INDIAN GOVERNMENT

under

INDIAN ACT LEGISLATION 1868-1951

prepared by

Wayne Daugherty and Dennis Madill

for

Research Branch

Department of Indian and Northern Affairs

Ottawa, 1980

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INDIAN GOVERNMENT UNDER INDIAN ACT LEGISLATION 1868-1951

P R E F A C E

This report was prepared to assist policy people to put in historical context band council powers and election systems for possible current revisions to the Indian Act. Though there existed a variety of governing systems among the diverse native tribes before the advent of European cultures, the following is a survey of the Canadian Government's legislated approach.

At Confederation Canada's Indian Policy had changed somewhat from "protecting" Indians to "civilizing" them; complete assimilation was the ultimate goal. To 1900 Canada extended the treaty system to the Indians of the Prairies and set aside reserves as a means of achieving assimilation. The rationale for this apparent paradox was that, with sufficient training and experience, the native peoples would eventually attain the same standards of "civilization" as non-natives. One of the first steps was to replace traditional tribal governments with the Euro-Canadian concept of elected local governments.

In Part One, Wayne Daugherty describes the implementation of the election systems and the problems encountered with their application and administration. For the most part though, the goal of displacing tribal government practices with structured election systems was successful.

The degree to which elected Indian chiefs and councils exercised their incumbent by-law-making powers, however, was somewhat less efficient. In Part Two, Dennis Madill looks at the powers granted to elected councils, their constraints and limitations, and why the concept of self-responsibility was often little more than theory.

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This report is intended to be a discussion paper in a policy context and is not a definitive account. Interested persons may use the information as a starting point for further research. Both papers complement an earlier study entitled The Historical Development of the Indian Act and all are available from the Treaties and Historical Research Centre, Suite 1618, Les Terrasses de la Chaudière.

Ron Maguire,
Deputy Chief,
Treaties and Historical
Research Centre.

January 1980

Ottawa K1A OH4
(819) 994-1182

PART ONE

The Elective System

CHAPTER ONE

The Three-Year Elective System of the Indian Act: 1869-1906

The policy of the Government toward the Indian people in the post-Confederation period was twofold and somewhat contradictory. On the one hand, it continued the protective, or guardianship policy of the colonial period; on the other, it proposed to assimilate the Indian, hopefully on a basis of equality, into the mainstream of society.[1] A major facet of this program of assimilation was to be the introduction of the democratic, elective process, considered at that time to be a mark of progress and civilization.[2] It was thought by the Government that the introduction of elective government would lead the Indians to abandon their traditional tribal political systems, which varied throughout the country and were considered impediments to the Indians' progress.[3] As Deputy Superintendent of Indian Affairs William Spragge stated:

> [T]he Acts framed in the years 1868 and 1869, relating to Indian Affairs, were designed to lead the Indian people by degrees to mingle with the white race in the ordinary avocations of life. It was intended to afford facilities for electing, for a limited period, members of bands to manage, as a Council, local matters - that intelligent and educated men, recognized as chiefs, should carry out the wishes of the male members of mature years in each band, who should be fairly represented in the conduct of their internal affairs.
>
> Thus establishing a responsible, for an irresponsible system, this provision, by law, was designed to pave the way to the establishment of simple municipal institutions.[4]

The system which came to be known colloquially as the three-year elective system (for this was the term of office), was first applied under Section 10 of the Indian Act of 1869. This section read:

> The Governor may order that the Chiefs of any tribe, band or body of Indians shall be elected by the male members of each Indian Settlement of the full age of twenty-one years at such time and place, and in such manner, as the Superintendent General of Indian Affairs may direct, and they shall in such cases be elected

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> for a period of three years, unless deposed by the Governor for dishonesty, intemperance, or immorality, and they shall be in the proportion of one Chief and two Second Chiefs for every two hundred people; but any such band composed of thirty people may have one Chief; Provided always that all life Chiefs now living shall continue as such until death or resignation, or until their removal by the Governor for dishonesty, intemperance or immorality.[5]

The interesting aspect of this provision was the authority the Department exercised through the agency of the Governor [General]. It was the Governor who decided, on the recommendation of the Department, to which bands the elective system would apply and could do this without their consent. Likewise, it was the Governor only who had the power to depose an elected Indian official for a misdemeanor, not the band council.

The same situation prevailed with regard to the powers that an elected band council could exercise. Though the band council was empowered to pass rules and regulations with regard to matters specified by the Act, its decisions were always subject to confirmation (approval) by the Governor.[6] Thus the ultimate authority with respect to the elective system and band government lay with the Department, and was a feature of all subsequent Indian Act legislation concerning this aspect of Indian life.*

The Indian Act of 1869 was not particularly successful as an instrument in promoting the elective system among the Indian people; perhaps because the concept was alien to the Indian. As Deputy Superintendent Spragge stated in 1871:

> [N]evertheless, the new plan of appointment has found, as yet, little acceptance with the Indian people in general. With the exception of the Mohawks of the Bay of Quinté, they have evinced no desire to identify themselves with the proposed new order of things, or to give effect to it by applying for authority to hold elections.[7]

Spragge attributed this lack of enthusiasm to the fact "that the Indian mind is in general slow to accept improvements, until much time is consumed in discussion and reflection."[8] He did allow, however, that "it would be premature to conclude that the bands are averse to the elective principle, because they are backward in perceiving the privileges which it confers."[9]

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* See Dennis Madill, Part II.

In 1876, a new Indian Act, which became the basis for all subsequent Indian Acts, was enacted by Parliament. The main purpose of the Act was to consolidate the many laws relating to Indians into a single piece of legislation.[10] A secondary but even more important aspect of the Act was as Superintendent General Laird observed:

> [T]hat [the] true interests of the aborigines and of the State alike require that every effort should be made to aid the Red man in lifting himself out of his condition of tutelage and dependence, and that is clearly our wisdom and our duty, through education and every other means, to prepare him for a higher civilization by encouraging him to assume the privileges and responsibilities of full citizenship.[11]

Though Laird made this statement in relation to the enfranchisement clauses of the Act, the sentiment expressed therein was no less true of the election provisions. Laird also stated that the views of some of the Indian Chiefs in Ontario had been sought with regard to the provisions of the new Act and that it had been modified to meet their wishes.[12] Unfortunately, he did not indicate to what extent, and in what manner, the views of the Indians affected the legislation.

Under the new Act, the sections concerning election procedures were both amended and expanded. Section 62, formerly Section 10, was amended to include incompetency among the infractions for which a chief or life-chief could be deposed. There was no definition, however, as to what constituted incompetency. It was also specified that the Governor in Council, as distinct from the Governor alone, as cited in Section 10, could order the election or deposition of chiefs.[13]

A new section, number 61, was added. This section defined who was eligible to vote, being those male members of the band of the full age of twenty-one years. It also provided that the vote must be by a majority of those eligible and that it be taken at meetings or councils of the band. The section further specified that these meetings could be held according to the rules of the band; but such meetings had to be conducted in the presence of the Superintendent General or his agent, so that the election could be monitored.[14]

The Indian Act of 1876, though it expanded and amended the election provisions; the principal focus of the Act and the legislators appears to have been on enfranchisement. This is reflected in the Annual Report for 1876 in which Deputy Superintendent General Vankoughnet wrote:

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> This Act, introduced and passed during the last Session of the Dominion Parliament-"To amend and consolidate the laws respecting Indians" - seems to give general satisfaction; and it is trusted that many Indians will avail themselves of its liberal provisions for enfranchisement - framed as they were, with the object of aiding the Indian to raise himself from the condition of tutelage and dependence; and of encouraging him to assume the privileges and responsibilities of full citizenship.[15]

Not much emphasis appears to have been placed on the elective system as an instrument of assimilation, and it is interesting to note that in the House of Commons Debates on the Act, Sections 61 and 62, were passed without comment.[16]

It is not known how many bands adopted the three-year elective system following the enactment of the 1876 Act but it does not appear to have been many. The only specific reference is to the Mississauga Band which undertook the election provisions of the Indian Act by Order in Council on 7 April 1877.[17]

In 1880, the election provisions of the Indian Act were again amended and expanded. Section 72, formerly Section 62, allowed that no band could have more than six chiefs and twelve second chiefs and councillors.[18] The records do not indicate the rationale behind this clause, but it may have represented an effort by the Department to limit the number of Indian officials with whom it would have to deal. The section also prohibited life-chiefs from exercising power in any form whatsoever, unless they too had been elected. This proviso was designed to eliminate or diminish the influence of the hereditary chiefs. It is not clear whether this clause was meant to be applied only to those bands which had undertaken the election provisions of the Act; or whether it applied to all bands regardless of their electoral status. Section 73, formerly Section 61, remained unchanged.[19]

The Act was further revised in 1886. Section 75 stipulated that an election could be set aside by the Governor in Council if it could be proven to the agent by two witnesses that a fraud or gross irregularity had occurred. It also provided that any Indian proven guilty of a fraud, irregularity or connivance would be declared ineligible for re-election for a period of six years.[20] This was the first occasion that a penalty other than deposition had been inserted into the election section of the Act. Also of interest was the fact that the provision defining the eligibility of voters was deleted. Whether this deletion was the result of a conscious decision or was done inadvertantly, is difficult to determine.

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The decade of the 1890's saw a number of minor changes to the election provisions of the Act. In 1894, subsection one of Section 75 was amended to provide a penalty for chiefs and headmen deposed from office. The penalty declared that they would be ineligible for re-election for a period of three years. [21]

In 1895, Section 75 was amended once again to permit bands containing thirty or more Indians to elect chiefs or headmen.[22] This amendment, however, had apparently been inserted in the Act by error and was subsequently withdrawn in 1898. The Act also stated that any elected or life chief or chief chosen by band custom could be deposed for dishonesty, immorality or incompetence and declared ineligible for office for a period of three years.[23] This clarified the somewhat vague wording of 1886 and applied to every band whether they were under the elective system or not.

In 1898, Section 75 was again amended to remove the erroneous clause inserted in 1895. The new amendment permitted chiefs and councillors in the proportion of two for every two hundred members and allowed any band of at least thirty members to have a chief.[24]

Despite the numerous amendments to the election provisions of the Act, the Indians seemed reluctant to adopt them. Why this was so is not specified in the records but reasons suggest themselves. Firstly, the elective system with it's hierarchical structure was alien to the Indian concept of government, which in its simplest form relied on consensus; and secondly, they probably resented the intrusion of what they considered to be a whiteman's law. Certainly, this was the reason given to Agent J.T. Gilkison by the Six Nations Indians at Brantford when he proposed the elective system to them in the early 1870's.[25]

The reluctance of the Indians to adopt the elective system led to a certain amount of exasperation within the Department as indicated by Deputy Superintendent Smart in the Annual Report of 1897:

> The department's policy has, therefore, been gradually to do away with the hereditary and introduce an elective system, so making (as far as circumstances permit) these chiefs and councillors occupy the position in a band which a municipal council does in a white community.
>
> With this end in view the "Advancement Act" was framed, and the 75th section of the "Indian Act" enacted to provide the introductory or intermediate stage. The provisions referred to have not been taken advantage of as speedily or extensively as could have been desired.[26]

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Actually, the Department had already undertaken measures to speed up the process. In 1895, the Department increased the number of bands under the three-year elective system in the older provinces. A list of bands was drawn up and by Order in Council of 15 June 1895, the system was applied to those bands on the list.[27] They included forty-two bands in Ontario; six in Quebec and seven in New Brunswick.[28] There is no indication that these particular bands had requested to be placed under the election provisions of the Act. It would seem, therefore, that the Department had exercised its option through the Governor in Council to place these bands under the elective system without their consent.

In 1899, the system was again expanded. On 16 May 1899, a general Order in Council applied the three-year system to all bands in Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island.[29]

There were, however, some exceptions. In Ontario, the Six Nations of Brantford and the Oneidas of the Thames had retained their hereditary system of tribal government while the Mississaugas of the Credit and the Iroquois of Caughnawaga (Quebec) were under the Indian Advancement Act.[30] Since the provinces, not the bands had been specified by the Order in Council, these four were inadvertently included under the three-year system. The latter two bands being already under the Indian Advancement Act were automatically excluded from the elective system of Section 75 of the Indian Act.[31] In the case of the former, the Department had no intention of disturbing their status, possibly fearing political repercussions and therefore did not attempt to do so.[32]

The Indians of the Treaty 3 area in north-western Ontario were also exempted from the three-year system. Neither the Indian Superintendent at Winnipeg, nor any of the commissioners who succeeded him at Regina, considered the Indians of Treaty 3 sufficiently advanced to have the elective system applied to them.[33] Thus, on their advice, the Department did not consider the system to be applicable even though it had been legally applied by the Order in Council.[34]

In 1906, the Indian Act and the Indian Advancement Act were consolidated into a single piece of legislation. The provisions for the three-year system in the old Indian Act became Sections 93 through 96 in the new Act.[35] These sections remained unchanged from the previous legislation.

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Endnotes

Chapter One

1. Robert G. Moore, The Historical Development of The Indian Act, 1978, p. 53.

2. Ibid., P. 51.

3. Robert J. Surtees, The Original People, Toronto: 1971, P. 72.

4. Canada. Department of Indian Affairs. Annual Report, 1870, P. 4: Deputy Superintendent William Spragge to Secretary of State Joseph Howe, 2 February 1871.

5. Gail Hinge,* Consolidation of Indian Legislation, Volume II: Indian Acts and Amendments 1868-1975, P. 13. [An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42. Statutes of Canada. 1869, Cap. 6. (32-33 Vict.)]

6. Surtees, P. 72.

7. Annual Report, 1870, P. 4.

8. Ibid., P. 4.

9. Ibid.

10. CP, House of Commons Debates, 3rd Sess., 3rd Parl., 1876, P. 342: The Indians, 2 March 1876.

11. Canada. Department of Indian Affairs. Annual Report, 1876, P. XIV: Report of Superintendent General Laird cited by the Minister of the Interior, David Mills, to Sir Frederick Temple, Earl of Dufferin, Governor General of Canada, 15 January 1877.

12. Ibid., P. XIV.

13. Hinge, P. 41. [An Act to amend and consolidate the laws respecting Indians. Statutes of Canada. 1876, Chap. 18. (39 Vict.)]

14. Ibid., P. 41.

15. Canada. Department of Indian Affairs. Annual Report, 1876, P. 8: Deputy Superintendent General Vankoughnet to Superintendent General David Mills, 31 December 1876.

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*Legislation cited in this paper is taken from Gail Hinge, Consolidation of Indian Legislation, Volume II: Indian Acts and Amendments. This compendium was prepared for the Office of Native Claims, Department of Indian and Northern Affairs, and is available in the Department Library. The full title and statute citation for for the legislation is enclosed in brackets accompanying the footnote.

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16. CP, House of Commons Debates, 3rd Sess., 3rd Parl., 1876, P. 931.

17. PAC, RG10 Vol. 1079, No. 337: Letterbook of the Deputy Superintendent General, 12 April 1880.

18. Hinge, P. 75. [An Act to amend and consolidate the laws respecting Indians. Statutes of Canada. 1880, Chap. 28. (43 Vict.)]

19. Ibid., P. 75.

20. Hinge, P. 141. [An Act respecting Indians. Short Title. The Indian Act. Revised Statutes of Canada. 1886, Chap. 43, Section 75]

21. Hinge, P. 140. [The Indian Act. Statutes of Canada. 1894, Chap. 32, Section 5]

22. Hinge, P. 141. [The Indian Act. Statutes of Canada. 1895, Chap. 35, Section 3]

23. Ibid., P. 141.

24. Hinge, P. 142. [The Indian Act. Statutes of Canada. 1898, Chap. 34, Section 9]

25. PAC, RG10 Vol. 6808, File 470-2-1 (Red Series): Minutes of Six Nations Council held on 20th March in re the Deputation, Payment of Debts and the new Indian Act from Agent J.T.Gilkison, 21 March 1876.

26. Canada. Department of Indian Affairs. Annual Report, 1897, P. XXV: Deputy Superintendent General Jas. A. Smart to Superintendent General Clifford Sifton, 31 December 1897.

27. PAC, RG10 Vol. 7920, File 32-1, Vol. 1, P. 1: Briefing paper entitled 'System of Election or Appointment of Chiefs and Councillors in the varying Provinces' from H.C. Ross, 4 February 1911.

28. Annual Report, 1897, P. XXVI.

29. PAC, RG10 Vol. 7920, File 32-1, Vol. 1, P. 2.

30. Ibid.

31. Ibid., P. 1.

32. Ibid., P. 2.

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33. Ibid., P. 3.

34. Ibid.

35. Hinge, P. 208. [The Indian Act. Revised Statutes of Canada. 1906, Chap. 81]

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CHAPTER TWO

The One-Year Elective System of the Indian Advancement Act: 1884-1906

By 1880, the Government decided the time had arrived to establish what Superintendent General Sir John A. Macdonald termed, "a better system for managing their local affairs than the one which at present prevails among them.'[1] In the Annual Report for 1881, Macdonald further stated:

> It is worthy of consideration whether legislative measures should not be adopted for the establishment of some kind of municipal system among such bands as are found sufficiently advanced to justify the experiment being tried. It is hoped that a system may be adopted which will have the effect of accustoming the Indians to the modes of government prevalent in the white communities surrounding them, and that it will thus tend to prepare them for earlier amalgamation with the general population of the country.[2]

Indeed, steps in this direction had already been taken. The previous year, in a circular letter to the various agents and superintendents, Lawrence Vankoughnet, the Deputy Superintendent General outlined the proposed form of municipal government. According to Vankoughnet, there would be established on each reserve an elected council which would manage the local affairs of the band. Each council would be composed of representatives from each section (i.e. wards) of the reserve and would be presided over by one person holding a position equivalent to that of a reeve or mayor. This person would be selected by the whole community.[3] Vankoughnet requested that the agents and superintendents inform him of their views on the proposed legislation and whether the Indians in their areas were capable of undertaking such an enterprise.[4]

The majority of replies to Vankoughnet's circular were negative. Most of the agents and superintendents felt that the Indians under their jurisdiction 'were not sufficiently advanced in intelligence' to undertake a municipal form of government.[5]* In some cases, the proposals were submitted to the bands themselves. The Fort William Band, for instance, responded by adopting a unanimous resolution:

> [T]hat, for the present, we are not prepared to incur the expenses incidental to such an arrangement.[6]

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*The word intelligence appears to have been used as a synonym for capability or knowledge and it is in this context that it should be regarded.

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Not all the replies, however, were negative. J.T. Gilkison, Indian Superintendent and Commissioner at Brantford, felt there would be no difficulty in applying the municipal system to the Mississaugas.[7] William Plummer, Superintendent at Toronto, approved of the proposed municipal system and indicated that the bands in his agency were 'sufficiently intelligent' to undertake it.[8]

In British Columbia, I.W. Powell, Visiting Indian Superintendent at Victoria, had a somewhat less paternalistic view. He noted that the various tribes in British Columbia were quite independent of each other and because of the greater Indian population in relation to that of the whites, it had been the policy to promote the independence and authority of each chief.[9] It is not clear whether this policy belonged to the federal or provincial government.

Powell felt that if the Department carried out its plan to appoint agents for British Columbia, there were many Indian communities in the province which could undertake municipal government.[10] He did not think that the majority of bands who earned their living from the sea were capable of municipal government but indicated that in the long run they would be encouraged by the example of other bands who were.[11] He suggested that the Cowichan Band had the potential for municipal government and added that the proposed system would not only be beneficial to the Indians but would help make them amenable to Departmental requirements.[12] Powell also observed:

> Many of the old chiefs still exercise much influence over their respective tribes and being wedded to old and ignorant customs, discourage the ambition to progress which prevails among the young men of the Band. In the localities that might be selected for the introduction of a council there is no doubt that the younger and more advanced Indians would be chosen as representatives or councillors; and hence a vigorous civilizing power would be created, which would eventually stamp out hereditary chiefship and with it the only upholders of their ancient ignorance and barbarism.[13]

On the prairies, Mr. E. McColl, Inspector of Indian Agencies, expressed the view that the adoption of the municipal system would greatly enhance the self-reliance of the Indians. He suggested that Indians of the St. Peter's, Fairford, Fisher River, Norway House, The Pas and Cumberland Bands as likely candidates for municipal government.[14]

Edgar Dewdney, Indian Commissioner for the North-West Territories, Manitoba and Keewatin, thought that only the St. Peter's Band was in a position to adopt the proposed system. Nevertheless, he cautioned that the chief might regard the measure as a challenge to his authority, as indeed it was. Dewdney advised that no action be taken in the North-West or in Manitoba.[15]

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Despite the fact that the bulk of the replies to his circular letter had been negative, Deputy Superintendent General Vankoughnet was sufficiently encouraged to proceed with the plan to institute the municipal system. In a memorandum to the Superintendent General, Vankoughnet noted:

> [A] number of the superintendents and agents have reported in favor of the scheme, and consider that it would materially aid in the promotion of the civilization of the Indians as well as regulating matters upon the different reserves.[16]

Vankoughnet's memorandum indicated that agents other than Powell in British Columbia considered the proposed legislation as an instrument with which to civilize (i.e. assimilate) the Indians.

With regard to the form the municipal government would take, Vankoughnet stated:

> The plan proposed is, to have a council consisting of representatives from the different sections of a reserve elected by the Indians resident in those sections and to be presided over by the local Indian agent, should there be one living sufficiently near the reserve, or if not, by one of the band elected to the position by the other members of the council, or by the whole band. The latter officer would be chairman of the council and have somewhat similar functions to the reeve of a township.[17]

The plan was essentially the same as that outlined in the circular letter of 1880 with the exception that the agent had been designated to preside over the council, if possible. This feature had first been suggested by Macdonald:

> [I]t is thought that a council, proportionate in number to the population of the band, elected by the male members thereof, of twenty-one years and over, and presided over by a functionary similar to the Reeve of a Township, might answer the purpose; or in its initiatory stage the council might be presided over, with better results by the local Indian Superintendent or Agent.[18]

Vankoughnet also suggested that a clause be inserted in the bill to permit a band to return to its former management if the new scheme proved unsuccessful.[19]

The Superintendent General, Sir John A. Macdonald apparently agreed with these plans for he instructed Vankoughnet to prepare a bill.[20]

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A bill was subsequently drafted and on 29 January 1884, Macdonald introduced it in Parliament as Bill Number 22. In his explanation of the Bill on first reading, Macdonald stated:

> [T]his is a Bill intended to meet a difficulty connected with the more advanced bands of Indians whose self-government is now carried on in council, where they can discuss matters affecting their communities and where the chiefs have the principal power. In some of the more advanced communities the Indians are civilized to all intents and purposes, and it is thought well that there should be something more than a mere informal council where they cannot speak authoritatively. The Bill is tentative to a considerable extent. It provides that in such Indian communities as the Governor in Council thinks fit for the operation of this Act, the Indians shall meet on a certain day and elect six councillors; that those six councillors shall elect a chief councillor, who shall be what would be called a reeve among the white communities in Ontario; and that they shall have the same powers as are given to the chiefs under the Indian Act, and also certain additional powers of arranging among themselves for the improvement of their reserves.[21]

In the debate that followed, Macdonald was questioned about certain particulars of the Bill. Mr. Paterson, Member of Parliament for Brant, noted that the vote for council elections had been given to Indian males only. He suggested that there were widows residing on reserves who might also have an interest in these elections.[22] Macdonald replied:

> [B]y slow degrees, the idea of placing women on an equality with man has grown in the civilized world, but I do not know whether, among Indian tribes, the idea has reached that stage that it has in the Canadian Parliament. Perhaps by hon. friend, when he considers the matter, will move an amendment to extend the right of voting to the ladies of the Indians in his constituency, in whom he takes so fraternal and paternal an interest.[23]

The matter was not pursued.

Paterson also asked what provisions had been made for chiefs whose power would be curtailed by the implementation of the Bill.[24] He stated that many of the chiefs were jealous of their power and might not embrace the proposed act unless conciliated in some manner.[25]

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Macdonald's reply was specific:

> In some of the tribes there are hereditary and elective chiefs combined. There are great varieties of organizations in the different bands. It is not proposed in any way to affect the status or the rank of the chiefs; but, as in the Act of 1880, where an elective system of chiefs has been adopted, the hereditary chiefs retain their rank, but lose their power. I will say to my hon. friend that I have received a good many suggestions from different bands of Indians - from educated men, who are quite capable of judging the effect of this law. On the whole, the Bill has been favourably received by more advanced bands. There is to be no force exercised on the Indians; this measure is also intended to give them the opportunity of adapting themselves to the white system as much as possible.[26]

One of the educated Indian men from whom Macdonald received suggestions was Chief Peter Jones of the Mississaugas of the Credit. Jones expressed concern about the number of councillors proposed in the Bill. He felt the number should be odd such as seven, nine or eleven; stating that the councils had traditionally been large and that to reduce it to six would 'be more like plunging them into municipal work than training them to it'.[27] Jones also considered the division of reserves into sections or wards inadvisable. He reasoned that one or two sections might contain all the best candidates while the other sections would have to make do with people who might prove indifferent to the operation of municipal government.[28] He suggested that the candidates be nominated and elected at large, provided they held the required property and could prove their ability to attend to their duties as councillors.[29] He further recommended that the term Head Chief be retained, it being the equivalent of chief councillor, and that triennial elections be held at first and only gradually reduced to a yearly basis.[30] Finally, Jones suggested that the chiefs already elected under Section 72 of the Indian Act of 1880 should continue in office and that provision be made to elect sufficient councillors to make up the numbers required.[31]

Jones' arguments were countered in a letter of 13 February 1884, from Deputy Superintendent General Vankoughnet to Sir John A. Macdonald. Vankoughnet pointed out that the original draft of the Bill had proposed that the number of councillors should vary from three to six. He thought that this should be reinstituted as the present Bill made the mandatory number of councillors six in all cases.[32]

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With regard to the division of the reserves into sections, Vankoughnet agreed that in some cases good candidates would be prevented from election to the council because of their residence in the same ward.[33] He stressed that this could not be avoided even in a white community and that it was important that each section of a reserve be represented on council in order to protect its interests.[34]

In answer to Jones' suggestion that chiefs elected under the Indian Act be permitted to retain office, Vankoughnet replied that it would be better to apply the Act without reference to any previous band organization. He also favoured yearly elections rather than triennial ones as Jones had wanted, for it would in his opinion be a means to prevent councillors from neglecting their obligations to their constituents.[35]

Vankoughent expanded on his views in a letter to Macdonald, dated 27 March 1884. He stated that the Bill arbitrarily set the number of wards at six which would be too many for some of the smaller reserves. He suggested that the number of wards vary from two to six according to the size of the reserve.[36] Vankoughnet recommended that Section 5 be divided into sub-sections with the first sub-section providing for the nomination of candidates; and further suggested the property qualification be of the value of one hundred dollars.[37] These latter suggestions, however, were not incorporated in the Act.

On 19 April 1884, the 'Act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal power', was enacted by Parliament. The short title was 'The Indian Advancement Act of 1884.'[38]

The election provisions of the Act consisted of eight sections. Section 1 of the Act stated that it could be applied to any band in any province including the North-West Territories and the District of Keewatin.[39]

Section 2 defined the term reserve to mean 'two or more reserves' and the term band to mean 'two or more bands'; joined together for the purposes of the Act. This meant that two bands of the same tribe, though living on separate reserves, could amalgamate and have the Advancement Act applied to them as though they were a single political and geographical entity.[40]

Section 3 stipulated that an Order of the Governor General in Council was necessary to apply the Act to a band.[41]

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Section 4 allowed for the division of reserves into sections, to number no less than two nor more than six. Each section was to have a relatively equal number of voters.[42]

Section 5 defined voter eligibility. The electors were to be all the male members of the band twenty-one years of age or older. Each section of the reserve was to be represented by one or more councillors as specified by the Order in Council applying to that reserve. Any Indian elected to the position of councillor had to own or live in a house situated on the reserve. The agent was to preside over the election and take and record the votes of the electors. He could also admit or reject the claim of any Indian to be an elector. This later aspect was subject to appeal to the Superintendent General.[43]

Section 6 declared that at a time and place designated by the Superintendent General, provided it was within eight days of the election, the councillors were to meet and elect a chief councillor from among themselves.[44]

Section 7 declared that councillors were to be elected for a one year period.[45]

Section 8 allowed that in the case of a vacancy on the council caused by death or incapacity occuring more than three months before the next scheduled election, the agent was to give notice and hold an election. Only the electors of the indisposed councillor's section could vote. It was also stipulated that if the councillor to be replaced was a chief councillor, an election for a new chief councillor was to be held in the manner already provided. During the period of vacancy the remaining councillors were to constitute the council and appoint a temporary chief.[46]

Section 9 dealt with the responsibilites of the agent with regard to band council meetings. As may be seen from Section 6, Vankoughnet's proposal to have the agent preside over the council as a chief councillor had been eliminated, though again the records do not indicate when this change occurred. Nevertheless, the agent was given the role of presiding over the band council meetings.[47]

According to the provisions of Section 9, the agent was to determine when and where the Council would meet to conduct its business. It was stipulated that the Council was to meet no less than four nor more than twelve times a year. The agent or his deputy, appointed for the purpose by the Superintendent General, was 'to preside and record the proceedings' and 'control and regulate all matters of procedure'.[48] The agent was also to report and certify all by-laws passed by the Council. He could address the Council to 'explain and advise them upon their powers and duties, and any matter requiring their consideration'.[49]

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The agent, however, was prohibited from voting on any issue that came before the Council. Though giving the agent a seemingly large degree of control and influence over Council meetings, these provisions were undoubtedly necessary, given the Indians lack of familiarity with the procedures of a municipal council.

After the passage of the Act through Parliament, Deputy Superintendent General Vankoughnet sent instructions to various agents to inform the Indians. He told them:

> [Y]ou should explain fully each of the provisions of the Act to the Band, and inform them at the same time that the object of the Department is to endeavor to promote their advancement in civilization and intelligence with a view to their eventually attaining to an equality in those respects with the white portion of the population of the country.[50]

Vankoughnet also admonished the agents that it was not the Department's intention to coerce the Indians into adopting the Act.[51]

The initial replies to the Department were not encouraging. Superintendent T. Malton (Parry Sound) wrote that the only bands in his agency capable of undertaking the Act were the Parry Island and Gibson Bands, but that both had declined the offer to do so.[52] Agent A. McKilroy (Wallaceburg) reported that he had explained the Act to the Chippewa Council and they had rejected it.[53] Agent Charles Sargeant (Chateau Head) replied that he did not think any of the MicMac Bands under his jurisdiction were capable of self-government.[54]

Ironically, it was in the North-West, where the Indians were thought to be least advanced that the Act was accepted. Agent J. Reader, at The Pas, wrote on 13 April 1885, that he had explained the Act to the Indians and that they had agreed to accept it.[55] He added, however, that he did not feel The Pas Band was sufficiently advanced to have the Act applied to them.[56]

Although Reader's opinion was negative, Inspector McColl's was not. He had already stated in his reply to Vankoughnet's circular of 1880 that he felt The Pas Band was capable of operating under the act. Now he reiterated those views:

> In my opinion The Pas including the Birch River Indians who belong to the same band are the only Indians (if any) sufficiently advanced in intelligence in Mr. Reader's agency to have municipal institutions introduced among [them] for they

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> had the advantages of education from the Episcopal Mission Society for upwards of half a century, and perhaps its worthwhile to allow them to adopt the act as a trial...[57]

McColl, however, cautioned against applying the Act to other bands such as the Grand Rapids Indians. He commented that they were employed by the steamboat companies and spent much of the summer away from the reserves.[58] Another factor in his consideration was that few of them could read or write.[59] McColl also thought that the Cumberland Band which he had previously championed should be excluded. He related that many of them, including the French half-breeds whom he considered the most intelligent, were withdrawing from treaty and therefore, it would not be advisable to have them adopt the Act.[60]

Surprisingly, Vankoughnet's subsequent reply only asked how many sections The Pas and Birch River reserves would be divided into; the day, place and hours of the election, and the number of councillors representing the various sections.[61] He made no comment on the difference of opinion between McColl and Reader with regard to the feasibility of The Pas Band adopting the Advancement Act; nor did he comment on McColl's change of heart with regard to the Cumberland Band.

As the election plans progressed, an important question was posed by Agent Reader. He inquired through Inspector McColl whether the present chiefs and councillors were to be considered ex officio.[62] Deputy Superintendent General Vankoughnet replied:

> The present Chief and Councillors could not be ex officio members of the Council.
>
> That there is no objection to their being elected, if they have a majority of votes, to form part of the Council.
>
> They could not hold their present offices separate from the Indian Advancement Act. If that Act is applied to a Band of Indians, the Councillors elected under the Act are virtually the Chiefs of the Band, and the other old Chiefs are no longer considered as holding office.[63]

Meanwhile, the Cumberland Band had requested that the Advancement Act be applied to them. Despite McColl's objections, Vankoughnet thought the band should have a trial run with the Act, particularly since there appeared to be a unanimous desire on the part of the band to do so.[64] Vankoughnet suggested the elections could be held when the annuity payments were made.[65]

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The election plans for these three bands proceeded. The election for The Pas Band was scheduled for 29 July 1886; that of Birch River for the 10th of August; and on the 13th of August for the Cumberland Band.[66] Further progress, however, was disrupted by Agent Reader. In a letter to McColl dated 16 July 1886, he stated:

> Owing to the state of transition through which these Bands are passing on account of so many withdrawals from treaty should it meet with your approval, I beg respectfully to suggest that the respective elections of a council be postponed to a future date.[67]

Whether this was a ploy on the part of Agent Reader to do away with the elections or was a legitimate consideration, is difficult to ascertain. Certainly, Reader had been hostile to the bands' efforts to adopt the Act and even the enthusiastic McColl had objected to the Cumberland Band's attempt to do so. In any event, Reader's advice was accepted by the Department and the elections were postponed indefinitely.

The Pas and Cumberland Bands were not the only bands in Manitoba interested in the Indian Advancement Act. Agent Muckle of the Clandaboye Agency reported that the St. Peter's Band had agreed to accept it with the exception of clauses five and eleven.[68] Clause five dealt with the residency and property requirements while clause eleven dealt with taxing powers. As Muckle stated:

> [T]heir reasons for not accepting clause 5, is that they want all the land outside the two mile belt to be in common, at least this is about the only reason I could see. In regard to clause eleven, anything in regard to taxes, is a "Bete Noire", to an Indian, and nothing would persuade them to tax themselves, although they would be perfectly willing to tax non treaty people who live within the reserve.[69]

On 22 June 1887, Agent Muckle reported that he had told them they must accept the Act in its entirety or do without it. The St. Peter's Band chose the latter course and its application to have the Advancement Act applied to them was refused.[70]

In British Columbia, however, the story was different. On 22 December 1885, Superintendent I.W. Powell stated that during his summer visit he had suggested to Agent Lomas that the Cowichan Band was sufficiently advanced to adopt the Advancement Act.[71] Lomas subsequently explained the provisions of the Act to the band who then indicated their willingness to accept it.[72]

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Powell, therefore suggested that an Order in Council be passed admitting the Cowichan Band to the Advancement Act. On 30 January 1886, an Order in Council, No. 2340 was passed applying the Advancement Act to the Cowichan Band, which became the first band in Canada to adopt the Act.[73]

Shortly, following the application of the Act to the Cowichan Band, the Kincolith Band of Nass River, stated that they were anxious to have it applied to them.[74] On 15 July 1886, Order in Council Number 1435 was passed, admitting Kincolith to the Act.[75] Kincolith was subsequently followed by Metlakatla on 24 January 1889 through Order in Council No. 69, and by Port Simpson on 28 February 1894, through Order in Council Number 562.[76]

In 1886, the Indian Advancement Act underwent some minor changes. Section 2 was amended to state that if the application and operation of the Act with respect to a particular band had proven unsuccessful, then the Governor in Council could declare it to be no longer applicable.[77] This amendment had been proposed by Vankoughnet back in 1884.

Section 3, formerly Section 5 of the Act, was amended to permit the agent or his deputy presiding at the band council election to cast the deciding vote in the event of a tie.[78] This amendment was apparently added to meet a contingency which had been unforeseen when the original legislation was drafted; specifically that of deadlocked elections.*

The Indian Advancement Act was revised again in 1890. The revision arose out of the behavior of the elected council on the Caughnawaga reserve which refused to attend to council business because some appointments it had made had been disallowed by the Department of Indian Affairs.[79]

As a result, on 7 February 1890, Deputy Superintendent General Vankoughnet recommended that two amendments be made to the Indian Advancement Act.[80] The first amendment would permit the Superintendent General to disqualify any councillor who refused or neglected to attend council meetings; refrained from voting in council or in any way obstructed the business of the council.[81] This,Vankoughnet stressed, was a very advisable amendment. The second amendment made provision for a nomination day for those candidates running for the office of councillor.[82] It is not certain whether these proposed amendments were initiated by Vankoughnet or whether they reflected the desires of the Indians; although when the amendments were introduced in the House of Commons on First Reading, Hansard states that the Indians themselves had requested these changes.[83]

*Robert G. Moore (The Historical Development of the Indian Act) states that the assignment of the deciding vote to the agent in the event of a tied election, 'exemplified Government's move towards stricter management of local affairs on reserves.' This seems a rather doubtful proposition. If the government were attempting to give the agent greater control over the elective system, it seems rather odd they would make this control contingent on the relatively rare circumstance of a deadlocked election.

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The amendment dealing with the disqualification drew the ire of the opposition when it was debated in Parliament. Wilfrid Laurier stated that it gave too much power to the Superintendent General:

> [A]nother provision in the Bill is that whoever refuses to attend meetings of the council when notified,or refrains from taking part in the proceedings by at least voting, may be removed by the Superintendent General of Indian Affairs. This proposal is not worded as I would wish it to be; but the idea which is here embodied is not one with which I would be disposed to find fault. If he refused to act as a councillor after a certain time I would not object to his office becoming ipso facto forfeited, but the power should not be given to the Superintendent General. The powers give the Superintendent General more control over the Indians than he should possess.For these reasons I consider the second clause is altogether objectionable....[84]

As a result of the Parliamentary opposition the amendment was not adopted at that particular time.

The second amendment, however, dealing with nominations was enacted. It became Section 13 of the Indian Advancement Act and was divided into five subsections. The provisions of Section 13 allowed for a nominating meeting to be held one week before election day. The meeting was to be held between the hours of 10:00 a.m. and 12:00 noon with the agent, a person appointed by the Superintendent General, or a chairman selected by the meeting, presiding. Only Indians nominated at these meetings could be candidates for office. In order for a nomination to be valid, the candidate had to be nominated by an elector from his section (ward) of the reserve. Subsection 5 permitted the agent to declare a candidate elected if this candidate had been the only one nominated by twelve noon. In the event that two or more candidates were proposed for councillorship, then the election was to be held in the normal manner under the provisions of Section 5.[85]

In 1906, the Indian Act and the Indian Advancement Act were consolidated into a single piece of legislation. The Indian Advancement Act became Part II of the Indian Act and its election provisions were covered in Sections 172 through 194.

The only major change in the Advancement Act was the inclusion of Section 193 which stated:

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> Every member of a council elected under the provisions of this Part, who is proved to be a habitual drunkard or to be living in immorality, or to have accepted a bribe, or to have been guilty of dishonesty or of malfeasance of office of any kind, shall, on proof of the fact to the satisfaction of the Superintendent General, be disqualified from acting as a member of the council, and shall, on being notified, cease forthwith so to act; and the vacancy occasioned thereby shall be filled in the manner hereinbefore provided.[86]

Section 193 provided the Advancement Act with a system of deposition which had long been a feature of the election provisions of the Indian Act. The major difference was that under the Advancement Act (Part II of the Indian Act) the power to depose rested with the Superintendent General whereas under the Indian Act it lay with the Governor General in Council. The provision of the Superintendent General with the power to depose councillors who were not attending to their duties had been the major aim of the similar amendment proposed in 1890. Though Section 193 had different wording and other criteria for deposition, the principle was the same.

The consolidation and inclusion of Section 193 was the last major change in the Indian Advancement part of the Indian Act prior to its being rescinded in 1951 by Order in Council.

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Endnotes

Chapter Two

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CHAPTER THREE

Hayter Reed's Western Policy: 1890-1898

By 1890, it was apparent that a certain disillusionment with the elections portion of the Government program to civilize and assimilate the Indians, had developed among the officials of the Department of Indian Affairs. Undoubtedly influenced by the Riel Rebellion of 1885, and by the frustrating lack of progress, particularly with respect to the Advancement Act, their attitude hardened towards Indians in general and the tribal role of chiefs and headmen in particular.

The Annual Report for 1889, for instance, stated:

> [A]gain, the lapse of the office, when old chiefs and headmen have died, has greatly benefited some of the bands - except under certain circumstances, the influence of the old chiefs has not been found to be beneficial. To begin with, they are naturally conservative, and even when themselves convinced that the only hope for their people is in following the path of industry they are compelled, in order to retain their influence over the lazy and intractable, to become against their better judgement, the mouthpiece for the ventilation of imaginary grievances and the presentation of utterly unreasonable demands. The agents find that when the Indians, deprived of their chiefs, are compelled to seek the advice of their instructors, a marked change for the better is soon observed. During the past years the Indians of White Bear's Band became themselves so convinced that the influence of their chief was not for the general interest that they petitioned for his deposition, which was allowed.[1]

One man who subscribed to this view was Commissioner Hayter Reed, who was particularly critical of the practicability of band elections in the West. His attitude and policies were reflected in his dealings with the Cowessess Band during the decade of the 1890's.

In 1887, the Cowessess Band, at their own request, had been placed under the three-year elective system. By 1891, the first three-year term had expired and a new election for chief and headmen was held.[2] Reed, however, did not like the outcome of the election. He disapproved of the band's choice for chief because the candidate preferred hunting to farming.[3]

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Reed expressed his disappointment at the election result in a letter to the Department. He noted that elections tended to unsettle the Indians and that the best men were not always chosen. He also felt that elected officials, due to the pressure of public opinion, did not always do what was best for the band.[4] Although Reed did not define what the best interests of the band were, he no doubt considered them synonymous with Departmental policy and strongly recommended that the Department do away with the system of elections.[5] Reed expanded on his ideas in a letter of 5 March 1891, stating:

> From the Department's concluding remarks I am led to infer that it understood me to express a preference for the old system of hereditary Chiefs, but so far from this being the case I have invariably urged the desirability of abolishing the office altogether, wherever possible, as one of the strongest aids towards the destruction of communism and the creation of individuality.[6]

Reed had already tried to put his ideas into practice by attempting to dissuade the James Smith Band from replacing their old councillors by adopting the three-year elective system.[7] This action earned him a reprimand from Deputy Superintendent General Vankoughnet who told Reed that the Department was not prepared to eliminate chiefs and headmen, and that there was no objection to the James Smith Band adopting the triennial system of elections.[8] In fact, they never did undertake it.

The reprimand, however, prompted Reed to write a long letter in his defence and to put forward once again his arguments for the abolition of the offices of chief and headmen. He stated that it was his understanding that the Department's objective was to educate the Indian so that he could be enfranchised and become a citizen of the state.[9] In order for this aim to be achieved, the Indians would have to be weaned from the tribal way of life. Reed claimed that the existence of band councils with their chiefs and councillors militated against the inculcation of individualism among the Indians and kept alive the feeling that the Indians were distinct from the whiteman.[10]

Reed compared the situation to that of the immigrants whom he claimed were more easily assimilated when they did not live

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in colonies where they could retain their customs and habits.[11] He thought that the Indians would be more amenable to assimilation if the tribal system were eliminated.[12] Reed concluded his letter with these observations and a plea:

> The experience had of the triennial election system, produces the conviction that its effects are much worse than those of the hereditary one.
>
> If as already stated, permanently appointed Chiefs and Councillors find it necessary for their influence to investigate or countenance opposition to the Department, the hopes and fears engendered by the system of triennial elections, must result in greatly aggravating that evil. Moreover the amount of intrigue and excitement attendent upon those recurring elections, has the most unsettling effect upon the Indians, and introduces among them some of the worst features connected with politics.
>
> The importance of this matter it appears to me can hardly be over rated, and I have consequently felt it to be my duty to put my views clearly before the Department, in the hope that it may be induced to reconsider its decision in the matter, at any rate to the extent of allowing Indians who themselves recognize the advantage of so doing, to refrain from the election of Chiefs and Councillors, as these offices become vacant.[13]

In April 1892, certain members of the Cowessess Band entered a grievance against their elected officials. They wanted the offices of chief and headmen abolished and the annuity for those officials to be used for the general welfare of the band.[14] After much debate, the Indians agreed to leave the decision regarding abolition to the Commissioner.[15] Reed, of course, was quite agreeable to their request and reported to Ottawa:

> Since I have so often and so fully expressed my views to the Department, I need only say that all I require in order to decide in favour of abolishing the positions, in so far as the Band [Cowessess] referred to are concerned, is to know that the Department would approve of the course.[16]

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Vankoughnet, however, was still the Deputy Superintendent General and permission was not forthcoming. By 1894, the situation had changed. Reed was now the Deputy Superintendent General and in a position to implement his policies.

On 14 February 1894, Reed received a letter from Assistant Commissioner Forget that Agent McDonald of the Crooked Lake Agency intended to call an election for the Cowessess Band.[17] Forget added that he had told MacDonald not to proceed with the election until authority was granted. He doubted that permission would be forthcoming since it was now Department policy to do away with the offices of chiefs and headmen.[18] Reed replied to Forget approving his action in the matter and stated that MacDonald should be warned that he was to carry out Department policy.[19]

In April, Agent Mc Donald again requested permission to hold an election. He said he had strongly advised the Indians to do away with elections but that they were adament in their desire to hold one, claiming it as a treaty right under the provisions of Treaty No. 4.[20] Reed, however, insisted that everything should be done to abolish these offices. He also inquired as to whether a paper signed by the Cowessess Band agreeing to eliminate the offices of chief and headmen was in the Regina office.[21] McDonald replied that he could find no copy of this paper, and stated again that the Indians were in unanimous agreement to have an election.[22] Assistant Commissioner Forget replied likewise and pointed out that the Indians were insisting on retaining the elective offices as a treaty right.[23]

Reed refused to accept these explanations and inferred that Agent McDonald was being remiss in his attempt to persuade the Indians to abandon their election plan.[24] McDonald wrote back saying he had done everything possible to dissuade the Indians and did not deserve the reprimand. He noted:

> As stated in my letter to you No. 584 of 10th April last the Indians of Cowessess Band No. 73 claim they were promised a Chief and Headmen at the time of Treaty and they requested me to state to you that they do not wish the terms of the Treaty interferred with. They are perfectly civil and orderly but quite firm in their request for a new election...
>
> If dissuasion on my part is the only means to be adopted I can only say with all due and proper deference to the Department, I have already done so vigourously and I will continue to do so and will report to you further any steps I may have taken.[25]

In a marginal note on McDonald's letter, Commissioner Forget stated that the elective positions could not lawfully be abolished

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without consent of the Indians who would probably want a 'quid pro quo' for doing so.[26] It is not clear how Forget arrived at this conclusion. The Cowessess Band had been placed under the election section of the Indian Act by an Order in Council. Clearly, this Order in Council could be rescinded at any time or even superseded by a new Order in Council without the consent of the Indians. It may be, however, that Forget was referring to these positions in the context of Treaty No. 4, in which case he was of the opinion that the revocation of a treaty provision would require the approval of the Indians. Indeed, this appears to be the case for he further suggested that the Indians be asked to give up their treaty rights to an election in exchange for presents of tea and tobacco equal in value to the amount of annuity moneys that would have been paid to their elected officials.[27]

Reed replied to this letter stating that the Department was aware of the validity of the Indian claim but felt that their true interests required them to relinquish the elected offices.[28] He expressed the opinion that the annuity money could not lawfully be applied in the manner suggested by Forget.[29] It was also contrary to the Department's policy of not supplying articles the Indians could and should get for themselves.[30]

Reed's reply was somewhat vague and in need of clarification. His reference to the validity of the Indian claims undoubtedly referred to the treaty provision permitting them a chief and a certain number of councillors. They did not, as Forget had remarked, have a treaty right to an election. This could only be conferred under the election provisions of the Indian Act. Reed, however, offered a counter proposal to Forget's suggestions. He proposed that in exchange for Indian relinquishment of their treaty rights, the Department would give the band a couple of wagons or other considerations.[31] He stated:

> It is observed that the Agent states that he has exhausted his powers of persuasion in the matter, but possibly he may be doing his abilities injustice, and it is hoped that, especially with the inducements herein described to add force to his exertions, that a renewed effort may prove more successful.[32]

McDonald made this offer or inducement, for that was what it was, to the Cowessess Band but they would have none of it. They insisted upon maintaining their right to a chief and councillors arguing that future generations would blame them if they dispensed with a treaty right.[33] Reed, faced with the Indians' resistance to his policy, capitulated and authorized McDonald to hold the election.[34]

Agent McDonald was given instructions on election procedure and was also informed:

> Should the Band consider that any right under the Treaty to elect Headmen is being invaded, it should be pointed out to them, that although the Treaty allows a number not exceeding four to each Band, when they accepted the elective short term system they abrogated the Treaty in this respect and came under the provisions of the Indian Act, which allows one Chief and two Councillors to each 200 Indians; but as the population does not entitle them to any Councillors, no right is affected, and the election should therefore be proceded with on these lines. [35]

McDonald was further informed that if there was serious opposition from the Indians on the grounds that the Department had created a precedent by allowing four councillors, then he was authorized to permit the election of two councillors. [36] It was stressed, however, that:

> [O]nly on the understanding that this is done merely on account of the precedent inadvertantly created and not as a recognition of any rights which the Band might consider themselves possessed of under the Act, the Department reserving to itself the right to hold them to the strict construction of the law at anytime, should it be deemed proper. [37]

The Indians were surprised to find that by accepting the three-year system, they had abrogated the treaty.[38] The band had never been told, nor had any other band, that by accepting the election provisions of the Indian Act or the Advancement Act they were abrogating their treaties. The records do not indicate how Reed arrived at his interpretation but it would seem that he was operating on the principal that an act of parliament superseded any treaty.

The Department realizing it would appear severe to renege on the precedent established, permitted as a courtesy only, the election of two headmen.[39] As previously stated, however, the Department reserved the right to fall back on Section 75 of the Indian Act.

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The Cowessess Band was not satisfied with this decision. In 1898, they petitioned the Department through Agent J.P. Wright, to allow them to elect four councillors instead of two. They claimed they had a right to four councillors due to the stipulations of the Treaty. They also pointed out that Section 75, amended in 1895, permitted one chief for thirty and one councillor for each additional thirty members of a band.[40]

On 16 May 1898, the Secretary of the Department, J.D. McLean replied to the petition. In a letter to Commissioner Forget, he stated:

> [I] beg to inform you that whatever may be the claim of these Indians under Treaty, one chief and two Headmen is a little more than they are entitled to under the Indian Act. The provision under the 75th Section of that Act of one councillor for each thirty members was inserted in error and has never been put in force by the Department, and there is now a bill before Parliament to rectify the mistake.[41]

McLean also stated:

> [A]s the Band appears to have adopted the Triennial System without any pressure from the Department or its agents and as it has been shown time and time again that chiefs and councillors in the Northwest are a hindrance rather than a help to the agent in carrying on his work, some good reason would have to be given the Superintendent General for recommending that the Order in Council be rescinded with a view to the Band being allowed the number of Headmen provided by the Treaty.[42]

As far as can be determined no such 'good reason' was forthcoming and the matter appears to have been laid to rest.

In 1897, James A. Smart replaced Hayter Reed as Deputy Superintendent General. With the termination of Reed's term of office the policy of eliminating chiefs and headmen came to an apparent end. During his four years in office, Reed had striven hard to displace the political organization of the western bands on the theory this would foster individualism among the Indians and incidentally make them more amenable to Departmental policies and objectives. His dealings with the Cowessess Band is just one example of his efforts.

Oddly enough, his policy appears to have been aimed strictly towards the western tribes. There is no indication that Reed ever tried to apply his policy to the eastern bands whom evidence suggests, he considered to be more energetic and progressive.

Indeed, it was during his term of office that the first blanket application of the election provisions of the Indian Act was made with regard to the eastern Indians.

In the end, Reed's western policy was defeated by the resistance of the Indians to it and their persistance in maintaining some form of tribal political organization.

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Endnotes

Chapter Three

1. Canada. Department of Indian Affairs. Annual Report, 1889, p. 166: Commissioner Hayter Reed to Superintendent General E. Dewdney, 31 October 1889.

2. PAC, RG10 Vol. 3911, File 111,404: Letter to Superintendent General Dewdney from Commissioner Reed, 17 February 1891.

3. Ibid.

4. Ibid.

5. Ibid.

6. PAC, RG10 Vol. 3911, File 111,404: Letter to Superintendent General Dewdney from Commissioner Reed, 5 March 1891.

7. PAC, RG10 Vol. 3911, File 111,404: Letter to Commissioner Reed from Deputy Superintendent General Vankoughnet, 3 May 1892.

8. Ibid.

9. PAC, RG10 Vol. 3875, File 90674: Letter to Deputy Superintendent Vankoughnet from Commissioner Reed, 20 May 1892.

10. Ibid.

11. Ibid.

12. Ibid.

13. Ibid.

14. PAC, RG10 Vol. 3911, File 111,404: Copy from minute book of proceedings of Indian Councils at Crooked Lake Agency signed by Agent A. McDonald, 15 April 1882.

15. Ibid.

16. PAC, RG10 Vol. 3911, File 111,404: Letter to Deputy Superintendent General Vankoughnet from Commissioner Reed, 26 April 1892.

17. PAC, RG10 Vol. 3911, File 111,404: Letter to Deputy Superintendent General Reed from Assistant Commissioner Forget, 14 February 1894.

18. Ibid.

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19. PAC, RG10 Vol. 3911, File 111,404: Letter to Assistant Commissioner Forget from Deputy Superintendent General Reed, 21 February 1894.

20. PAC, RG10 Vol. 3911, File 111,404: Letter to Assistant Indian Commissioner Forget from Indian Agent A. McDonald, 10 April 1894.

21. PAC, RG10 Vol. 3911, File 111,404: Letter to Assistant Indian Commissioner Forget from Deputy Superintendent Reed, 17 April 1894.

22. PAC, RG10 Vol. 3911, File 111,404: Letter to Assistant Indian Commissioner Forget from Indian Agent A. McDonald, 26 April 1894.

23. PAC, RG10 Vol. 3911, File 111,404: Letter to Deputy Superintendent General Reed from Assistant Indian Commissioner Forget, 30 April 1894.

24. PAC, RG10 Vol. 3911, File 111,404: Letter to Assistant Indian Commissioner Forget from Deputy Superintendent General Reed, 16 May 1894.

25. PAC, RG10 Vol. 3911, File 111,404: Letter to Assistant Indian Commissioner Forget from Indian Agent A. McDonald, 9 June 1894.

26. Ibid.

27. Ibid.

28. PAC, RG10 Vol. 3911, File 111,404 Letter to Assistant Indian Commissioner Forget from Deputy Superintendent General Reed, 18 August 1894.

29. Ibid.

30. Ibid.

31. Ibid.

32. Ibid.

33. PAC, RG10 Vol. 3911, File 111,404: Letter to Assistant Indian Commissioner Forget from Indian Agent A. McDonald, 10 September 1894.

34. PAC, RG10 Vol. 3911, File 111,404: Letter to Assistant Indian Commissioner Forget from Deputy Superintendent General Reed, 20 September 1894.

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35. PAC, RG10 Vol. 3911, File 111,404: Letter to Indian Agent McDonald from T.P. Wadsworth for the Commissioner, 12 October 1894.

36. Ibid.

37. Ibid.

38. PAC, RG10 Vol. 3911, File 111,404: Copy of report on meeting between Indian Agent A. McDonald and Cowessess band, 5 November 1894.

39. Ibid.

40. PAC, RG10 Vol. 3939, File 121,698-8: Letter to Department Secretary J.D. McLean from Indian Agent J.P. Wright, 28 April 1898.

41. PAC, RG10 Vol. 3939, File 121,698-8: Letter to Indian Commissioner Forget from Department Secretary J.D. McLean, 16 May 1898.

42. Ibid.

CHAPTER FOUR

Two Examples of Indian Resistance to the Elective System

The Department, though it restricted the application of the elective system in the West, continued to foster it in the East. Its efforts, however, were not always rewarded with immediate success. Quite often, the members of a particular tribe were divided on the question of adopting the elective system. In some cases, the division was the result of internecine political rivalry; in others, it was a combination of political rivalry and genuine ideological differences between the progressives and the traditionalists. The result of these conflicts was resistance to the implementation of the elective system. Such was the case at St. Regis and the Six Nations at Brantford.

In 1887, the members of the St. Regis Band complained that three of their chiefs had misappropriated funds belonging to the band. A Roman Catholic Church on the reserve had undergone a number of repairs, the cost of which had been met by a loan credited to the band.[1] This loan had been repaid to the capital amount by deductions made from the interest payable to the members of the church.[2] As the church, however, had been frequented by American Indians from the adjoining part of the reserve in New York State, these Indians had also been requested to pay a portion of the cost.[3] The American Indians paid their share to the three chiefs in question. The chiefs, when called upon by the Indian agent to turn this money over so that it could be distributed to the members of the church, were unable to account for it.

According to a report on the situation to the Superintendent General from Deputy Superintendent General Vankoughnet, a meeting of the band was held on 17 October 1887.[4] At that meeting, some 58 of the 76 members in attendance expressed disapproval of the way in which the three chiefs had managed the money.[5] The Department was requested to depose the chiefs and hold an election to replace them. The agent supported the request.

In his report, Vankoughnet also noted that there was little question that the three chiefs were guilty of dishonesty and incompetence under Section 75 of the Indian Act and could, therefore, be removed by the Governor General in Council.[6]

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Vankoughnet suggested:

> [T]hat a recommendation that that course be taken, be submitted to His Excellency in Council: and further that under the provisions of the same section of the Act, subsection 1., the system of election of Chiefs for three years, be introduced at St. Regis, but that two of the life chiefs against whom no charge has been brought, be allowed to retain their rank in accordance with the provisions of sub-section 3 of said section.[7]

Vankoughnet's recommendations were subsequently accepted. The chiefs were deposed and Section 75 of the Act was applied on 9 June 1888 by Order in Council.[8] Thus the elective system was introduced to the St. Regis Band and the hereditary system abolished, at least officially.

In 1891, irregularities occurred at the St. Regis election, the first to be held since the inception of the system. The five men who were elected as chiefs were accused of dispensing liquor and ale on the day of the election to gain votes.[9] After a thorough investigation of the accusation by the agent, the five were found guilty. In a memorandum to the Governor General from the Clerk of the Privy Council it was related that the Minister of Indian Affairs had recommended:

> [I]n view of the statements made in the papers transmited by the Indian Agent, is of opinion that there was gross irregularity practiced at the election; and, he therefore recommends that the election be set aside by your Excellency in Council, and that the chiefs who were then elected be declared ineligible for re-election, as provided in sub-section 4, of Section 75 of the Indian Act, and that such ineligibility in so far as Head Chief John Square is concerned extend to six years, and as regards each of the second chiefs to three years.[10]

The election was set aside and a new election was held on 25 February 1892.[11] One year following this election, two of the newly elected chiefs took it upon themselves to lease four islands in the St. Lawrence River to outside parties.[12] As the islands had already been leased by the Department, their action not only contravened the regulations of the Department but were clearly illegal as well.

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Deputy Superintendent General Reed, expressed the opinion that it would be in the interests of the band and would serve as a warning to others if the two chiefs were deposed.[13] He recommended this course of action and the two chiefs were deposed on 10 June 1893.[14]

In 1894, the St. Regis Band sent the Department a petition requesting a return to the hereditary system of government.[15] At the election held in 1891, certain Indians had advanced the claim to have hereditary chiefs.[16] The Department, however, had rejected their contention. In this latest petition, the Indians stated that the elective system created disharmony amongst the band.[17] The hereditary system, they contended, created only peace, harmony and friendship.[18]

On 11 December 1894, ex-chiefs Loran Pyke and Thomas White had an interview with Hayter Reed with regard to the petition. The two ex-chiefs stated that under the hereditary system when a vacancy occurred, the Indians assembled in a general council. At the council any member of the band had the right to nominate any other member of the band. If more than one person was nominated, an election was held with the person receiving the largest number of votes being elected.[19] This system they contended, did away with undue excitement,canvassing, bribery and corruption.[20]

Reed replied that the Department could not agree to a return to the hereditary system based on the principle of life chiefs.[21] He suggested, however, that if the Indians would modify the hereditary system so that chiefs were elected for a ten year period, then the Department might be amenable to their wishes.[22] Reed stated in a report to Superintendent General Daly:

> [T]hat if the old system of electing Chiefs were so modified, it would not appear to him to be in the nature of a retrograde step to allow the Indians to return to it instead of the present system if the majority of the band expressed such a desire, providing that it was arranged that the general assemblies of the Indians for the selection of Chiefs under that system should be held in the presence of the Agent and with the knowledge of the Department.[23]

Reed's compromise solution was not adopted by the Department and the records do not indicate the reason for its rejection.

The St. Regis Band continued to agitate for the hereditary form of tribal government. Their opposition took a serious turn on 27 June 1898, when the Indians were called together to elect a new chief and council.[24] At the meeting the Chiefs and a number

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of Indians conspired successfully to prevent an election by taking possession of the Council House and threatening those who attempted to cast votes.[25] As a consequence, the election had to be postponed. Despite the violent opposition, the government's stand remained unchanged. On 13 July 1898, the Department Secretary, J.D. McLean advised the agent at St. Regis that the Superintendent General had reviewed the matter and had decided that the St. Regis Reserve would remain under the election provisions of the Indian Act.[26] The agent was instructed to inform the Indians of this decision and to emphasize that no further consideration could be given to representations on behalf of the hereditary system.[27]

On 4 August 1898, another attempt was made to hold an election. Although a constable from the North-West Mounted Police was present to keep order, the supporters of the hereditary system were once again able to prevent the election from taking place.[28] In December 1898, the Department sent Inspectors Macrae and McKenna to the St. Regis Reserve to investigate the situation. They subsequently recommended that the Indians again be strongly advised that the Superintendent General had decided the elective system would remain in place and no further representations would modify the decision.[29] The Minister approved this recommendation and issued a further directive that the Indians be informed:

> [T]he agitation carried on by those members of the Band who claim exemption from the operation of the law has prevented the distribution of interest money.
>
> [T]hat as soon as they show their willingness to abide by the law and elect a Council under the Indian Act the interest money will be paid.
>
> [T]hat until a Council be elected under the Act, the Department will administer as far as it may the affairs of the Band.[30]

In March 1899, Inspector Macrae was authorized to hold another election. About 200 Indians, however, many from the American side, took possession of the Council House and assaulted the local constables forcing them to leave the village.[31] The election attempt was a failure.

This fiasco prompted a letter to the Department from Mitchell Jacobs, an ex-chief at St. Regis. The ex-chief asked if the law was going to be violated with impunity; adding that if the offenders were not punished, life and property at St. Regis would not be safe. He noted that many of the law abiding Indians

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were afraid to take part in public affairs.[32] He declared that the government had a duty to protect these people and demanded that the Department take action against the law breakers.[33] Whether or not this letter had any influence, the Department soon took measures to rectify the situation at St. Regis. In May 1899, Commissioner Sherwood, accompanied by several members of the North-West Mounted Police went to St. Regis to arrest the Indians who had led the March disturbance.[34] The Indians attempted to prevent the arrests and in the ensuing scuffle, one of them, John Ice, was shot and killed by the Commissioner.[35] The Department's explanation and justification for this unfortunate episode was stated in the Annual Report for 1899:

> The majority of the Canadian Indians had little if any sympathy with the obstructive views of the minority, and certainly none with violent resistance of the law, but the latter with the assistance of the American Indians who fomented, if they did not instigate the trouble, managed to over-awe the majority, and actually resorted to violence in order to prevent them from exercising their franchise in the election of chiefs.
>
> In the interests of law and order it was of course impossible to tolerate such conduct, and,while the killing of an Indian was very deeply regretted, yet as all possible patience had been exercised and was beginning to be mistaken for weakness, the Department was in no way responsible for the outcome of a position which was so determinedly forced upon it.[36]

The shooting of John Ice seems to have had a sobering effect on the adherents of the hereditary system. In June, Inspector Macrae was authorized to hold another election at St. Regis, and this time it was conducted without incident.[37] There seems, however, to have been a misinterpretation of the result of the election among certain of the Indians. Ex-Chief Loran Pyke claimed, in a written statement to the Department:

> On this day a Council was held by the Seven Nations of Iroquois Indians residing in St. Regis, for the purpose of creating Life Chiefs after the tribal system of government.
>
> The Twelve Life Chiefs were duly created by the Band in the presence of a representative of the Government Mr. J.A. Macrae.
>
> The members of the tribe who were chosen according to our different clans, hold their positions for life.
>
> Mr. J.A. Macrae has informed us that the Government has consented to our return to our old tribal system of

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> Government in order to prevent further troubles, as a great deal of trouble was made while the elective system of Government was in force on this reservation.[38]

Whether this was a genuine misunderstanding on the part of Pyke or a deliberate attempt to distort the meaning of the election is difficult to determine. His view of the election was certainly contrary to that of Inspector Macrae, who stated in his report to the Department:

> I may say in reference to the newspaper paragraphs that I have observed concerning it that the understanding that the Chiefs were being elected for three years was perfectly clear and was arrived at at a Council held on the 19th, the day before the election, at which several white gentlemen were present. Any or all of these can substantiate what I stated to the Indians.[39]

In 1902, at the termination of the three-year term, the Department, undoubtedly disturbed by the violence that had taken place at St. Regis, decided not to pursue the issue of elections. The Department, though not withdrawing the band from the elective system, informed its members that authority for an election would be granted whenever the band decided it wanted one.[40]

In the meantime, many Indians continued to agitate for a return to life chiefs. Mitchell S. Jacobs, speaking on behalf of the hereditary faction at St. Regis, complained that the Department was still attempting to foist the Indian Act on the band.[41] He claimed that there was an understanding that the Council would remain the same with Chiefs recognized during good behaviour. (life chiefs)[42] This prompted an answer from the Department Secretary, J.D. McLean, who replied in what must have become a weary refrain, that the Department could not justify a return to the hereditary system. He expressed the hope that the Indians would accept the elective system and, in time, be convinced of its wisdom.[43]

The following year, 1904, the Department received a letter from John Adams, a representative of the faction at St. Regis who desired an election.[44] Adams requested the Department to hold an election according to the provisions of the Indian Act. He claimed that at least 50 to 60 members of the band were in favour of the elective system and felt it was time to have properly elected chiefs. He noted that an election could be held without much opposition, especially if the Government displayed its determination to do so.[45]

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Adams followed up his letter with a visit to the Department to express his views. In a memorandum, Charles Cooke, Clerk of the Department stated:

> Adams is, however, of the opinion that if the conduct of the meeting held for elections were left wholly to the agent and the Indians, it would likely result in a failure: but if the Department were to dispatch three or four officers, (not from Ottawa) from the surrounding towns, who are known and feared by all the St. Regis Indians, to such a meeting and merely maintained order, the elections would pass off quietly.[46]

The Department apparently acceded to Adam's request. In 1904, a vote was taken among the Indians at the St. Regis Reserve. Unfortunately, for the proponents of the elective system, the motion to hold elections was defeated by forty-four votes to twenty-two.[47] In light of this, the Department decided that no election could or should be held unless a clear majority of the Indians wanted it.[48] By 1908, however, the elective system was revived. As the influence of the life chiefs faded, the elected band council became the recognized governing body at St. Regis.[49]

* * * * *

While some bands were attempting to retain the hereditary system, other bands or factions thereof, were attempting to acquire the elective system. Such was the situation with the Six Nations at Brantford, where in 1894, some members of the band petitioned the Department for an elected council.[50]

In a report to Superintendent General Daly, Deputy Superintendent General Reed recounted a visit to the Six Nations at Brantford during which he met with the petitioners. Reed stated that he was personally under the impression that the present council (hereditary) was detrimental to the interests of the band. He told the petitioners that the Department understood that the majority of the Six Nations were opposed to the elective system, but added that the Department would be glad if such a system were adopted.[41] He informed Daly that from his observations, he thought the band would be in favour of the elective system if the question was submitted to them.[52] Reed, also pointed out, that by law, the Governor in Council could apply the elective system without consulting the Indians.[53] No action, however, appears to have been taken with regard to Reed's memorandum.

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In September 1894, the Department received another petition from the Six Nations requesting an elected council. In their petition, the Indians stated the reasons for their request:

1. That the system of committing the Government of the Six Nations to a Council of hereditary life chiefs is detrimental to the advancement of the nation for the following among other reasons, -

   (a) The present Council a majority of whose members are uneducated men, is incompetent to guide a people who are progressive and prepared for still further advancement in civilization.

   (b) Under the present system of government no encouragement is extended to young men to devote their energies and talents for the good of the nation.

   (c) The present Council is not a representative one as the people have no voice in its selection, nor are its members chosen on account of their fitness or ability. The people therefore, have no voice or share in the management of their own affairs nor in the expenditure of their own money.

   (d) The present number of Chiefs is too large and involves too great an expenditure of money in the meetings of the Council.[54]

The petition ended with a plea to the Department to institute the elective system according to Section 75 of the Indian Act.[55] The plea, however, fell on deaf ears and the issue lay dormant until 1899.

In that year, the Department received another petition, this time from the opponents of the elective system. They stated they were satisfied with the hereditary system and that under it the Six Nations were making reasonable progress.[56] They charged that the proponents of change were half-breeds who were under the influence of local whites.[57] The petitioners asked for protection against the efforts to change their system of government.[58]

The Department asked the Superintendent at Brantford for his views. He replied that only one-third of the band was in favour of change and that any attempt to alter the form of government would meet with strong resistance and, perhaps, serious trouble.[59] As an alternative, he suggested that a dual system be introduced, retaining the hereditary council in its present form and adding an elected council; with both councils sharing in the governing of the band.[60] The Superintendent felt that this arrangement would satisfy both parties while giving the elective system a chance to display its superiority.

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The Department does not appear to have considered this alternative. Instead, in his letter to the Minister, Department Secretary McLean stated:

> [I]t appears very questionable whether the time is ripe for any change, and in view of the evidence of the rapid growth of progressive sentiment within recent years, that if a little patience be exercised, such sentiment will increase to an extent which will make it possible to institute the change with comparatively little, if any, danger of opposition and trouble.[61]

He went on to recommend:

> [T]hat the minority be advised that although the Department is in sympathy with their views, it does not think that while they are confined comparatively to so few of their number, it would be advisable to comply with their request, and also that the memorial addressed to his Excellency be forwarded to him with a statement to the effect that the change to which the memorialists object, is not contemplated, at any rate at present.[62]

McLean's advice was apparently taken by the Department. The issue was placed in abeyance and did not arise again until 1909.

In 1909, the Department received a long memorial from Chief J.S. Johnson, Deputy Speaker of the Six Nations Council. Chief Johnson chastised the Department for entertaining what he termed 'unauthorized and unofficial correspondence and petitions of the Indian Rights or Warriors Association'.[63] He reiterated the charges of the petition of 1899 that the people demanding the elective system were half-breeds and n'er-do-wells, who did not represent the true interests of the band.[64]

Chief Johnson also expressed concern about a rumoured plebiscite the Department was to hold to determine who was in favour of the elective system.[65] He declared that if this plan were executed it would be a violation of the Six Nations treaty rights and noted:

> In this connection the Imperial Government gave to the Six Nations (and only the Six Nations) and no others, the lands which we now enjoy. According to our deed one stipulation was mentioned and that was that the Six Nations were to enjoy these lands forever in the most free and ample manner in accordance with their several customs and usages.

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> This was conceded by the Imperial Crown to us the Six Nations, and no subsequent enactment contained in the Indian Act bearing upon this matter can equitably supersede, set aside or nullify this Treaty, and we will stand by this Treaty.[66]

The Chief ended his memorial with a request to the Department that it respect the system of government and the treaty rights of the Six Nations.[67]

In March 1909, Gordon J. Smith, the Indian Superintendent at Brantford informed the Department that the Warriors Association were prepared for a plebiscite.[68] J.D. McLean, Assistant Deputy Superintendent and Secretary of the Department, replied that if the elective system were adopted the Six Nations Council would be reduced to sixteen members.[69] Since the Mohawks and Cayugas were more numerous than the other tribes, the latter would have no representation on the Council.[70] McLean indicated that unless this difficulty could be overcome, the Department could not contemplate a change in the governing system.[71]

Meanwhile, the agitation by the Warriors Association for an elective system continued. Alarmed by their activities, the opponents of the elective system led by Chief Johnson, wrote to the Honourable William Paterson, Minister of Customs, early in 1910. They asked him to find out whether the rumour that the Department was going to authorize a plebicite on the question of the elective system was true.[72] The Chief also requested Paterson to enjoin the Department from lending encouragement and assistance to the Warriors Association.[73]

In his reply to Paterson, Frank Pedley, the Deputy Superintendent General emphasized that the Department had no intention of trying to change the form of government at Six Nations by means of a plebiscite.[74] Although he gave no reasons, one possibility is that the Department feared a repetition of the violence that had occurred over the elective system at the St. Regis Reserve in 1899. As for refraining from giving encouragement to the Warriors Association, Pedley remarked:

> [R]especting, however, the request that the officers of the Indian Department shall not lend any encouragement to the Indian Rights Association [Warriors Association] in their request for an elective system, they have also been informed that while the Department has no wish to secure any changes in the system of tribal government, and has no intention of assisting in bringing about any such changes, it has no warrant to prevent efforts being made by members of the Six Nations to secure changes; and, further, that it does not seem improper to receive communications from members of the Six Nations, who may be opposed to the present system of tribal government.[75]

Many of the Indians who opposed the elective system feared that if they accepted it, they would lose their treaty rights. A case in point was Mr. Nelles Montour, a member of the Six Nations, who wrote the Department expressing his concern.[76] In his reply to Mr. Montour, Department Secretary McLean, assured him that the adoption of the election provisions of the Indian Act (Section 93) would not negate the treaty rights of the Six Nations Indians.[77] McLean's reply outlined the major provisons of Section 93:

> (1) Under the elective system chiefs and councillors are elected, not by other chiefs or councillors, but by the vote of the majority of the electors, who consist of all the male members of a band of twenty-one years of age and upwards.
>
> (2) Under the elective system the Six Nations Indians like all other bands, cannot have more than one chief and fifteen councillors.
>
> (3) Under the elective system the term of office is for three years.
>
> (4) Under the elective system a chief or councillor can only be deposed by the Governor General in Council and for one or more of the following reasons: dishonesty, intemperance, immorality or incompetency.[78]

The four points, McLean declared, was the difference between the hereditary and elective system.

The two factions on the reserve were not the only ones interested in the form of government to be used by the Six Nations. A number of local clergymen also expressed their views to the Department. They indicated that the hereditary system was a hindrance to the progress of the reserve because the chiefs, not being elected, were not responsible to the people; and also noted, that those in favour of change were being persecuted by the Council.[79] They scoffed at the rumours of threatened violence, stating this was merely a ploy on the part of the chiefs to prevent the Department from intervening.[80] The clergymen further claimed that half of those opposed to change were actually indifferent and would support either system.[81] Thus they argued

> [I]t would appear that the condition laid down by the Superintendent General that the Department will not sanction a change until a substantial and permanent majority, say 66 2/3, shall be in favour of such a change, has now been complied with.[82]

The protestations of the clergy, however, had no effect on the Department which adamantly maintained a position of neutrality.

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The Department's position was underscored in 1913, in a letter from the Assistant Deputy Superintendent and Department Secretary, J.D. McLean, to Charles McGibbon, Inspector of Indian Agencies at Penetanguishene, Ontario. McLean stated:

> The stand taken by the Department for some years has been that of strict neutrality on the question, as it has been the cause of very bitter feelings between the opposing factions, and those in favour of the present system, after having made appeals to His Excellency the Governor General and to His Majesty the King, have been assured that no change will be made unless the Department should first be assured that such change is desired by the majority, and that it will be in the interest of all.[83]

The situation at Six Nations was soon overshadowed by the events of World War I and the issue of the form of government for the reserve did not arise again until 1923.

In September, 1923, the Governor General appointed a Royal Commission to investigate the situation. It would seem the Government felt that the lack of discipline displayed by the Council and the general management of the reserve warranted such intrusion.[84] Lieutenant-Colonel Andrew. T. Thompson, K.C., headed the Commission.[85]

Thompson's report outlined the following points with regard to the Council:

(1) The Council of Chiefs is composed of men not 'elected', but appointed.

(2) The right to a seat in the Council is vested in certain families.

(3) The Chieftainship does not go to any particular male member of the family, but to someone of these, selected for the purpose.

(4) In their form of Government the Six Nations have no written constitution. Their procedure rests upon long established custom, but as the knowledge of this has been transmitted by word of mouth only from generation to generation, it is impossible to ascertain the facts with exactness.

(5) That the right to chieftainship is confined to a few families, and is hereditary in principle, all are agreed, and further that the nomination of the chief is a prerogative of the women of the family concerned. At this point, however, the evidence of the witnesses varied somewhat. Some maintained that the right of nomination belongs to all women of the family, with a final say, in

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case of disagreement, in the oldest women thereof. Others maintained that the oldest woman alone has the right to nominate. The difference is not of very much importance, for after all the oldest woman of the family has the say, whether with or without consultation with the other women.

(6) This family right to a seat in the Council is muched cherished, and jealously guarded. It not infrequently happens that the number of males in the family concerned has become very small, with a limited choice in consequence. As a result men are sometimes sent to the Council who are grossly ignorant, and more than one witness alleged that even those mentally unsound had been sent there, in order that the chieftainship should be maintained in the family concerned.

(7) It follows that a comparatively small nubmer of old women have the selection of those who are entrusted with the transaction of business of the Six Nations Indians, while the vast majority of the people have nothing whatsoever to say in the choice of their public servants.[86]

The Commissioner concluded his report by recommending 'that an elective system should be inaugurated at the earliest possible date.'[87]

The Department accepted Thompson's recommendation and by so doing terminated its policy of neutrality to which it had long held fast. Part II of the Indian Act (Indian Advancement) was applied to the Six Nations by Order in Council No. 1629 on 17 September 1924.[88] The Six Nations was the last band to which the Advancement Act was applied.

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Chapter Four

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CHAPTER FIVE

Administrative Problems Encountered by the Elective Systems

As is the case with any human endeavour, problems arise which were not foreseen when the project was initiated. This was no less so with the administration of the election provisions of the Indian Act and Indian Advancement Act.

One problem arose in relation to the Indians in the West. There, with the exceptions already noted, the Indians were not officially under the election provisions of either the Indian Act or the Indian Advancement Act.[1] In order to meet the difficulty, the Department permitted the Indians to hold elections according to their own band custom. These elections were usually held under the supervision of the Indian agents, and indeed, were often initiated by them.[2] The victors of these elections were then regarded as appointees of the Department.[3] Though the Department could reject an appointee, it seldom did so, preferring to accede to the wishes of the majority of the band.[4]

In a letter to W. Sibbald, Indian agent at Onion Lake, Saskatchewan, J.D. McLean described the manner in which these quasi-elections were to be held:

> After authority has been obtained from the Department for such appointment, public notice is given to the band concerned that an appointment is to be made. Then, at the meeting called for the purpose the Indians are invited to indicate by vote or in any manner that may be the custom of the band who is the most popular choice. The agent then reports to the Department the result of the meeting with his own views as to the suitability of the candidate or candidates; after which the Department confirms the appointment if it sees fit.[5]

The practice of appointment led to a question regarding tenure of office. In British Columbia, some of the appointees were hereditary chiefs who held office for life. In other areas, the Indian agents attempted to limit the term of office to three years as prescribed in Section 75 of the Indian Act. The Department apparently had no stated policy in regard to this question, although the Department Secretary J.D. McLean, noted in 1899 that the term of office for an appointee was not affected by the Indian Act.[6]

Finally, in 1905, the Department's policy was formalized. In a letter to Indian Superintendent A.W. Vowell of British Columbia, Deputy Superintendent General Pedley explained;

> [S]ome years ago the Department decided that it would be better that all appointments should be made for an indefinite term. As you are aware, nearly all chiefs in British Columbia hold the office for life. On the other hand in the case of a few chiefs in the Fraser agency that were appointed for a term of three years, in every instance that term has been exceeded without change two or three times over. The Department feels justified, therefore, by experience, in the conclusion that the indefinite term is the best.[7]

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It is not quite certain how the Department regarded hereditary chiefs, but they seem to have interpreted "life" to mean an indefinite term during good behaviour.[8]

The policy of indefinite appointment, however, was not implemented with any consistency. In 1908, the Brokenhead River Band in Manitoba requested an election. H.C. Ross, a clerk in the Department, informed the Deputy Minister that the Brokenhead River Band, though not officially under the election provisions of the Indian Act, had been permitted to use the three-year system.[9] In 1899, however, the Department had curtailed this arrangement and placed the band under the system of indefinite term.[10] Ross commented that it was thought best that this should continue though he did not state why.

By contrast, the St. Peter's Band, likewise not under the election provisions, was permitted to use and retain the three-year system.[11] It was not until 1915 that the election provisions of the Indian Act were applied to them.[12]

The appointment of chiefs and councillors for an indefinite term raised the question of deposition. It would appear some of the agents were under the impression that they had the power to depose. This, of course, was not the case. J.D. McLean clarified the issue in 1911 by stating that only the Governor in Council had the right to depose under Section 96 (Section 75) of the Indian Act, and then only on the grounds of dishonesty, intemperance, immorality or incompetence.[13]

A simple solution to the problem of administering the elective system would have been to apply it uniformly throughout the country. Indeed, this had ben suggested by H.C. Ross* in 1899. In a report of that year, Ross commented:

> After reading Section 75 of the Indian Act very carefully, I see no reason why the Department should not obtain authority of the Governor in Council to apply the elective system to all bands in Manitoba and the North-West Territories. The obtaining of such authority does not appear necessarily to involve the immediate application of the elective system; the Department could therefore use its discretion in the matter, having authority to apply the system at any time, but only doing so in individual cases.[14]

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* H.C. Ross was listed on the Department's employment roll as a Clerk of Printing and Translation. It is not clear what his relationship to the policy process was.

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This suggestion elicited a very negative response from men in the field. Their attitude was exemplified by R.N. Wilson, Agent for the Blood Reserve in the North-West Territories. Wilson claimed the Indians views were opposite to those of the Department and he was afraid that if given the opportunity under Section 75, they would elect agitators.[15] He felt that as long as there was a reactionary element within the band, it would be better to retain the system of appointment.[16] Only after the old chiefs had passed away was Wilson willing to advocate the elective system.[17] When one considers Wilson's attitude, it would seem that Hayter Reed's influence was still extant in the lower echelons of the Department. Ross's suggestion was not adopted.

The manner in which the vote was taken at band council elections was yet another issue. When Parliament enacted the election provisions of the Indian Act and the Indian Advancement Act it had not specified in either piece of legislation any particular procedure with regard to voting. The Department lacking any specific instructions had adopted the method of open voting. It was not long, however, before the question of the secret ballot arose.

It was first raised in the House of Commons in 1890 during the debates on the amendments to the Indian Advancement Act. In the debate on the amendment providing for the nomination of candidates, Mr. Lister, the Member of Parliament for Lambton, remarked that the Indians would hardly be satisfied with a system of nomination if they were to be denied the ballot.[18] He said that recent Indian elections in his county had been held by open vote, and that many of the Indians had been coerced to vote in a certain way through threats and intimidation.[19] Lister noted that many of the Indians wanted the same safeguards that they had in Dominion elections and concluded:

> [I]t seems to me anomalous that we should say to them that they may vote by ballot in Dominion elections, they have sufficient intelligence and education to vote for members of the House of Commons by ballot, but in the smaller matter, though a great matter to them, the election of their own councillors, they shall have neither a proper nomination of candidates, nor shall they be permitted to cast their ballot as they wish, and as the spirit of this age approves.[20]

Lister's comments, though well taken, failed to evoke a response from the then Superintendent General, Edgar Dewdney. Parliament did not appear to be sufficiently concerned with the issue to investigate it further or to take action.

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In 1892, the Alnwick Band (in Ontario) petitioned through their agent, John Thackeray, for permission to use the secret ballot in their election.[21] Thackeray, echoing Lister's sentiments, said in a covering letter that he thought the Indians were capable of using the secret ballot and that the Dominion Parliament must have thought so too, when it extended the franchise to them.[22] The petition, however, does not appear to have been successful. In the summer of 1895, for instance, instructions were sent to various agents about to hold elections to conduct them by open vote. There was no reason why the Department as an administrative measure could not have instituted the secret ballot for band council elections. The provisions of either Act did not prohibit the use of the secret ballot. The Department, however, for reasons not reflected in the records, either did not think the issue of the secret ballot important enough; or perhaps did not consider it to be feasible.

By 1903, the Department appeared to have altered its attitude, though again the records do not indicate why or how this alteration took place. W.B. McLean, Indian Superintendent at Parry Sound, requested permission from the Department to use the secret ballot in an upcoming election.[23] J.D. McLean replied:

> [I]beg to say that as the system of voting has been changed in one other band in your Superintendedency, namely, the Gibson band, and the change has evidently given satisfaction to all concerned, the Department has no objection to the same course being followed in respect to the Parry Island band, provided that the majority of the members of that band desire the change. On your satisfying yourself on this point, you may decide that the voting shall be by ballot without further reference to the Department.[24]

Thus the question of the secret ballot was left to the discretion of the Agent and the desires of the Indians. The Department, however, still maintained an ambivalent stance towards the ballot. On 10 December 1903, McLean sent instructions to Wm. R. Aylsworth, Agent at Belleville, that the election he was about to hold must be by open voting.[25]

By March 1909, the Department seems to have accepted the fact that balloting was a better method than open voting. In a letter to C.E. Beckwith, Agent at Steam Mills, Nova Scotia, regarding the question of balloting, J.D. McLean declared:

> The Department agrees with the view that voting by ballot is decidedly preferable to open voting.[26]

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This view was further underlined in 1915 when the Mud Lake Band (Ontario) expressed a desire to return to open voting. In response to their request, S. Stewart, the Assistant Deputy and Secretary of the Department, wrote Agent R.J. McCamus, stating:

> With reference to the subject of the "secret vote" referred to by Whetung, it is presumed that by that term he means voting by ballot. If so, the Department sincerely hopes that the majority of the Indians would be wise enough to oppose such retrograde movement as to return to the method of open voting, and no such change should be made without the sanction of the Department.[27]

Thus, the Department came to favour the ballot, though there is no indication that a conscious effort was ever made to implement the procedure as part of its electoral policy.

There were other minor problems with regard to voting. Agent J. Pitre, at Point la Garde, Quebec, was concerned because the Indians were voting for party tickets.(i.e., slates of candidates) J.D. McLean, though not as alarmed at the prospect, nonetheless cautioned Pitre:

> [N]ow,while of course it is impossible to prevent the Indians from voting on a party ticket any more than white men,I have to point out to you that nothing ought to be done to encourage this practice; but on the contrary the Indians ought to be reminded at an election that they are perfectly free to vote for the candidate for the office of chief nominated in one ticket and for one or more candidates for the office of councillor nominated in any other ticket: they are not bound to follow any party ticket and it might be better that they should not.[28]

The question of half-breed voters at Indian elections also arose. The Department's position on this matter was simple:

> [I]t is not necessary to inquire whether voters are full-blooded Indians or not: if they are members of the band, they have a right to vote.[29]

The Department also ruled that the Indian Act did not permit an Indian to vote by proxy; and that an elector had to be present at the election meeting in order to exercise his voting right.[30]

Tie voting was yet another problem in administering the elective system. The Indian Act made no allowance for a tie vote at an election. The Indian Advancement Act, on the other hand permitted the agent to cast the deciding vote in the event of a tie.

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In 1910, the Cowessess Band held an election which resulted in a deadlock. The agent finding no solution under the section of the Indian Act dealing with the three-year system, used Part II of the Act (Indian Advancement) and cast the deciding vote.[31] The Department approved of his action and confirmed the election.[32] It was somewhat ironic and perhaps improper that the agent used a section of the Act not applicable to most of the Indians in the country, including the Cowessess Band. In any event, procedures to be followed in the event of a tie were not incorporated into the provisions of the Indian Act concerning the three-year system until 1936.

Another source of trouble for the Department was the neglect of the agents to call elections at the proper time.* On 19 May 1909, for instance, J.D. McLean, Assistant Deputy Superintendent General and Secretary, wrote to A.W. Vowell, Indian Superintendent at Victoria, indicating that he had not received a report on the elections due for Port Simpson in 1908 and Metlakatla in 1909.[33] * He allowed that the new agent Mr. Lorenz, perhaps through confusion, may have held the elections but had not reported them to headquarters.[34] McLean instructed Vowell to acquaint Lorenz with the provisions of the Advancement part of the Indian Act:

> [A]s the respective days on which elections for the two bands referred to have now passed in the present year, no election can now be held until that day next year; but he must bear in mind to make arrangements to hold elections for the Port Simpson and Metlakatla bands at the proper time next year, and to report the results promptly, also that any changes in the position of chief or councillor in any other bands of his agency, whether caused by death, resignation or otherwise, must be reported promptly.[35]

The confusion, however, did not rest solely with the agent. In the latter part of his memorandum to Superintendent Vowell, McLean observed that the former agent, Mr. Morrow, had requested an election for the Kincolith Band.[36] This election, he declared, was unwarranted because the Advancement part of the Indian Act had not been applied to the band by Order in Council.[37] In fact, however, McLean was wrong, for the Indian Advancement Act had been applied to Kincolith on 15 July 1886, by Order in Council 1435.

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* The agent was responsible for presiding over the actual mechanics of the election and seeing that the election was held on the date specified by the Order in Council. It is in this sense that the agent could be said to have 'called the election'.

* J.D. McLean had assumed the post of Assistant Deputy Superintendent General in addition to retaining his duties as the Secretary of the Department.

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The neglect of the agents to call elections on the dates specified by the Orders in Council and the sometimes confused communications between Department headquarters and officers in the field, occasionally led to unusual developments. On 15 April 1911, Thomas Deasy, Indian Agent at Masset, British Columbia, informed the Department that he had just held elections under the Advancement part of the Act (Part II) for the bands at Masset and Skidgate.[38] Deasy added that the bands had been conducting elections since 1900 when G.W. Morrow was agent and he felt that he should follow the precedent established.[39]

The Department was surprised to learn of this turn of events. J.D. McLean, the Assistant Deputy and Secretary acknowledged Agent Deasy's letter and told him that the Department had been unaware that the two bands had undertaken Part II of the Indian Act.[40] He also pointed out that the Act could only be applied by the Governor in Council; that this had not been done; and that the Department had not considered it advisable to apply it to these bands.[41] McLean concluded that the two bands had no legal right to conduct elections under Part II of the Indian Act.[42]

On 6 May 1911, H.C. Ross wrote a long memorandum to the Deputy Minister explaining the situation. He reiterated the facts of the case and noted that Agent Deasy had recommended that Part II of the Indian Act be applied to the Skidgate and Masset bands. He concluded:

> As it is evident that these two bands have been for some years following the system of election provided by the Advancement Part of the Act, I certainly think that it would be well to make these elections regular and legal by having that Part of the Act applied to them by Order-in-Council, and I, therefore, recommend that as soon as the Department ascertains the arrangement of sections into which the Skidgate and Masset reserves have probably been divided and what dates have been fixed upon by those bands respectively, a report be made to Council applying the Advancement Part of the Act to those bands.[43]

In the meantime, Assistant Deputy and Secretary McLean, notified Deasy that his recommendation to apply the Advancement Act to the two bands had been accepted.[44] He requested the agent to inform him of the number of sections included in each reserve, the number of councillors representing each section, the day, month and the hours during which the election would be held each year.

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Work continued on the application of the Act but with further problems. On 6 December 1911, H.C. Ross explained to Assistant Deputy Superintendent General McLean, that there were still difficulties in applying the Act in these cases. He stated that the Indians wanted the nominations on the same day as the elections but that this was contrary to the Act which stipulated that nominations were to be held one week before the election.[45] He did not think that it would be proper to incorporate this condition into the Order in Council.[46] In order to overcome this impasse, Ross suggested:

> [A]s, however, both bands have been holding elections for some years under the system laid down in the Advancement Part of the Act, although not authorized by Order in Council, I am afraid it would be very difficult to force them to comply with this detail, and so long as the point is not mentioned in the Order in Council, I think the best course to follow would be ignore it.[47]

After all, Ross contended, the Act would at last be legally applied to the bands in question and he considered this to be the overriding consideration.[48]

On 27 and 29 January 1912, the Orders in Council applying the Advancement Act to the Masset and Skidgate bands respectively, were passed.[49] Thus through an apparent misinterpretation of his duties by Agent Morrow were the two bands admitted to the Act.

The Department in dealing with the myriad problems that arose in regard to the administration of the election processes of both Acts, adopted a pragmatic approach; attempting to solve each problem on the basis of the merits of that problem. At times this approach gave the administration an aura of confusion, and contradiction, as witness the Department handling of the issue of the secret ballot. This pragmatic approach, however, gave the administration of the election procedures the flexibility required to deal with a disparate group of people who were all at varying degrees of political, social and economic development. This flexibility is perhaps best illustrated by the fact that by 1900, there were four systems of tribal government: the three-year elective system (Indian Act); the one-year system (Indian Advancement Act); the hereditary system used at the Six Nations Reserve and in parts of British Columbia; and the appointment system used mainly on the prairies.

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CHAPTER SIX

The Elective System: 1906 - 1951

The Department took few initiatives in the area of election legislation following the consolidation of the Indian Act and the Indian Advancement Act in 1906. In fact, some twenty-eight years elapsed before any changes were made to the election provisions. In 1934, sub-section one of Section 167 of Part II of the Act (Indian Advancement) was amended to permit the Governor in Council to divide the reserves into sections, or if desired, to declare the reserve one whole section for electoral purposes.[1]

In 1936, three more amendments were made to both sections of election provisions of the Act. Section 174 of Part II was amended to provide that a councillor must not only be possessed of a house on the reserve but must live on the reserve as well.[2] Two of the provisions of Part I of the Act dealing with the three-year system were also altered. A new sub-section 5 was added to Section 96 to permit the agent or person presiding at the band election to cast the deciding vote in the event of an electoral tie.[3] This had long been a feature of Part II (Indian Advancement) of the Indian Act. Another feature of Part II, the delineation of the agent's duties at band council meetings, was now included in Part I. This new section was 99A and read:

> (1) At meetings of the council the agent for the reserve, or his deputy appointed for the purpose with the consent of the Superintendent General, shall
>
> a) preside, and record the proceedings;
>
> b) control and regulate all matters of procedure and form, and adjourn the meeting to a time named or sine die;
>
> c) report and certify all by-laws and other acts and proceedings of the council to the Superintendent General;
>
> d) address the council and explain and advise the members thereof upon their powers and duties.
>
> (2) No such agent or deputy shall vote on any question to be decided by the council.[4]

These amendments were the last to be made to the election provisions of the Indian Act, prior to its revision in 1951.

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During the mid-1940's, the Department began to explore the possibility of extending the three-year elective system to some of the bands in the prairie provinces. The western Indians utilized the tribal system, having long been considered too aboriginal to adopt the elective system. As the prairie provinces became more settled and the Indians better educated, however, there grew a conviction among some members of the Department that the tribal system should be replaced by the elective system.[5]

On 20 January 1943, the Department made a submission to the Privy Council, proposing to apply the three-year system to certain designated bands in Manitoba and Saskatchewan.[6] The plan was not implemented, due to the opposition of the General Superintendent for Indian Agencies, Mr. M. Christianson, who opposed the plan because he thought the replacement of existing chiefs and councillors would create friction and hard feelings.[7] The treaties specified a certain number of councillors for each band which could be abrogated by the adoption of the election provisions of Part I or Part II of the Act. This led the majority of Indians as well as many of the Indian agents to oppose any radical change.[8]

In 1944, a questionnaire was circulated to the agents in preparation for a new submission. The replies were generally favourable, although there were some problem areas. The bands of the Carlton Agency which had been recommended previously for the three-year elective system, were not omitted from the list by the agent.[9] The Inspector of Indian Agencies in the West, Mr. Ostrander, however, advised Mr. T.R.L. MacInnes, the Department Secretary, that the more progressive bands of the Carlton agency should be included on the list of bands designated to receive the elective system.[10] He attributed the negative stance to the fact that the agent had not been long in office.[11]

In Alberta, the reports of the agents were conflicting and there was little evidence that the Indians desired to adopt the three-year elective system.[12] In light of this, the Department decided to hold a vote among the various bands to determine if they wished to change their form of local government.[13] The records do not appear to indicate whether the vote was ever held, or if so, what the result was.

On 30 June 1945, a new submission to the Privy Council was drafted and sent to the Deputy Minister for approval.[14] The draft was returned for further consideration.[15] Since a Special Committee of the Senate and House of Commons was about to conduct hearings with regard to the revision of the Indian Act, the Department decided that it would be better to wait until the terms of any new Act were known before proceeding with a plan to apply the elective system.[16] As it turned out, the plan never became operational.

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The Special Committee of the Senate and House of Commons spent the years 1946 to 1948 hearing proposals for changes to the Indian Act. Many Indian groups were given the opportunity to appear before the Committee to present their views on the various aspects of Indian life. Though the issue of band council elections does not appear to have been a major concern with the Indians, some groups did make suggestions with regard to the election provisions of the Act.

The Indian Women's Tillicum Club from the Nanaimo Reserve suggested that Indian women should be eligible to run for council and that there should be an educational standard for prospective candidates.[17]

The Indian Association of Alberta recommended, that, if a band so requested, the elective system should be applied for a term of three years. The Association also stated:

> [T]hat a free electoral system did not exist and that the choice of the members of the Band had not always been accepted by the authorities. Chiefs who must face re-election at the end of a three year term will provide more efficient service to their people and will be likely to defend their people's rights and needs more actively.[18]

The non-treaty Sioux Indians noted that the chiefs and councillors received no pay for their offices and suggested that band officials should receive adequate compensation.[19] The Carrier Indians of Central and Northern British Columbia agreed with the proposals and stated in their brief to the Committee:

> [W]e do not see why the Indian Chiefs and Councillors are not counted as members of Indian Affairs, when all services and materials comes from them, or ends with them, responsibilities and difficulties, without any income.[20]

The representatives of the Muncey Band Council declared in their testimony to the Committee that Section 99A gave too much authority to the agent.[21] This view was shared by the representatives of the bands from the Duck Lake Indian Agency, who noted.

> [T]hat the powers embodied under this section of the Indian Act be revised and our Chief and Councillors be empowered to conduct the affairs of our band. While we recognize the value of the advice and guidance from our Indian Agent we believe that we are now capable of assuming a larger share of the responsibilities of the affairs of our band and request that this section of the Indian Act be revised along the lines requested.[22]

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Upon the completion of [their] deliberations, the Special Committee of the Senate and House of Commons set out in its Fourth Report with relation to the elective system, the following recommendations:

> (b) That Indian women of the full age of 21 years be granted the right to vote for the purpose of electing Band Councillors and at such other times as the members of the band are required to decide a matter by voting thereon.[23]

The recommendation was favourably received by the Government and was included in Bill 79, the proposed new Indian Act, when it was introduced in Parliament.[24]

In 1951, the revised Indian Act was enacted by Parliament. The two systems of election provisions was eliminated and a single set of provisions encompassing Sections 73 to 79, was instituted.

Section 73, subsection 1, retained one of the main features of the old Act in that it permitted the Governor in Council to apply the elective system at his discretion. Subsection 2, defined the number of chiefs and councillors a band was permitted, which was one chief and no less than two nor more than twelve councillors.[25]

Subsection 3, paragraph (a) and (b) defined more specifically the responsibility of the Governor in Council for providing regulations for band council elections. The subsection read:

> (3) The Governor in Council may, for the purpose of giving effect to subsection one, make orders or regulations to provide
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> (a) that the chief of a band shall be elected by
>
> (i) a majority of the votes of the electors of the band,or
>
> (ii) a majority of the votes of the elected councillors of the band from among themselves, but the chief so elected shall remain a councillor,
>
> (b) that the councillors of a band should be elected by
>
> (i) a majority of the votes of the electors of the band, or
>
> (ii) a majority of the votes of the electors of the band in the electoral section in which the candidate resides and that he proposes to represent on the council of the band.[26]

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Paragraphs (c) and (d) provided for the division of the reserve into one to six sections for voting purposes.[27]

Subsection 4 stated:

> Where the Minister is satisfied that a majority of the electors of a band do not desire to have the reserve divided into electoral sections and reports to the Governor in Council accordingly, the Governor in Council may order that the reserve shall for voting purposes consist of one electoral section.[28]

Section 74 defined who was eligible to stand for election:

> (1) No person other than an elector who resides in a section may be nominated for the office of councillor to represent that section on the council of the band.
>
> (2) No person may be a candidate for election as chief or councillor unless his nomination is moved and seconded by persons who are themselves eligible to be nominated.[29]

Section 75 provided for the regulations governing elections. It encompassed many of the regulations of the old Act. This section stated:

> (1) The Governor in Council may make orders and regulations with respect to band elections and, without restricting the generality of the foregoing, may make regulations with respect to
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> (a) meeting to nominate candidates,
>
> (b) the appointment and duties of electoral officers,
>
> (c) the manner in which voting shall be carried out,
>
> (d) election appeals, and
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> (e) the definition of residence for the purpose of determing the eligibility of voters.
>
> (2) The regulations made under paragraph (c) of subsection one shall make provision for secrecy of voting.[30]

This last provision in paragraph 2 was one which was long overdue.

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Section 76 was one of the most important in the new Act. It defined who was eligible to vote. According to the new section an eligible voter was a member of the band the full age of twenty-one years and ordinarily resident on the reserve. Under this definition Indian women were finally given the right to vote.[31]

Section 77 dealt with the tenure of office, vacancies, and disqualifications. These were essentially the old deposition clauses from the Indian Act and the Indian Advancement Act. The new term of office was set at two years.[32]

Section 78 permitted the Governor in Council, upon the report of the Minister of Indian Affairs, to set aside an election for the following reasons:

> (a) there was corrupt practice in connection with the election,
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> (b) there was a violation of this Act that might have affected the result of the election, or
>
> (c) a person nominated to be a candidate in the election was ineligible to be a candidate.[33]

Section 79 dealt with regulations for band and council meetings. It read:

> The Governor in Council may make regulations with respect to band meetings and council meetings and without restricting the generality of the foregoing, may make regulations with respect to
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> (a) presiding officers at such meetings,
>
> (b) notice of such meetings,
>
> (c) the duties of any representative of the Minister at such meetings, and
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> (d) the number of persons required at the meeting to constitute a quorum.[34]

The new Indian Act was certainly an improvement over the old dual system of election provisions. These improvements were summarized in the Annual Report of 1952:

> The election provisions have been revised to provide uniform procedures and term of office. The right to vote in band elections and other votes under the Act has been extended to all members of a band of the full age of twenty-one years. This, for the first time,

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> extends the franchise in band affairs to women. Indian women are now exercising this right, and a number of them have already been elected to office. Secrecy of voting has been provided under election regulations. As formerly, those bands to which the election provisions have not been applied may choose their chiefs and councillors according to band custom.[35]

In order for the new Act to be applied, the orders and regulations of the old Act had first to be rescinded. This was done in November 1951, by Order in Council No. 6016.[36] The first Orders in Council placing the bands under the provisions of the new Act were passed in 1952.

The success of the new election provisions may be gauged by the number of bands which undertook them. Prior to 1951, 400 bands were under the indefinite system (tribal custom); 185 were under the three-year system; while 9 had undertaken the Indian Advancement provisions (one-year system).[37] By 1971, however, some 384 bands had been placed under the elective system, while 169 bands retained the tribal custom method.[38]

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Endnotes

Chapter Six

1. Gail Hinge, Consolidation of Indian Legislation. Vol. II: Indian Acts and Amendments, 1868-1975. p. 306 . [Indian Act. Revised Statutes of Canada, 1927, Chapt. 98.]

2. Ibid., p. 308.

3. Ibid., p. 280.

4. Ibid., p. 281.

5. PAC, RG10 Vol. 7115, File 1/3-5: Memorandum to the Director re Indian Chiefs and Councillors - Prairie Provinces from Department Secretary T.R.L. MacInnes, 28 February 1946.

6. Ibid., p. 2.

7. Ibid.

8. Ibid., p. 1.

9. Ibid., p. 2.

10. Ibid.

11. Ibid.

12. Ibid., p. 5.

13. Ibid., p. 4.

14. Ibid., p. 2.

15. Ibid.

16. PAC, RG10 Vol. 7115, File 1/3-5: Memorandum to the Director from Department Secretary T.R.L. MacInnes, 4 January 1949.

17. CP, Special Joint Committee Of The Senate And The House of Commons, Appointed To Examine And Consider The Indian Act, Minutes of Proceedings and Evidence, No. 21. 13 August 1946. Appendix AH, p. 853 (hereafter cited as CP, S.J.C. 1946).

18. CP, S.J.C., 1946, Appendix AC(1), p. 801.

19. CP, S.J.C., 1947, Appendix HF, p. 2062.

20. CP, S.J.C., 1948, Appendix IF, p. 214.

21. CP, S.J.C. 1947, Appendix HM, p. 2081.

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22. CP, S.J.C. 1947, Appendix HJ, p. 2073.

23. CP, S.J.C. 1948, Fourth Report, p. 187.

24. CP, Minutes of Proceedings and Evidence of Special (House of Commons) Committee appointed to consider Bill No. 79, An Act respecting Indians, 23 April 1951, p. 148-149.

25. Hinge, p. 338.[The Indian Act. Statutes of Canada. 1951, Chapt. 29 (15 George VI)]

26. Ibid., p. 338.

27. Ibid.

28. Ibid.

29. Ibid.,p. 339.

30. Ibid.

31. Ibid.

32. Ibid.

33. Ibid. p. 340.

34. Ibid.

35. Canada. Department of Indian Affairs. Annual Report, 1952, p. 43.

36. PAC, RG10 Vol. 7115, File 1/3-5 Vol. 2: P.C. 6016, 12 November 1951.

37. CP, Minutes of Proceedings and Evidence of Special (House of Commons) Committee appointed to consider Bill No. 79, An Act respecting Indians, 23 April 1951, p. 151.

38. Canada. Department of Indian and Northern Affairs. The Canadian Indian: Statistics, 1973, p. 17.

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SUMMARY

The implementation of the election provisions of the Indian Act legislation was a slow and tentative process. The reluctance of the Indians to accept the elective systems was,perhaps, as the Hawthorn Report states:

> [T]hat the band council device was not a spontaneous creation of the Indians, but one which was introduced from the outside; that the system was not congruent with Indian precedent or social organization in most cases; that the development of self-government at the local level did not occur to the extent anticipated.[1]

Yet one wonders what alternative, given the context of the situation, could have been utilized. The position of the Indian people in the latter quarter of the nineteenth century was certainly not congruent with their historical experience. The economic base, which had shaped the Indian's political institutions and social relations had been destroyed, and the Indian people were faced with a set of circumstances which to them were unique. Again Hawthorn:

> For the first time, thousands of Indians found themselves living in permanent, sedentary communities with clearly defined spatial and social boundaries. A growing body of formal rules governing corporate land usage, residential rights, band membership rights, and so on, gave these mostly quite small communities a legal character and an exclusiveness which stood in marked contrast to the traditional residential grouping.[2]

The government of Sir John A. Macdonald, in order to ameliorate the transition of the Indian people into the new political reality, embarked on a program of assimilation, of which the elective system was a major facet. The feeling was that assimilation would permit the Indians to participate fully, and, on a basis of equality in white society.

The elective system had two goals. The first was to acculturate the Indian people in the political mores of the prevalent society, through the operation of local self-government; the second, to eliminate the vestiges of the indigenous Indian political system. It would, as William Spragge, the Deputy Superintendent General of Indian Affairs, had asserted in 1870, 'establish a responsible, for an irresponsible system'.[3]

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Hawthorn suggested that there was yet a third function, in that:

> Band councils persisted in Indian communities, not because they were perceived as responding to important local government needs, but because the government insisted on dealing through them ....[4]

The establishment of the elective system may have had this effect, but as a conscious consideration of the government of the time, it is not reflected in the documents or correspondence. Indeed, Hawthorn's observation is somewhat contradicted by Hayter Reed's policy of eliminating chiefs, headmen and band councils, at least insofar as the Western Indians were concerned.

Parliament enacted two pieces of legislation to introduce the elective system; the election provisions of the Indian Act (three-year system) and the Indian Advancement Act (one-year system).

The Indian Advancement Act was the least effective of the two pieces of legislation. It was designed to apply a municipal form of government to the so-called 'advanced' bands. Yet, oddly enough, the Department never seemed to have had an official working definition of the term 'advanced'. It would appear, however, that when the word was used, Department officials had in mind such bands as the Six Nations at Brantford, a relatively sophisticated tribe both economically and socially, having long been settled on the reserve.

The elective provisions of the Advancement Act were applied in what appears to have been a haphazard manner. In British Columbia, for instance, there were six bands under the Act. Yet, there were other bands in British Columbia, apparently just as 'advanced', that were never considered. There is no apparent explanation for this. In its entire history, the election provisions of the Advancement Act was only applied to or adopted by, nine bands. In two instances, it had been applied by an agent who had acted without the knowledge or authority of the Department.

The reluctance of the Indians to adopt the elective provisions of the Advancement Act, bewildered Departmental officials. In the Annual Report of 1909, Frank Pedley, Deputy Superintendent General mused:

> It seems strange and cannot 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.[5]

Pedley's explanation for this development was:

> It is not that the Indians lack the spirit of independence nor the desire to conduct their own affairs, but

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> 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, which is often too hastily assumed to be a mark of retrogression on their part.[6]

While there may be validity in Pedley's observation, it may be that the main difficulty lay in the nature of the Act itself. In introducing the legislation in Parliament in 1884, Prime Minister Macdonald admitted that the Advancement Act was essentially no different from the Indian Act.[7] Because there was little difference, the Indians undoubtedly saw little advantage in undertaking it. Perhaps the best summation of the ineffectiveness of the Indian Advancement Act was given by the Department Secretary, T.R.L. MacInnes, in 1951. According to MacInnes:

> The main differences between Part II and Part I are that under Part II, elections are held every year. A 'section' or 'ward' system is provided for, property qualifications are required and the powers of the councils include taxation and imposition of penalties. Other differences are that under Part II, the by-laws and removal of councillors from office required only Ministerial approval instead of by Governor in Council as under Part I; also, under Part II specific rules are laid down regarding nominations procedure at elections and meetings. Under Part II the chief councillor is elected by the councillors from among their number instead of being elected at large as under Part I. The application of Part II, as in the case of Part I, is by Crder in Council.
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> In effect, the bands under Part II have carried on the same way as under Part I, subject only to the statutory differences as to procedure and qualifications, etc., above mentioned.
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> The result is that no advantage has been gained by the application of Part II and that the intention of the Part, which was to develop public spirit and interest and responsibility in local self-government, has not been realized. Probably the main reason for this unsatisfactory result is that the Indians have refused to tax themselves preferring to leave the responsibilty of administration of public services to the Federal Government to be paid for either from band funds administered by the Department or parliamentary appropriation.It

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> is true that the band councils under Part II are active and have a considerable responsibility which they carry out with regard to expenditure of band funds, allocation of lands and many other matters as provided by the Indian Act, but the councillors do this under Part I also.[8]

The ineffectiveness of the Advancement Act appears to have been recognized early by the Department and this may account for its embodiement as Part II of the Indian Act in 1906. Certainly, after the turn of the century, neither the Indian people nor the Department took any initiative with regard to the Advancement Act. Indeed, during the remainder of its existence, it was applied only once, to the Six Nations of Brantford in 1924.

The election provisions of the Indian Act itself were only marginally successful during the initial phase of introduction. Though a few Indian bands, such as the Golden Lake band in Ontario and the Cowessess band in the West, adopted the three-year elective system, most of the bands were apathetic. This led to a certain amount of exasperation within the Department and resulted in the blanket application of the provisions to the Eastern bands in 1895 and 1899. No matter how imperfectly the election provisions were utilized, however, the fact that they existed led imperceptably to the political acculturation of the Indian people. As the older generation passed on, the three-year elective system provided a basis for political activity for the new generations, acclimatized to life under the new conditions.

The most innovative measure implemented by the Department was the matter in which it dealt with the bands not considered 'advanced'. The Department permitted these bands to form councils through tribal custom. Once a council was in place, it was introduced to the problems endemic to reserve life. As an admiring Frederick H. Abbott, Secretary of the Board of Indian Commissioners (United States), wrote:

> In the reserves of western Canada the real work of civilizing the Plains Indians in settled communities began scarcely forty years ago, and this fact explains why the Indians of these reserves have not reached the point in their development, when, through their band councils, they may exercise the large functions of local self-government exercised by the bands in the eastern reserves. But they have begun their march upward. Their councils, composed of chiefs and assistant chiefs, just as they were in the old days, instead of dealing with questions relating to hunting or war parties or the enforcement of tribal rules of justice, are gradually taking up the problems of the new conditions which surround them. The form

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> of the old tribal machinery is retained, but its functions are changed, as the Indians, themselves, become educated and prepared to assume responsibilities in conformity with the standards of civilization. The form of the tribal government is thus preserved as a means of easy approach, from the Indian's own point of view, to the white man's ways, through avenues familiar to him, its functions gradually changing and increasing until the Indians, after several generations, unconsciously, by processes of evolution, may take on the characteristics of self-governing white communities and become part and parcel of the state.[9]

That the Department was making preparations during the 1940's to apply the elective system (Indian Act) to the bands on the prairies, is perhaps a good indication that this approach was successful.[10]

The administration of the two Acts, though flexible, was not without inconsistency. For example, though it was agreed by Departmental officials that secret balloting was preferable to open voting, nothing was ever done until 1951, to amend the legislation. The Department could at any time, prior to 1951, have recommended that this fundamental facet of the democratic election process be included in band council election procedures; however, it never did so.

The application of the Indian Act election provisions was also inconsistent. The Indians of Treaty 3, for instance, were included in the blanket application of 1899 but no one in the Department ever considered them to be 'advanced' enough to undertake the elective system. Nonetheless, the Indians remained under the jurisdiction of the three-year elective system, even though in practice councils were formed through traditional band custom.

In 1951, the election provisions of the Indian Act were revised. Part I and Part II were eliminated and a single set of regulations formulated. The most notable aspects of the new provisions were Section 75, subsection 2, which permitted the secret ballot; and Section 76, subsection 1, which defined an eligible voter as any member of the band twenty-one years of age or over. For the first time women were permitted to vote in band council elections. By Section 74, subsection 1, women could also run for the office of chief or councillor.[11]

Indication that change within the polity of Indian bands had occurred by 1951, is illustrated by the fact that within two years of the enactment of the revised election provisions, some 263 bands had adopted the elective system.[12] By 1971, this figure had risen to 384 bands, which meant that over 71% of the Indian bands were using the elective process.[13] In addition, women were now

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participating in band politics and administration. In 1971, there were 19 women chiefs and 218 women councillors.[14]

If one judges the aims for which Indian self-government was established, insofar as the elective system is concerned the fact that two-thirds of the bands in Canada have adopted the system indicates that the program, despite its slow development, has been to a large extent successful.

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Endnotes

Summary

1. H.B. Hawthorn, Ed. A Survey Of The Contemporary Indians Of Canada: Economic, Political, Educational Needs and Policies, Part II, Ottawa 1968, p. 178.

2. Ibid., p. 177.

3. Canada. Department of Indian Affairs. Annual Report, 1870, p.4: Letter to the Secretary of State Joseph Howe from Deputy Superintendent William Spragge, 2 February 1871.

4. Hawthorn, p. 178.

5. Canada. Department of Indian Affairs. Annual Report, 1909, p. xx: Letter to Superintendent General Frank Oliver from Deputy Superintendent General Frank Pedley, 16 July 1909.

6. Ibid., p. xx.

7. CP, House of Commons Debates, 2nd sess. - 5th Parl., p. 539: Self Government By Indians, 29 January 1884.

8. PAC, RG10 Vol. 7115, File 1/3-5 Vol. 1: Memorandum re Part II of the Indian Act - Indian Advancement from Department Secretary T.R.L. MacInnes, 26 February 1951.

9. Frederick H. Abbott, The Administration of Indian Affairs in Canada, Washington 1915, p. 49.

10. PAC, RG10 Vol. 7115, File 1/3-5: Memorandum to Director re Indian Chiefs and Councillors - Prairie Provinces from T.R.L. MacInnes, 28 February 1946.

11. Gail Hinge, Consolidation of Indian Legislation. Volume II: Indian Acts and Amendments, 1868-1975: p. 339. [The Indian Act. Statutes of Canada. 1951, Chapt. 29 (15 George VI.)]

12. Hawthorn, p. 265, Part I.

13. Canada. Department of Indian and Northern Affairs. The Canadian Indian: Statistics, Ottawa 1973, p. 17.

14. Ibid., p. 17.

PART TWO

Band Council Powers

CHAPTER ONE

The Principles of Indian Policy: Protection and Civilization Legislation, 1868-1880

The principles of Canada's Indian policy were, to a great extent, established by the time of Confederation. What changed after Confederation was the emphasis placed on these principles. The pre-1867 period largely concerned the protection of the Indian and his land. "Civilization" of the Indian had been gaining in importance but was regarded as a gradual and long-term process. Assimilation was the long range goal.[1] Indeed, no longer was the objective simply to teach the Indian to cope with persons of European ancestry and to become "civilized", but he was to become European and assimilated fully in colonial society. Thus was the purpose of the law, "an Act to encourage the gradual civilization of the Indians in this Province, and to amend the laws respecting Indians", passed in the legislature of the United Canadas in 1857.[2]

Prior to Confederation the general view of government was that if the Indians were to be "civilized" they would have to abandon their traditional tribal system of government. In 1868, and more particularly in 1869, Parliament passed legislation designed to alter the tribal organizations. Subsequently, the Indian Act of 1876 incorporated all the protective features of earlier legislation and contained some minor changes designed to further the process of "civilization". An important part of this process was the gradual breakdown of the tribal system and the development of local government. The elected band council was regarded as the means to destroy the last vestige of the hereditary system.[3]

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The Act of 1868 consolidated much of the legislation passed in the previous decade regarding protection and management of Indian interests.[4] Attempts to attain the goals of "civilization" and assimilation were put into practice by the passage of "an Act for the gradual enfranchisement of Indians..." in 1869 and were reflected in the increased powers of chiefs.[5] Up to this time Chiefs had been empowered to make by-laws on minor police and public health matters but these regulations could only be enforced after approval by the Superintendent General of Indian Affairs.[6] William Spragge, Deputy Superintendent of Indian Affairs, summarized the intent of this legislation in the Annual Report for 1871:

> [T]he Acts framed in the years 1868 and 1869, relating

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to Indian Affairs, were designed to lead the Indian people by degrees to mingle with the white race in the ordinary avocations of life. It was intended to afford facilities for electing, for a limited period, members of bands to manage, as a Council, local matters - the intelligent and educated men, recognized as chiefs, should carry out the wishes of the male members of mature years in each band, who should be fairly represented in the conduct of their internal affairs.

Thus establishing a responsible, for an irresponsible system, this provision, by law, was designed to pave the way to the establishment of simple municipal institutions. The statute 32 and 33 Vic, chap. 6, gives to the bands by section 11, authority to frame rules and regulations subject to confirmation by the Governor in Council for:-

1st. The care of the public health.
2nd. The observance of order and decorum at assemblies of the people in General Council, or on other occasions.
3rd. The repression of intemperance and profligacy.
4th. The prevention of trespass by cattle.
5th. The maintenance of roads, bridges, ditches and fences.
6th. The construction, maintenance and repair of school houses, council houses, and other Indian public buildings.
7th. The establishment of pounds and the appointment of pound keepers.[7]

The Enfranchisement Act of 1869 demonstrated a change in emphasis from earlier colonial legislation to promote assimilation. The colonial legislation had been "for the gradual civilization" of the Indian; the new Act was "for his gradual enfranchisement."[8] Evidence of showing "civilization" was a prerequisite for enfranchisement. This Act, designed initially for the Six Nations and other Indian people with long contact with Europeans, was to provide further training in Euro-Canadian political and social values. On 30 June 1872 Mr. Joseph Howe, Superintendent General of Indian Affairs, suggested that many of the bands in eastern Provinces were benefitting from the 1869 Act:

> [I]n those Provinces (Ontario and Quebec) many of the bands exercised nearly all the powers of municipalities, and are being rapidly trained to self-government. They zealously co-operate with the chiefs, who derive their distinctions by descent, are elected by the free suffrages of the bands; they have their own Council Houses, which often resound with bursts of natural eloquence, or are enlivened by displays of mother wit and shrewd good

> sense; they maintain their own agents, doctors, and schoolmasters; and in their general intercourse with the Department, with rare exceptions, are courteous, intelligent and reasonable.[9]

The first band to benefit from the 1869 Act was the Mohawks of the Bay of Quinte and its council has operated effectively ever since.[10]

The 1869 Act also gave the chiefs discretionary powers with respect to enfranchisement.[11] It authorized chiefs, if sanctioned by the Superintendent General, to indicate which band members could be enfranchised. Since the passage of the Civilization and Enfranchisement Act (22 Victoria, chapter 9) in 1859, few Indians had relinquished their status and rights in favour of enfranchisement. Hector Langevin, the Secretary of State of Canada from 1867 to 1869, expected that a large number of Indians would become enfranchised through the provisions of the 1869 Act.

Canada consolidated its Indian policy by means of an "Act to amend and consolidate the laws respecting Indians", or "The Indian Act" of 1876. This Act was the foundation for all future Indian legislation. In its general approach and basic philosophy, however, the 1876 Indian Act revealed little change since 1830.[12] It was basically paternalistic and designed to help the Indians achieve a certain level of competence in the management of their own affairs. At the same time it was intended that the structure of band councils and their responsibilities would be progressively refined, and more responsibility and power would be delegated from the chiefs to local band councils.

Under the 1876 Indian Act, the authority granted to duly constituted chiefs or band councillors on Indian reserves was similar to that provided in "An Act for the gradual enfranchisement of Indians..." (1869). Authority was limited to framing rules and regulations regarding specific matters of public health, the observance of order at assemblies, the repression of intemperance and profligacy, the prevention of trespass by cattle, the maintenance of roads, bridges and fences, construction and repair of schoolhouses and other public buildings, the establishment of pounds and the appointment of pound-keepers and finally the locating of land in the reserves and the establishment of a register of such locations.[13] Even in these matters, however, ultimate approval and sanction came from the Governor in Council. Nevertheless, there was no provision for local enforcement of the by-laws.

This problem, relating to the inability of tribal governments to enforce by-laws, was apparent in a case at St. Regis in 1878.[14] The chiefs had formulated a set of regulations regarding the impoundment of livestock which included a provision for fining violators. The latter provision prevented

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approval of the regulations since they could not come under the Act. This case clearly exemplified the frustration of the chiefs as well as Indian Affairs officials.[15] The Solicitor of the Indian Affairs Department pointed out that it was "worse than useless to pass rules that cannot be enforced" and he recommended that the Act either be amended to provide for enforcement or that the section granting the chiefs power to frame such rules be deleted altogether.[16] This situation was altered by an amendment to the Indian Act in 1879 which granted chiefs authority to impose fines. The amended section read as follows:

> The imposition of punishment, by fine or penalty, or by imprisonment, or both, for infraction of any of such rules or regulations (see P.2) the fine or penalty in no case to exceed thirty dollars, and the imprisonment in no case to exceed thirty days.[17]

In 1880 this power was again modified. Conviction of offenders by a summary trial before a Justice of the Peace was now required before a fine could be imposed.

One of the more significant provisions of the Indian Act of 1876 was to encourage individual property rights and landholding on reserves.

> 6. In a reserve, a portion of the reserve, subdivided by survey into lots, no Indian shall be deemed to be lawfully in possession of one or more of such lots, or part of a lot, unless he or she has been or shall be located for the same by the band, with the approval of the Superintendent General.
>
> Provided that no Indian shall be dispossessed of any lot or part of a lot, on which he or she has improvements, without receiving compensation therefor, (at a valuation to be approved by the Superintendent General) from the Indian who obtains the lot or part of a lot, or from the funds of the band, as may be determined by the Superintendent General.
>
> 7. On the Superintendent General approving of any location as aforesaid, he shall issue in triplicate a ticket granting a location title to such Indian, one triplicate of which he shall retain in a book to be kept for the purpose; the other two he shall forward to the local agent, one to be delivered to the Indian in whose favour it was issued, the other to be filed by the agent, who shall permit it to be copied into the register of the band, if such register has been established.[18]

An essential condition of enfranchisement and of the "civilization" process was the granting of a portion of reserve land in

fee simple to an Indian. The Act authorized the chiefs of any band council to regulate the assignment of individual landholdings on their reserves and to establish a register of such locations.[19] The introduction of the location ticket, as it was called, was a means by which an Indian could demonstrate that he had adopted the European concept of private property.

At St. Regis, as among other Iroquois settlements, formal records indicating the issuance of location tickets were only partially maintained in the period between 1876 and 1910.[20] By 1876 chiefs were responsible for allocating and sanctioning rights to land, including the rights acquired through purchase or inheritance. Landholdings over much of the reserve were described as "hodge-podge", and the lack of boundaries was cited as a source of dispute.[21] In 1884 the Agent at St. Regis reported the need for a survey to establish reserve boundaries once and for all. The absence of surveyed holdings and the resulting uncertain character of boundaries were a reflection of the limitation of the powers of the chief. Chiefs' decisions were not authoritative and binding without the specific location of persons on surveyed lots and the approval of the Indian Affairs Department.[22] Chiefs were limited in matters such as these since they held no real power to enforce their judgements. Enforcements were accomplished only through appeal to outside officials (e.g. the sheriff). The uncertain status of the chiefs' authority ultimately contributed to the ineffectiveness of local authority, particularly around the turn of the century, and weakened the powers of the band council.[23]

During the Debates in the House of Commons on 21 March 1876, Hector Langevin, the principal designer of the 1869 Enfranchisement Act, asked David Laird, the Minister of the Interior and Superintendent General of Indian Affairs, whether clause 26 of the new Indian bill, which referred to reserve land surrenders, meant assent of the majority of all male band members or only a majority of males present at a surrender meeting.[24] Laird specified the latter and added that "the Department took good care of their practice not to allow these surrenders unless the Indians were at home at the time."[25] Langevin maintained that "there should be a certain proportion of the band present before a surrender of lands should be determined upon".[26]

However, clause 26 of the Act did not include Langevin's precautionary measures:

> 1. The release or surrender shall be assented to by a a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose according to their rules, and held in the presence of the Superintendent General, or of an officer duly authorized to attend such councils by the Governor in Council or by the Superintendent General; provided, that no Indian shall

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be entitled to vote or be present at such council, unless he habitually resides on or near and is interested in the reserve question;

2. The fact that such release or surrender has been assented to by the band at such council or meeting, shall be certified on oath before some judge of a superior, country or district court, or stipendary magistrate, by the Superintendent General or by the officer authorized by him to attend such council or meeting, and by some one of the chief or principal men present thereat and entitled to vote, and when so certified as aforesaid shall be submitted to the Governor in Council for acceptance or refusal;...[27]

The 1876 Indian Act, as all previous legislation, was designed for the Indians living east of Lake Superior. The Western Indians were excluded from most provisions of the Indian Act until such time as the Superintendent General of Indian Affairs considered them "advanced enough in civilization" to come under the Act. However, the Eastern Indians rejected it because if they adopted the elective system the Superintendent General would have supervisory and veto power over most band decisions. The Minutes of Council for the Six Nations Indians at the Grand River reserve for the 1879 reflected this worry:

1st. We find the Indian Act of 1876 is not calculated to promote our Welfare if we accept it because it empowers the Superintendent General of Indian Affairs to manage, govern, and control our lands, moneys, and properties, without first obtaining the consent of the chiefs of the Six Nations,

2nd. Moreover the Dominion Parliament can pass a special Act under the said Act, and carry out the same without first obtaining the consent or approval of the Chiefs in Council, as it has been done already before we have legally accepted the said Act,..[28]

In addition, in a letter dated 8 January 1879, to Sir John A. Macdonald, Prime Minister of Canada and Superintendent General of Indian Affairs, the Council suggested that "we frame our own laws, rules and regulations, suitable for our advancement as well as our welfare, and have the Governor in Council confirm the same."[29] Such protests achieved little success, for subsequent amendments and later Indian Acts increased the authority of the Superintendent General to interfere in band and personal affairs.

By 1876, the powers of the Hereditary Council of the Six Nations Indians had been weakened considerably. The Indian Act of 1876, as well as subsequent amendments, with the provisions for "democratic" elections, majority voting, and elective councils,

undermined the authority of Hereditary Councils.[30] In effect, the Council would become "a procedure for deliberations rather than a body, invested with governing powers".[31] When evaluating the performance of the Hereditary Council in local government after 1876, therefore, it must be seen in the existing relationship to the overriding and permissive powers of the Indian Affairs Department.

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Endnotes

Chapter One

1. See John L. Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy", The Western Canadian Journal of Anthropology, Vol. iv, no. 2, 1976, pp. 13-15.

2. Ibid., p. 16.

3. Ibid., p. 19.

4. See Robert G. Moore, The Historical Development of the Indian Act, Treaties and Historical Research Centre, P.R.E. Group, Indian and Northern Affairs, August, 1978, p. 53; CP, Statutes of Canada (31 Vic, cap. 42), 22 May 1868, pp. 91-100.

5. CP, Statutes of Canada (32-33 Vic, cap. 6), 22 June 1869, pp. 22-27: An Act for the gradual enfranchisement of Indians, the better management of Indian Affairs, and to extend the provisions of the Act 31st Victoria, chapter 42.

6. Tobias,"Protection, Civilization, Assimilation", p. 17.

7. Canada. Department of Indian Affairs. Annual Report, 1871,p.4: William Spragge, Deputy Superintendent of Indian Affairs to Department of Secretary of State, 2 February 1871.

8. Tobias, "Protection, Civilization, Assimilation", p. 17.

9. Canada. Department of Indian Affairs. Annual Report,1872, pp. 1-2: Joseph Howe, Secretary of State for the Provinces, to Sir Frederick Temple, Earl of Dufferin, 30 June 1872.

10. Indians of Ontario, (an Historical Review), Indian Affairs Branch, Ottawa, January, 1966, pp. 28-29.

11. Moore, The Historical Development of the Indian Act, pp. 53-54.

12. Robert J. Surtees, The Original People, Toronto, 1971, p. 71.

13. Thomas Stone, "Legal Mobilization and Legal Penetration: The Department of Indian Affairs And The Canadian Party At St. Regis, 1876-1918", Ethnohistory, Vol. 22, 1975, p. 382.

14. Ibid.

15. Ibid., p. 383.

16. Ibid.

17. CP, Statutes of Canada (42 Vic, cap. 34), 15 May 1879: An Act to amend "The Indian Act, 1876".

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18. CP, Statutes of Canada (39 Vic, cap. 18), 12 April 1876, The Indian Act, 1876.

19. Stone, "Legal Mobilization and Legal Penetration", p. 383.

20. Ibid., p. 384.

21. PAC, RG10 Black Series, Vol. 2285, file 50979: J. Davidson to Department of Indian Affairs, 26 May 1884; Thomas Stone, "Legal Mobilization and Legal Penetration", p. 384.

22. Stone, "Legal Mobilization and Legal Penetration", p. 384.

23. Ibid., p. 385.

24. CP, House of Commons Debates, 3 Sess. 3 Parl., 1876, p. 752: Laws Respecting Indians, 21 March 1876.

25. Ibid.

26. See ibid., p. 928: Indian Laws, 30 March 1876.

27. CP, Statutes of Canada (39 Vic, cap. 18), pp. 51-52.

28. PAC, RG10 Black Series, Vol. 2077, file 11432: Six Nations Band Council to Prime Minister Sir John A. Macdonald, 8 January 1879.

29. Ibid.

30. Ella Cork, The Worst of the Bargain, San Jacinto, 1962, pp. 126-127.

31. Ibid., p 41.

CHAPTER TWO

Local Government Initiatives and Band Council Powers: 1880 - 1906

The Indian Act amendments of 1880 to 1890 complemented Prime Minister Macdonald's National Policy which included the peaceful settlement of the western Indians on reserves and their adoption of agricultural pursuits. The policies of the Department of Indian Affairs (created in 1880) reflected Macdonald's "civilization" program by including measures to increase the powers of Indian band councils (Indian Act of 1880) and introduce a simple form of municipal government for the more advanced bands (Indian Advancement Act). The Indian Advancement Act of 1884 intended to tranform tribal regulations into municipal laws and to install a system of self-government. By 1890, however, no advantage had been gained by the application of the Advancement Act and its intention, to develop Indian interest in and responsibility for local self-government, had not been realized.

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In 1880 circulars were sent to the Indian Superintendents and Agents asking them to report whether the bands under their supervision were willing and capable enough to adopt a simple form of Indian municipal government.[1] On 19 July 1880, Mr. Lawrence Vankoughnet, Deputy Superintendent General of Indian Affairs, advised them as follows:

> With a view to the further advancement of the Indians of the Dominion in intelligence and civilization, it is contemplated to establish, as far as practicable, with their consent, a system of Municipal Government for Bands sufficiently advanced to justify the conclusions that the same would probably be attended with success.
>
> [T]he Department will be glad to learn from you whether the Indians within your district are in your opinion fit to assume intelligently the responsibilities involved in such a system...[2]

Vankoughnet also pointed out that band councils should be given power to levy taxes upon occupants of property; to pass by-laws regarding the repair or construction of roads crossing reserves; the construction and maintenance of line fences; the protection of sheep; the destruction of noxious weeds and preventing parties from frequenting reserves for improper purposes.[3]

Both Laird and Prime Minister Macdonald favoured substituting

some new system for the tribal organization. David Laird, then Lieutenant Governor and Indian Superintendent of the N.W.T., reported, however, that a simple form of local government would be inoperative in the Territories:

> The municipal system on Reserves, in my opinion, would not work in the Territories for many years to come. They are not sufficiently intelligent to manage such institutions; but if settled hither and thither among the other population of the country, they might, with the aid of their neighbours' example and experience, be able in a generation or two to rise to the full stature of perfect politicians.[4]

Simon J. Dawson, Member of Parliament from Algoma, disapproved, however, of the abolition of the tribal system, particularly in his own riding where the Indians were not sufficiently "advanced". The tribal system, he felt, was "the true protection the Indians have against the encroachment of the whiteman."[5]

Macdonald outlined his scheme in the Annual Report of the Superintendent General in 1880:

> A council, proportionate in number to the population of the band, elected by the male members thereof, of twenty-one years and over, and presided over by a functionary similar to the Reeve of a Township, might answer the purpose; or in its initiatory stage the council might be presided over, with better results, by the local Indian Superintendent or Agent.[6]

Band Councils would be empowered to pass by-laws concerning fences, ditches, roads, trespass of cattle, the preservation of order on the reserve, the repression of vice, and other matters of purely local interest.[7]

The conclusion from the majority of the Superintendents and Agents who replied to the circular was that the Indian bands within their respective districts were not sufficiently "advanced" to manage their own affairs.[8] They generally agreed that the powers conferred on the chiefs by previous Acts were extensive enough. It was thought advisable, nevertheless, that some future attempt should be made to obtain the consent of the more advanced bands to the establishment of some system of local government.[9]

The Indian Acts of 1876 and 1880 were related directly to furthering the process of "civilization" and "assimilation". In particular, with the passage of the Indian Act of 1880, there was a significant transition from the delegation of authority to Chiefs to Band Councils. The elected band council was regarded as the means to destroy the last remains of the traditional political system.[10] The reserve system, other sections of the Indian Act, and missionaries were thought to

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have dealt effectively with all other aspects of traditional Indian values.[11]

In the 1880 Act clauses 72 and 74 on local government contained provisions not included in the 1876 legislation. Clause 72 provided

> that in the event of His Excellency ordering that the chiefs of a band shall be elected, then and in such case the life chiefs shall not exercise the powers of chiefs unless elected under such order to the exercise of such powers.[12]

Subsections 1, 10, and 11 of clause 74 (1880) increased the powers granted to band councils in clause 63 of the 1876 statute. Chiefs could henceforth frame laws in the following areas:

> 1. As to what denomination the teacher of the school established on the reserve shall belong to; provided always, that he shall be of the same denomination as the majority of the band; and provided that the Catholic or Protestant minority and likewise have a separate school with the approval of and under regulations to be made by the Governor in Council;
>
> 10. The repression of noxious weeds;
>
> 11. The imposition of punishment, by fine or penalty, or by imprisonment, or both, for infraction of any such rules or regulations, the fines or penalties in no case to exceed thirty dollars, and the imprisonment in no case to exceed thirty days; the proceedings for the imposition of such punishment to be taken in the usual summary way before a Justice of the Peace, following the visual procedure on summary trials before a justice out of session.[13]

It is significant that not only did band council powers increase under the 1880 Act but those of Indian Agents as well. When the influence of the chiefs decreased the traditional systems of selection were replaced by elections administered by the Agents. The powers vested in the Minister were naturally delegated to the Agents in the field and this enhanced their authority.[14] In addition, while an amendment of 1882 gave Indian Agents powers of a Stipendiary, or Police Magistrate, in carrying out the provisions of the Indian Act, it did not as W. H. Lomas, Indian Agent for the Cowichan Agency, suggested:

> give them the powers of an ordinary Justice of the

> Peace in settling petty disputes, Assault cases, Petty Larceny, Inforcing Sanitary Measures, i.e., such cases are constantly coming forward, often at a great distance from a Justice, but the Agent has not the power to settle them which I think he ought to have.[15]

An example of the procedure for drawing up by-laws under the Indian Act of 1880 was provided by the Fairford Band in 1883. E. McColl, Inspector of Indian Agencies, explained:

> During my inspection of that Band the following October I made enquiries as to what regulations they were desirous of having enacted for them.
>
> On my return to Winnipeg I drafted out certain By-laws and forwarded them to Mr. Agent Martineau on the 7th March 1883 to be submitted for the approval of the Band. Mr. Martineau did so and the chief and councillors accepted them as prepared by me excepting the following clause viz:
>
> 'That the Chief and Councillors shall have the power of locating the land on the reserve and establishing a register of such locations but the rights of the present occupants of locations must be respected'-
>
> ...I have chosen to make the experiment with the Fairford Band of Indians as they are more advanced than others in civilization.[16]

The by-laws were subsequently amended and signed by the chief and councillors and then ratified by the Governor in Council as provided for by the Indian Act.

The basic framework of the 1880 Indian Act remained the same until 1951. There were a number of additions made and some alterations particularly with regard to band council powers. Amendments appeared before Parliament almost annually, in each case reflecting either new problems arising in the management of Indian Affairs, or changing relationships between Indians and the "majority society".

Amendments in 1884, although enacted largely in response to difficulties and potential disturbances in the North-West, made one change in the Estates section which affected band council powers.[17] It gave the band partial authority for ensuring orderly descent of property by making band consent a prerequisite of the validity of the will.[18] However, in the case of any Indian dying intestate, the old formula was retained with no consent of the band required.[19]

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When the Indian Act amendments of 1884 were passed, Royal Assent was also given to the Indian Advancement Act.[20] The latter was properly titled "An Act for conferring certain privileges on the more advanced bands of Indians of Canada with the view of training them for the exercise of Municipal Affairs." This legislation was considered an ideal tool for "directed civilization." Sir John A. Macdonald's National Policy included placing Indians on reserves away from non-Indian settlements. The policy implemented on the reserves was intended to strike at the root of Indian traditional culture, or, as the Assistant Commissioner of Indian Affairs for Manitoba and the North-West Territories, Hayter Reed, called it - the "tribal system".[21]

In the House of Commons on 29 January 1884, Macdonald introduced the Indian Advancement Act as Bill No. 22:

> This is a Bill intended to meet a difficulty connected with the more advanced bands of Indians whose self-government is now carried on in council, where they can discuss matters affecting their communities and where the chiefs have the principal power. In some of the more advanced communities the Indians are civilized to all intents and purposes, and it is thought well that there should be something more than a mere informal council where they cannot speak authoritatively. The Bill is tentative to a considerable extent. It provides that in such Indian communities as the Governor in Council thinks fit for the operation of this Act, the Indians shall meet on a certain day and elect six councillors, that those six councillors shall elect a chief councillor, who shall be what would be called a reeve among the white communities in Ontario; and that they shall have the same powers as are given to the Chiefs under the Indian Act, and also certain additional powers of arranging among themselves for the improvement of their reserves. These are, shortly, the provisions of the Act.[22]

He went on to describe the powers to be exercised by the band councils:

> The council shall have power to make by-laws, rules and regulations, which, if approved and confirmed by the Superintendent General, shall have force as law within and with respect to the reserve, and the Indians residing thereon, upon all or any of the following subjects, that is to say: The religious denomination to which the teacher or teachers of the school or schools established on the reserve shall belong, as being that of the majority of the Indians resident on the reserve; provided that the Roman Catholic or Protestant minority on the reserve may also have a separate school or schools with the

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> approval of and under regulations to be made by the Governor in Council; the care of the public health; the observance of order and decorum at elections of councillors, meetings and of the council, and assemblies of Indians on other occasions or generally on the reserve, by appointing constables and erecting lock ups or by the adoption of other legitimate means; the repression of intemperance and profligacy; the subdivision of the land in the reserve, and the distribution of the same among the members of the band; also, the setting apart for common use, wood land and land for other purposes.[23]

Finally, Macdonald explained that, with respect to band councils, there were also powers concerning trespass by animals, the construction and repair of school houses and other buildings, roads and bridges, and water courses, etc.[24]

The Advancement Act also extended slightly the powers of the band council beyond those of the Indian Act by giving the band council power to levy taxes on the real property of band members.[25] During the Debates on the taxation clauses, Macdonald remarked that "the Indians are quite aware of their advantage and resist the attempts of the Department of Indian Affairs to make them responsible fellow subjects."[26] Furthermore, although Macdonald admitted that under clause 10 of the Advancement Act band councils could subdivide their reserves and perpetuate communal tenure, the Prime Minister contended that this risk had to be taken if Indians were to assume responsibilities of "civilized men".[27] During the debate on the Indian Advancement Act William Paterson, Liberal Member for South Brant, expressed concern that the chiefs would be losing many of their powers:

> Many of them are very tenacious of their power on the reserve, and I think, that unless some provision is made, their feeling of pride will prevent some of them from embracing the Act.[28]

Macdonald argued that the Act would not affect the status of the chiefs since, as in the Act of 1880, where an elective system of chiefs had been adopted, the hereditary chiefs would retain their rank but lose their power.[29]

Paterson's concern for the hereditary chief's loss of power under the Advancement Act was shared by Chief Augustin of the Garden River Band.[30] A recent Band Council resolution asked for permission to elect the number of new Chiefs to which they were entitled by Section 72 and to retain their powers as hereditary chiefs. However, Vankoughnet reiterated the intentions of the Advancement Act regarding the powers of chiefs, in

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a letter to Indian Agent Abbott:

> I beg to inform you that there is no provision in the law for allowing a life Chief to retain his powers as Chief in the event of the Band adopting the system of election in the appointment of their chiefs. You will observe on reference to the Section of the Act quoted by you that the life Chiefs, although still retaining their rank as Chiefs, are not allowed to exercise the powers of Chiefs, if the system of electing Chiefs be adopted, unless indeed they have been elected to the exercise of such powers in the manner provided by the Act.[31]

On various aspects of the Indian Advancement Act, Peter E. Jones, Chief of the Mississauga Band, to whom Macdonald referred in the House of Commons' Debates as "an educated professional man...whose opinion I value",[32] had his own thoughts:

> [T]he Chief Councillor should have the power to call special councils...when are necessary for the immediate transaction of business, and the minutes of such proceedings should be recognized by the local Superintendent and have full faith and credence.[33]

In discussing Section 11, Subsection 4, of the 1880 Act, which increased band council powers in the general area of reserve security, Chief Jones made this observation:

> As the Act of 1880 goes so fully into this subject, it is almost impossible to frame a by-law without it being a repetition or clashing with that Act.[34]

In a memorandum dated 13 February 1884, Lawrence Vankoughnet responded to Chief Jones' comments with regard to the powers of the Chief Councillor:

> The undersigned does not consider that it would be well to give power to the Chief Councillor, as suggested by Chief Jones, to summon Councillors at any time he might consider proper without reference to the Agent. Indians are notoriously fond of holding long Councils, often about little or nothing.[35]

On the subject of policing by-laws Vankoughnet was equally specific:

> Chief Jones' objection to sub-section 4 of Section 11 that any by-law framed under it (Indian Advancement Act) would be a repetition of the present provisions of the Indian Act, 1880, or would clash with the same, is well taken; but it is merely intended to give the Council power by that sub-section to pass a by-law

> appointing Constables on Reserves for the prevention of intemperance and profligacy, and in order to bring parties guilty thereof to justice.[36]

There were some basic differences, therefore, between the Indian Act and the Indian Advancement Act regarding band council powers: (a) Powers of Councils under the Advancement Act included taxation and imposition of penalties to enforce bylaws; (b) Under the Advancement Act bylaws required only Ministerial approval instead of by Governor in Council; (c) A "section" or "ward" system was provided for under the Advancement Act; however, few bands adopted this system.[37]

In a circular dated 16 January 1885 to Agents and Superintendents in every province, Vankoughnet advised that the Department did not want to force the Advancement Act on the Indians.[38] He instructed his officers to decide which bands were "sufficiently advanced in civilization and intelligence" to have the provisions of the Act applied to them.[39] Subsequently, Agents in Nova Scotia, New Brunswick, Quebec and Ontario replied either that the bands were incapable of a municipal form of self-government or that they refused to adopt required provisions.[40] Furthermore, James Farrell, Indian Agent for the South-Western District of New Brunswick, had doubts concerning the enforcement of the Act:

> In reply I beg to inform you that whilst there may be a few Indians amongst the different Bands of this District who might be easily instructed in matters of this kind yet for 'various reasons' I think it would be very difficult to enforce observance of the Laws requisite for the proper administration of the different subjects contained therein.
>
> At an early date I shall submit the Law to the Indians of St. Mary's and King's Clear for their consideration and ascertain fully before going into the same if they are prepared to carry out each and every section of the Act. If not it would be useless to attempt the undertaking as the object in view to be gained by the Department would only end in failure.[41]

In Manitoba, however, Inspector Ebenezer McColl felt that many bands could take advantage of the Advancement Act.[42]

> [T]he Indians of St. Peter's, Fairford, Fisher River, Norway House, The Pas and Cumberland Bands are sufficiently advanced in intelligence and civilization to justify the experiment indicated. I am most favourably impressed with the scheme proposed, for it is a gigantic step towards inculcating and developing

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> the principles of self reliance and self government in our dependent Aborigines, and the only practical system to adopt calculated to elevate them to the intellectual stature of their white brethern. It may at first be abused, but I have every confidence in its ultimate success, and it meets my hearty and unqualified approbation.[43]

The St. Peter's Band, for example, in some measure accepted the provisions of the Advancement Act but only in so far as framing local by-laws.[44] Indian Agent A. M. Muckle pointed out that "the chief and council seeing the value of municipal laws, in the surrounding countries, have adopted several viz.: establishment of pounds, dog, thistle and statute labor, and show a disposition to follow the example of their white brothers."[45] Nevertheless, none of the Indians at The Pas or Beren's River were capable of self-government under the new law, according to Agents Reader and Mackay.

I. W. Powell, Indian Superintendent for British Columbia, reported that the Cowichan Indians to whom the Advancement Act was first introduced, and later, the Kincolith Band, wished to take advantage of the Advancement Act as soon as possible.[46] He stated that the Cowichan Indians wanted

> a council elected..to enable them to frame by-laws for the better regulation of their reserves and the general advancement of their bands.
>
> ...At present owing to Railway construction and the increased number of white settlers, the Indians experienced great need of proper regulations, sanitary and otherwise, in regard to fences, roads, individual holdings and improvements generally, on their reserve and there is every reason to believe that the Advancement Act if applied would at once work satisfactorily.[47]

Powell suggested that before approving the by-laws for the Cowichan Band it would be advisable to have a copy of a set of by-laws passed by one of the older councils in Ontario.[48] He also pointed out that he did not know whether "two or three of the By-laws passed by the Cowichan Council would properly come under the Act, but they are all intended to correct existing evils on the Reserve."[49]

Indian Agent W. H. Lomas reported that by September 1886 several by-laws had been passed by the Cowichan Band and were being carried out with beneficial results. It was hoped that if the Cowichan Band Council continued to take interest in municipal matters, other bands might be anxious to have the provisions of the Advancement Act applied to them. While the elected council functioned adequately, nevertheless, the older members of the band seemed to cling to the traditional hereditary system:

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> [A]t present the old men take little interest in these matters, except to grumble when any new law interferes with some of their old habits, and as the Act requires a petition or at least that the majority of the male members of the band should be fitted for its application, it is difficult for the younger and more intelligent, who are generally in the minority, to take action.[50]

By the end of 1886, then, only three bands had accepted the Advancement Act in its entirety. A small band of Mississauga Indians in Ontario had also accepted some of its provisions. In the final analysis, most Field Officers had indicated that the Indians were not ready for the provisions of the Advancement Act and, in fact, wanted to retain the hereditary system under the 1880 Indian Act.[51] Indeed, by 1897 only the Mississauga Band and the Caughnawaga Indians of Quebec had accepted the Advancement Act to any substantial degree, although Indians on the Cowichan, Kincolith, Metlakalta, Port Simpson, and St. Peter's Reserves had adopted some terms of this Act.[52]

The Advancement Act (Revised Statutes of 1886) signified one of the Conservatives' initial attempts after the North-West Rebellion, to proceed with Macdonald's civilization programme. Indian suspicion of the motivations of both band councillors and government officials limited the operation of the Advancement Act.[53] This feeling caused some of the more "advanced" Indians to refuse to accept its basic provisions. For example, Dr.Peter Jones of the Mississaugas suggested to Prime Minister Macdonald in 1887 that the powers of Indian Agents to regulate band council meetings and certify by-laws under Section 9 of the 1886 Act ought to be extended to the chief councillors of each band.[54] Vankoughnet dismissed the recommendation since Agents had been given powers in order to train Indians in the exercise of municipal authority. He contended that

> in exceptional cases the Chief Councillor might be quite competent and sufficiently reliable to be vested with such powers; but in the majority of instances this would not be the case, and the result would be...mischievous.[55]

In 1889 the provisions of the Indian Advancement Act were applied to the Caughnawaga and the Metlakatla Bands. With respect to the Caughnawaga Band, Edgar Dewdney, Superintendent General of Indian Affairs, reported that "owing to the obstructive conduct of some councillors, the beneficial efforts of the Act had not yet been experienced."[56] Also Dewdney suggested that the application of the Advancement Act to the

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Kincolith Band had proved so beneficial that application had been made by the Metlakatla Band to have the provisions of the same Act applied to them.[57] Moreover, C. Todd, Acting Indian Agent for the North-West Coast Indian Agency, had pointed out that most of the bands in this area were among the most civilized of the Indians in British Columbia having been influenced greatly by missionaries.[58]

The framing of rules and regulations under the Advancement Act, regarding "the repression of intemperance and profligacy" clause, however, presented a problem. Mr. R. Sedgewick of the Justice Department stated that some band councils had exceeded their powers under this clause:

> With reference to the By-laws themselves, they all appear to be within the powers of the Council, except No. 6, 'For the Repression of Intemperance and Profligacy.' This By-Law it will be observed deals with certain offences which appear to be adequately provided for by 'The Indian Act' itself, and imposes penalties differing from those prescribed by that Act. I think that the Indians have, in this, exceeded their powers. They have probably done so also in enacting the third clause which purports to impose a penalty for the commitment of adultery on any of the reserves. I do not think that this By-Law should be confirmed by the Superintendent General, but there seems to be no objection to the confirmation of others.[59]

Hence, these provisions were not approved by the Superintendent General, even though the Kincolith Band had passed similar by-laws in 1886.

During the period of 1880-1890, it had become increasingly apparent that various problems within the Indian Affairs Department were contributing to the failure of the Advancement Act. Most of the administrative problems stemmed from the fact that all decisions of importance were originating from the Deputy Superintendent General.[60] Centralized authority had been the logical outcome of the changes resulting from the transfer of the Indian Department to Canadian authority in 1860, and by Confederation.[61] Lawrence Vankoughnet, Deputy Superintendent General during this period, like most nineteenth century Europeans, could not understand why some Indians preferred the tribal system, when non-native society offered them what he perceived as a more rewarding life-style.[62] Here was the root of the Indian Department's difficulties, for such attitudes were widely shared at the time. The public, furthermore, saw the Indian as a "brown Whiteman", and generally assumed that the factors which made for non-native "advancement" would meet Indian needs also.[63] C. E. Denny, author of The Law Marches West, wrote that the Indians had been a free and

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happy race, "knowing no law or restraint but their own will or the tribal rule, and were now like people suddenly shut off from light, having blindly to grope their way towards a new and unknown condition of which they had no conception. Their faults, many of them as we saw them, had been virtues to themselves."[64]

During this period the Indian Affairs Department occupied a low position in contrast with other Departments.[65] It was not uncommon, for instance, for other Departments to misplace Indian Affairs correspondence.[66] Other areas of government paid little attention to the needs of the Indian Affairs Department. Given these circumstances, not all the blame for the Department's lack of sensitivity can be attributed to Vankoughnet. When Clifford Sifton came to the office in 1896, he described it as "a department of delay, a department of circumlocution, a department in which people could not get business done, a department which tired men to death who undertook to get any business transacted with it."[67]

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Endnotes

Chapter Two

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3. PAC, RG10, Vol. 2116, file 22,155: Lawrence Vankoughnet to Department of Indian Affairs, 9 November 1881.

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31. Ibid., pp. 692-93.

32. CP, House of Commons Debates, 1884, p. 540: Self-Government by Indians, 26 February 1884.

33. PAC, RG10 Vol. 2116, file 22,155: Peter E. Jones to Sir John A. Macdonald, 11 February 1884.

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35. PAC, RG10 Vol. 2116, file 22,155: L. Vankoughnet to Sir John A. Macdonald, 13 February 1884.

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CHAPTER THREE

The Failure of the Advancement Act: 1890 - 1906

During the period 1890-1906 more pressure was put on the Indians to abandon their old tribal customs and accept the values of the "dominant society". This policy,which was a continuation of Sir John A. Macdonald's civilization program of settling and instructing Indians on reserves, had in large measure, failed by the turn of the century. Clifford Sifton, who became the new Minister of the Interior in 1896 under Wilfrid Laurier's Liberal administration, was more preoccupied with promoting Western development than with creating new Indian policies. The general philosophy of the Indian Affairs Department, which Sifton shared, was that Indians should be quietly maintained on reserves. There, through instruction in agriculture pursuits and self-government, etc., they should be prepared for assimilation into the majority society, or at least become willing and able to achieve a state of economic independence.

By 1900, however, the reserve system was being questioned as a means to achieve assimilation. Indian Commissioner Hayter Reed explained that Indians could only become "advanced" if they adopted the Whiteman's ideas. Moreover, Reed felt that banding Indians together on reserves impeded their "advancement". Nevertheless, he concluded that, for various reasons, it would be better at this time to leave them on the reserve "for the purpose of training them for mergence with the whites since a system which will supply every disideratum cannot in the circumstances of the case be devised...."[1]

By the turn of the century, the program of aggressive civilization that was characteristic of Indian policy and legislation in the period after 1876 had collapsed. Though many changes were made in the Indian Act after 1900, these were for the most part changes of degree,in that the main structural lines were already drawn.[2] It had become increasingly evident, that special treatment and legislation were necessary given the regional differences and the varying stages of development of Indian bands across Canada.

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An Amendment Bill of March and April 1890 proposed to give Band Councils powers to pass regulations relative to the size and style of sleighs used during the winter, as well as powers to frame rules and regulations without them being submitted to the Superintendent General for approval.[3] Mr. Cyrille Doyon, Member of Parliament for LaPrairie, suggested in the House on 31 March 1890, that the object of the latter amendment was to extend the powers to the Council of the Caughnawaga Reserve, by providing that band council by-laws should be valid without requiring the sanction of the Superintendent General. Doyon argued further that Indian band council powers were not as extensive as those of municipal councils:

> [O]ne must remember that the powers granted to this Council with respect to the objects as to which they have a right to pass by-laws, are not as extended as those which are granted to our ordinary municipal councils. Under the present system, it is the agent who, so to speak, exclusively manages the affairs of the reserve, for I think the Department interferes only on the advice of the agent, and, if I am not mistaken, I believe the Superintendent General never went there once in order to ascertain for himself how the affairs of the reserve were managed. I have here the resolutions which were passed a year ago by the council of Indians, and a whole year's experience must be sufficient to enable us to judge whether these people are fit to properly manage their own affairs.[4]

On 3 February 1890, Vankougnet expressed in no uncertain terms his disapproval of Doyon's proposal:

> [I] beg to inform you that, if the object of the bill is, as stated in the public press, to allow an Indian Council elected under the Advancement Act to frame rules and regulations without the same being submitted to the Sup't. General for approval, it should certainly not be acceded to by the Government. The Indians no where that I am aware of, and much less the Indian Council composed as it is at present at Caughnawaga, are sufficiently advanced to be allowed the privilege to pass by-laws independently of the approval of the Department.[5]

Edgar Dewdney, Superintendent General of Indian Affairs, argued further that some of the band councillors had obstructed a band council meeting when one of its by-laws had been viewed as being objectionable by the Superintendent General. The by-law had

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recommended that an Indian should be appointed as a Dominion policeman on the reserve.

On a more positive note, however, Mr. W.H. Montague, Member of Parliament for Haldimand, stated that the provisions of the Advancement Act had been applied to the Mississaugas of the Credit without any negative reactions that had been exhibited by the Caughnawaga Band:

> They are one of the few bands I believe, in the Province of Ontario who have been, at their own request, allowed the operation of the Indian Advancement Act, and no difficulties have arisen in the operation of that Act among them. They have not at all objected to their by-laws being supervised by the Superintendent General of Indian Affairs, and I am not informed of any reserve, except the one to which the hon. gentleman refers, on which the Indians have asked that they should be relieved from the revision of their by-laws.[6]

One of the most important questions that was raised during the Debates in the House of Commons in 1890 concerned whether councils of the more "advanced" bands should have the same powers as municipal councils. The disallowance by the Indian Affairs Department of an Indian to act as a Dominion policeman on the Caughnawaga reserve indicated rather emphatically that councils of the more "advanced" bands lacked the authority of municipal councils. Wilfrid Laurier, Member of Parliament for East Quebec, argued that if Indians were allowed to vote in national affairs they should have the right to vote in local affairs:

> 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 judgment 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.[7]

Sir John Thompson, Member of Parliament for Antigonish, took a different position. He pointed out that even though the Indians had the right to vote under the Franchise Act, this should not necessarily mean that they be allowed to exercise legislative powers. He cited the example that legislative assemblies could not legislate without Federal jurisdiction. He argued further that there was "no parity of reasoning between by-laws passed by a municipal council and by-laws passed by an Indian band."[8]

The debate on whether Indian band councils should have the same powers as municipal councils did not end in 1890; there would be other occasions for similar debates. Indeed, the conferring of powers even on non-native municipal governments in some cases involved a prolonged struggle. However, when those powers were attained some limitations were imposed. The provincial legislatures, in granting power to municipal bodies, were limited by The British North America Act. A general municipal Act, provided by the provincial legislatures, determined the powers which the council of a municipal corporation could exercise. Before the turn of the century the general attitude of provincial authorities toward municipalities was one of leniency.[9]

The main problem in the development of local institutions in the western provinces was to devise a system which would give the best results under their special conditions. It was natural in the early stages to copy the Ontario system; however, experience showed that different conditions required different insitutions.[10] As was the case with Indian band councils, the powers granted to municipalities varied according to the level of "advancement". Even though municipal councils were authorized to exercise numerous powers, they were subject to approval by the Minister or, in some cases, the Lieutenant Governor in Council.

While the effort to direct"civilization"and assimilation of the Eastern Indians led to direct involvement in band affairs, legislation for the Western Indian was to further the initial process of the civilization program and was therefore geared much more to the individual.[11] From 1891 through 1895-96, then, the Department followed a policy of closer supervision, reduced rations, and aid towards self-support among Indians in the West.[12] On 31 December 1894 Deputy Superintendent General Hayter Reed pointed out that, while the Eastern Indians displayed energy and progress, the Plains Indians lacked the desire for further improvement and did not wish to take advantage of the Advancement Act:

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> In this connection I may remark that I have been somewhat disappointed to observe a want of that energy and progress which are such striking features of not a little of the Indian life of the west. Some of the bands which have reached a point towards which many in the west are still struggling, manifest a lack of desire for further improvement, and do not care to avail themselves of the machinery provided by the 'Advancement Act'. There seems, generally speaking, to be too much inclination to take advantage of such exemptions as special legislation has necessarily provided for the protection of Indians in the earlier stages of evolution, and to shrink from assuming the responsibilities of citizenship. It will be the Department's earnest endeavour to trace to their sources the causes productive of this apathetic attitude, and to provide the necessary incentive to further progress, for experience has shown that Indians are peculiarly sensitive to the operation of the law by which, when progression ceases, retrogression begins.[13]

While Hayter Reed's sentiments regarding the Western Indians' lack of ambition were essentially quite accurate, they could hardly be applied to the Indians of the Berens River Agency. It was generally agreed, however, that neither the Chiefs nor the Councillors of the Berens River Agency had sufficient knowledge to frame the simplest rules or regulations with the result that prompt and proper management of some of the business of the Agency was becoming somewhat retarded.[14] A. MacKay, Indian Agent, was concerned that perhaps government legislation had not really influenced the Indians in his Agency:

> They asked the Government to legislate and frame the rules and regulations necessary for the simple and proper management of their people and reserves. And in addition to the different matters enumerated in the clause referred to, (Section 76 of the Indian Act respecting regulations to be made by Chiefs) they ask that rules be made to compel Indians in reserves to furnish school houses, council houses, and other Indian public buildings with fuel and lights when necessary, and means of keeping them clean, also protection of women from cruelty of husbands or wife-bearing, and prevention of Indians from keeping useless dogs.15

At least one band, Berens River, formulated rules and regulations in accordance with section 76 of the Indian Act and, on 17 April 1900, had them submitted by the Clerk of the Privy Council for approval by the Superintendent General.[16] Their proposals concerned the cleansing of houses and premises on the reserve;

the construction and maintenance of fences; the repression of noxious weeds; the construction and maintenance of watercourses, roads, bridges, ditches or fences; and the construction and repair of school houses, Council houses, or other buildings.[17]

Legislation in 1894, which included amendments on Indian estates and reserve lands, had significant ramifications for a band's governing authority. Clause 1 of the 1894 Act increased the discretionary authority of the Superintendent General and required his approval before an Indian's will took effect.[18] According to Superintendent General Daly on 9 July 1894, band council approval was deleted because councillors often unjustifiably voted against a will for personal reasons.[19] Mr. William Paterson, Liberal member for South Brant, argued in the House that more power should be given to councils of advanced bands:

> 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 they already have. It seems to me we should not take from the Indians and centre more power in the Superintendent General.[20]

Superintendent General Daly, nevertheless, pointed out that the changes in the 1894 Act had been brought about at the suggestion of the Indians and were the outcome of the experience with some of the more advanced Indians in Ontario.[21] Furthermore, it was absolutely necessary that the Superintendent General maintain control in order to avoid difficulties, namely, the Indians should have no right to devise land to one not entitled to reside on the reserve. Finally, as stated by Superintendent General Daly,

> All we are seeking is to permit the Indian to devise any and all kinds of property, and second to do away with the provision of the present law that they will receive the consent of the band. As I pointed out cases have arisen where the council representing the band through pique or through ideas of their own, have simply refused to carry out the will of the testator.[22]

Clause 2 of the 1894 Act amended clause 21 of the Indian Act respecting who might live on a reserve, placing control of residence by non-members solely with the Superintendent General.[23] Clause 3 empowered the Superintendent General to:

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> lease, for the benefit of Indians engaged in occupations which interfere with their cultivating land on the reserve, and of sick, infirmed or aged Indians, and of widows and orphans or neglected children, lands to which they are entitled without the same being released or surrendered.[24]

In effect, this amendment enabled the Superintendent General to lease reserve lands without band consent.

Most of the amendments of 1895, which concerned leasing of reserve lands, management of band moneys, and increased powers for Indian agents, continued the trend of increasing the authority of the Superintendent General to interfere in band affairs. Clause 1 repealed section 38 of the Indian Act with regard to leasing or selling of reserve lands.[25] The previous amendment had been in 1894 and enabled the Superintendent General to lease without surrender, lands of physically disabled Indians and others who were unable to cultivate their land.[26] The new section provided that the Superintendent General could lease for the benefit of any Indian the land to which he was entitled without it being released or surrendered.[27] Superintendent General Daly pointed out to the House of Commons on 5 July 1895, that in a number of cases in Ontario, Indians had engaged in other occupations and were fairly well off, had left the reserve and as a result, the government could not lease the land without band consent.[28]

> This Bill provides that the Superintendent-General may lease these lands for the benefit of these Indians. This gives us no further power to alienate, but simply provides for the leasing of them.[29]

The legislation in 1895 also authorized the Governor General in Council to spend 10 per cent of a band's trust funds on the construction or repair of roads, bridges, ditches, watercourses, and school-houses.[30]

Other aspects of the 1895 amendments augmented the authority of local Agents as ex-officio justices of the peace. The effect of this amendment, and other amendments which increased the Indian Agents' authority, was that they acquired some rather all-embracing powers at the local level which, at times, seemed to conflict with the rapidly decreasing powers of Indian band councils.[31] Moreover, when the powers of the chiefs were decreased and in some cases where the hereditary system was replaced by the elective process, there was increased authority among local Indian agents. Also, the power vested in the Superintendent General or the Governor in Council was delegated to the Agents and this enhanced their authority.

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In 1897, W.E. Jones, Indian Agent for the Swan River Agency in the North-West Territories, referring to the Swampy Crees of the Keeseekouse Reserve, suggested that "as far as possible, I have broken up the tribal influence, they depending on themselves and the agent rather than the chief and headmen, to attend and manage their own affairs and property".[32] In the final analysis, the extensive powers granted to the local agents were deemed necessary for the protection of the Indians.

In 1895 the Chiefs passed rules and regulations, approved by the Department of Indian Affairs, regarding the management of funds.[33] Hayter Reed, now Deputy Superintendent General, had introduced in 1895 a system by which, with the consent of the chiefs, loans could be made to suitable applicants on the recommendation of the band councils.[34] These loans in turn could be used to aid Indians in erecting proper buildings on their land. Reed described the importance of this system:

> This is regarded as the insertion of the thin end of the wedge into what is, without question, a very important and difficult matter to deal with; and it is hoped by degrees to be able to extend the operation of the principle, until much good shall have been accomplished.[35]

A number of internal problems affected the enactment of by-laws on the Six Nations Reserve. The "Warriors" during precontact times were the men of the non-chiefly lineages.[36] In the reserve period the Warriors' Association become largely a political organization and was quite persistent in putting pressure on the Council of the League.[37] Moreover, the Council of the League was critized periodically by the conservatives who found their activities too progressive, and the progressive or reactionary element who felt that the chiefs were hindering the development of the reserve.[38] The Warriors' Association, who had no chiefs to represent them in the Council, advocated numerous reforms which resulted in conflict with the Council, including the formulation of by-laws and an elective system of government to supplant the hereditary one.[39]

During the reserve period, therefore, the necessity for framing rules and regulations which would coordinate the various phases of reserve activity was not immediately apparent to the Council. The Warriors' Association, however, made the formulation of by-laws for the Six Nations a part of their program for governmental reform.[40] The minutes of Council for the years 1884-1885 provide evidence that this problem was receiving the attention of the hereditary chiefs.[41] The Council's reply to the Warriors' request to hold a meeting to consider the formulation of by-laws was as follows:

> In reference of the Warriors applying to have the use of the Council House to have a public meeting to hear a report from their deputation, and to see (to) the advisability of framing 'By Laws' the matter

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> was then referred to [the] fire keepers who refused to let the Council House on the grounds that the warriors are not unanimous in asking, etc.[42]

A few months later the Warriors again petitioned the Council for the right to participate in the formulation of by-laws:

> In reference of permitting Warriors to cooperate with the committee of Six Chiefs to frame rules and regulations for the good government of the Reserve [the Council decided that it] be declined, but that the warriors be permitted or allowed to frame Rules and Regulations for the Reserve and report of the same to the Council of Chiefs as soon as convenient.[43]

The minutes do not record whether the Warriors acceded to the suggestion of the Council, but they do note that the chiefs introduced the framing of rules and regulations for the reserve.[44]

In 1895 the Six Nations Band Council adopted a report of a reserve committee on by-laws charged with amending the acts relating to the trespass of houses and cattle. These amendments concerned the liability of parties impounding stray animals and directed that the cost of this action be paid to the Pound-keepers by the parties initiating the action.[45] The Council also provided through another minute, for the appointment of Poundkeepers and for the division of the reserve into sections, with the assigning of a Poundkeeper to each section.[46] At the same session the Council created a standing committee, known as the "locating line committee", to survey properties and run a boundary line to settle disputes between property holders:

> The locating line committee shall have a by-law and shall be appointed by the Council permanently that is so long as their work is satisfactory. Any person who claims that his, her or their division line is not on the original and established line or lines, can get the locating line committee to run such line, and it shall be considered as 'the line'. The disputant or disputants however, shall have a right to protest. Such protests shall be left with the Visiting Superintendent one week from the time said line is run, and the part of parties protesting may get the P.L. (Public Line) Surveyor to run such Division Line within two weeks from the date of such protest. At the expiration of the stipulated time, if the parties or party does not get the P.L.S. to run such line, then the original mover in the matter shall have power to get such P.L. Surveyor and run that line. The Secretary shall keep a book where all the reports from the locating line committee as to names of occupants, number of lots, concession, etc., were surveyed, may be registered.[47]

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On 13 December 1897, Superintendent Cameron reported that a conservative element within the Six Nations Council was directly retarding the "civilization" process by opposing "advancement" and the formulation of by-laws:

> It is most important that we should have Rules and Regulations governing the Six Nations, but in order to do so they must be concurred in by the Chiefs of the band, the controlling voice of the Council is the pagan portion who are opposed to any advancement, also to any Rules and Regulations effecting themselves beyond their old customs. The question of these amendments (those dealing with Line Fence Regulations) has been before the Council on several occasions and it was through the influence of the educated and advanced Indians that resulted in a portion of the programs concurring in the views of those desirous to advance the people. We have to contend greatly against several white people urging upon the Indians not to give up their old customs, but to live as free people of the forest, and not be found by any Rules and Regulations.
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>
> Therefore if these are again submitted to the Council at the request of the Department, that the amendment in reference to the Line Fence is objectionable, it no doubt will influence the pagan portion, and result in not having any Regulations in this respect. Before we had any Line Fence Regulations on this Reserve, the Indians were very careless and allowed their fences to remain in a very poor state of repair, but since we have had our Regulations I am pleased to say the State of affairs has been greatly improved.[48]

Anthropologist John A. Noon has suggested that, in the final analysis, the formulation of rules and regulations by the Six Nations council provided an adequate means of integrating the various aspects of reserve activity:

> The legislative enactments of the Council represent in content an adequate means of coordinating reservation society with particular stress on the regulation of economic activity. The formulation of laws does not of itself assure the coordination of societal activity. Ethical values, as a rule, are not at issue in regulatory legislation, and deprived of the weight of ethical sanction, their enforcement depends heavily upon compulsive mechanisms. The Council, by exercise of its appointive powers, had created an adequate personnel to enforce its legislation. If any weakness existed, it was the neglect to include in their legislation the penalties to be assessed against violators.[49]

It is significant to note here that by 1924 the hereditary system of the Six Nations was replaced by the elective system.[50] During the period of the old tribal system (traditional) of choosing band councillors, agitation on the reserve had so impeded effective administration that an improvement in their political system had to be made without delay.[51] Sally Weaver has pointed out in Medicine and Politics among the Grand River Iroquois: A Study of the Non-Conservatives that previous to the political change the Warriors'Association had been agitating for the establishment of by-laws for better educational facilities, and for the right of the individual to become enfranchised.[52] However, the degee to which they were responsible for the change in political systems still remains to be assessed.[53]

By Order in Council, dated 17 September 1924, the Six Nations accepted the provisions of the Indian Advancement Act. Under the new method, the Six Nations acquired a measure of local autonomy largely corresponding to that of a rural municipality but subject, of course, to the supervision of the Department and the Governor in Council.[54] Although the hereditary council no longer had political power, it remained as a standing committee for airing grievances and organizing resistance against the Federal Government.

To return to the period under discussion, most of the Indian Act amendments in 1898 concerned administration of Indian lands. Section 38, respecting leases and surrenders, was amended again to enable the Superintendent General to dispose of "wild grass and dead or fallen timber" on the Indian lands without band council consent.[55] Clifford Sifton, Minister of the Interior, stated in the House of Commons that he wanted "to avoid going through the formality of getting the authority of the Indian council to sell dead timber or wild hay on reserves."[56]

Section 70 of the Act was amended again to further empower the Governor in Council to direct expenditures of band funds, beyond public works and school support, "for surveys, for compensation to Indians for improvements or any interest they have in lands taken from them."[57] The general intent of the almost yearly additions to the powers of the Governor in Council was to overcome the apparently increasing reluctance of band councils to do what the Department deemed desirable. On 15 November 1897, Secretary D.C. Scott explained the reasons for this amendment:

> The occasion might arise when most improvements of a public character on an Indian Reserve might be opposed and altogether prevented by the Indians. In such a case I think the Governor General in Council should have 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 refuses to vote money in its own interests the Governor in Council should have power to take it without their consent.[58]

By 1900, therefore, it was apparent that the Indian Affairs Department was interfering with the political affairs of Indian bands. Numerous amendments to the Indian Act, for example, augmented the authority of the Superintendent General. Furthermore, opposition to the elected system and the attempt to restore traditional government by life-chiefs were motivated, at least in part, by the desire to assert autonomy from external non-Indian control. Factional divisions, whether political or religious, on the reserve (Six Nations at Grand River, for example) also had the effect of undermining the powers of the band council.

Indian Agent Daniel J. Lynch, in submitting an extract of the Minutes of Regular Council held on 17 July 1901 by the Mississauga of the Credit, summed up the attitudes on band council powers:

> [I]t 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.[59]

Similarly, the St. Regis band councils continued to exercise their powers although the elected chiefs attempted to exempt the reserve from the Indian Act and assert the right to govern according to their own laws.[60] The chiefs wished to be selected in a manner similar to the old Iroquois custom instead of being elected in accordance with the provisions of the Indian Act.[61] In addition, the chiefs wanted their powers extended beyond those provided by Section 76 of the Indian Act.[62] Specifically, the powers the chiefs demanded, related to criminal matters similar to those exercised by a grand jury.[63] In opposing the Band's demands, J.D. McLean, Secretary for Indian Affairs, stated:

> Before asking for an extension of these powers of government the chiefs should show that they are capable of using the powers which they already possess for promoting the welfare of the Indians, and further, the Department regrets that the Indians

> of St. Regis are so blind to their own interests as not to see the advantage of adopting regulations which have been productive of much good in every band where they have been tried.[64]

It was not until 1908 that the band council was recognized as the governing body for the St. Regis Band. The hereditary system eventually disappeared although resistance to the elected band council, has continued to find expression, particularly since the 1930's, in the form of support for the traditional Mohawk Confederacy chiefs.[65]

By the end of the century it had become increasingly evident that the general implementation of a simple form of municipal government under the Indian Act had, in large measure, failed. On 31 December 1898, J.A. Smart, Deputy Superintendent General of Indian Affairs, indicated that it might be more desirable to reduce the training procedure and accelerate the enfranchisement process:

> The policy of the Department, formulated for the purpose of taking hold of Indians in their untutored state and gradually educating them to fitness for the status of full citizenship, has of course been largely tentative in its character and modified or changed as experience has suggested to be advisable. It was observed in the introductory remarks to this report, that any halt in the earlier stages of progression is the immediate precursor of retrogression, and it may probably be asserted, that in the more advanced stages of the march, the failure to go on, is in some degree, fraught with kindred danger.
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> 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.[66]

In 1915, Frederick Abbott, Secretary of the Board of Indian Commissioners in the United States, reported on the nature of Indian government on the Prairies since the Act of 1876 in The Administration of Indian Affairs in Canada:

> In the reserves of western Canada, the real work of civilizing the Plains Indians in settled communities began scarcely 40 years ago, and this fact explains why the Indians of these reserves have not reached the

> point in their development when, through their band councils, they may exercise the large functions of local self-government exercised by the bands in the eastern reserves. But they have begun their march upward. Their councils, composed of chiefs and assistant chiefs, just as they were in the old days, instead of dealing with questions relating to hunting or war parties or the enforcement of tribal rules of justice, are gradually taking up the problems of the new conditions which surround them. The form of the old tribal machinery is retained, but its functions are changed, as the Indians, themselves, become educated and prepared to assume responsibilities in conformity with the standards of civilization .... its functions gradually changing and increasing until the Indians after several generations, unconsciously, by processes of evolution, may take on the characteristics of self-government, white communities and become part and parcel of the state.[67]

In retrospect, Sifton's administration (1896-1905) brought in a number of changes which only served to delay further the "civilization" process. Preoccupied with promoting western development, he had few ideas for Indian administration.[68] Also, the people whom Sifton put in positions of authority were essentially unsympathetic if not "hardline" in their attitudes towards the Indians. At the same time, it could also be argued that those who preceded him, Hayter Reed and, at times, his predecessor as Deputy Superintendent General, Lawrence Vankoughnet, were somewhat inflexible and uncompromising in their attitudes towards the Indians.[69]

Sir John A. Macdonald's program of "civilization" that had been a characteristic of Indian policy and legislation since 1870 had, to a large extent, failed by the turn of the century. By 1900, the reserve system was being questioned as a means of achieving assimilation. In fact, many regarded the reserve as preventing assimilation:

> 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.

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> 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 segration 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 croping up afresh amongst communities possessed of most life and character, which is often too hastily assumed to be a mark of 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; ...[70]

Dissatisfaction with the reserve system was due mainly to the fact that it only partially fulfilled its functions. That is, it did "civilize" the Indian to a certain extent but it did not complete the enfranchisement process. Indian Affairs officials generally agreed that assimilation could be attained sooner if the Indian was removed from the protective environment of the reserve. As stated by J.A.J. McKenna, Sifton's private secretary,"experience does not favour the view that the system makes for the advancement of the Indians". Many Indians living in Manitoba and the North-West Territories persisted in pursuing their traditional means of livelihood - hunting and fishing. The slow transition to a self-supporting, more "civilized" economic base, that of farming, disillusioned the Government. Assimilation, therefore, was still the long-range goal because of the difficulty in educating Indians to become self-sufficient.

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CHAPTER FOUR

The Increased Authority of the Superintendent General: 1906-1927

From 1906 to 1927 the Superintendent General acquired yet more discretionary authority over band affairs. Band Councils lost even more of what little power they had had under the Indian Act. For the most part, Councils became consultative bodies and gave evidence of suffering from legislative restrictions. Repeatedly, one is reminded of the relative insignificance of Band Councils as decision-making bodies. All Band Councils, moreover, even if fully autonomous, were subject to statutory limitations imposed not only by the Superintendent General but by provincial and territorial governments. As suggested by Anthropologist Derek G. Smith, "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 towards Native people".[1]

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By 1906 the Indian Act, with all its amendments since 1886, had become too cumbersome for practical use. Hence, a new consolidated Indian Act appeared in the Revised Statutes of 1906. It altered the order of the sections from that of the 1886 format, and the Indian Advancement Act, 1886, was incorporated as Part II.[2] Sections 194 and 195, previously under the Advancement Act, outlining band council powers, appeared as follows:

Powers of Council

194. The council may, by by-law, rule or regulation, approved and confirmed by the Superintendent General, provide that the religious denomination to which the teacher or teachers of the school or schools established on the reserve shall belong, shall be that of that majority of the Indians resident on the reserve: Provided that the Protestant or Roman Catholic minority on the reserve may also have a separate school or schools, with the approval of and under regulations made by the Governor in Council.

(1) The council may also make by-laws, rules and regulations, approved and confirmed by the Superintendent General, regulating all or any of the following subjects and purposes, that is to say: -

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(a) The care of the public health;
(b) The observance of order and decorum at elections of councillors, meetings of council, and assemblies of Indians on other occasions, or generally, on the reserve, by the appointment of constables and erection of lock-up houses, or by the adoption of other legitimate means;
(c) The repression of intemperance and profligacy;
(d) The subdivision of the land in the reserve, and the distribution of the same amongst the members of the band; also, the setting apart, for common use, of woodland and land for other purposes;
(e) The protection of and the prevention of trespass by cattle, sheep, horses, mules and other domesticated animals; and the establishment of pounds, the appointment of poundkeepers and the regulation of their duties, fees and charges;
(f) The construction and repairs of school houses, council houses and other buildings for the use of the Indians on the reserve, and the attendance at school of children between the ages of six and fifteen years;
(g) The construction, maintenance and improvement of roads and bridges, and the contributions, in money or labour, and other duties of residents on the reserve, in respect thereof; the size and kind of sleighs to be used on the roads in the winter season, and the manner in which the horse or horses or other beasts of burden shall be harnessed to such sleighs; and the appointment of roadmasters and fence-viewers, and their powers and duties;
(h) The construction and maintenance of watercourses, ditches and fences, and the obligations of vicinage, the destruction and repression of noxious weeds and the preservation of the wood on various holdings, or elsewhere, in the reserve;
(i) The removal and punishment of persons trespassing upon the reserve, or frequenting it for improper purposes;
(j) The raising of money for any or all of the purposes for which the council may make by-laws as aforesaid, by assessment and taxation of the lands of Indians enfranchised, or in possession of lands by location ticket in the reserve: Provided that the valuation for assessment shall be made yearly, in such manner and at such time as are appointed by the by-law in that behalf, and be subject to revision and correction by the agent for the reserve, and shall come into force only after it has been submitted to him and corrected, if and as he thinks justice requires, and approved by him, and that the tax shall be imposed for the year in which the by-laws is made, and shall not exceed one-half of one per centum on the assessed value of the

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land on which it is to be paid; and provided also that any Indian deeming himself aggrieved by the decision of the agent, made as hereinbefore provided, may appeal to the Superintendent General, whose decision in the matter shall be final;

(k) The appropriation and payment to the local agent, as treasurer, by the Superintendent General, of so much of the moneys of the band as are required for defraying expenses necessary for carrying out the by-laws made by the council, including those incurred for the assistance absolutely necessary for enabling the council or the agent to perform the duties assigned to them;

(l) The imposition of punishment by penalty or by imprisonment, or by both, for any violation of or disobedience to any law, rule or regulation, made under this Part, committed by any Indian of the reserve; but such penalty shall, in no case, except for non-payment of taxes, exceed thirty dollars, and the imprisonment shall not exceed thirty days.

(2) If any tax authorized by any by-law, or any part thereof, is not paid at the time prescribed by the by-law, the amount unpaid, with the addition of one-half of one per centum thereof, may be paid by the Superintendent General to the treasurer out of the share in any money of the band of the Indian in default; and, if such share is insufficient to pay the tax, or any portion thereof so remaining unpaid, the defaulter shall be deemed to have violated by the by-law imposing the tax, and shall incur a penalty therefor equal to the amount of the tax or the balance thereof remaining unpaid, as the case may be.

(3) The proceedings for the imposition of any punishment authorized by this section, or the by-laws, rules or regulations approved and confirmed thereunder, may be taken before one justice of the peace, under Part XV of the Criminal Code; and the amount of any such penalty shall be paid over to the treasurer of the band to which the Indian incurring it belongs for the use of such band.

(4) The by-laws, rules and regulations by this section authorized to be made shall, when approved and confirmed by the Superintendent General, have the force of law within and with respect to the reserve, and the Indians residing thereon. R.S., c.44, s. 10; 53V, c.30, s.2

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> 195. A copy of any by-law, rule or regulation under this Part, approved by the Superintendent General, and purporting to be certified by the agent for the band to which it relates to be a true copy thereof, shall be evidence of such by-law, rule or regulation, and of such approval, without proof of the signature of such agent, and no such by-law, rule or regulation shall be invalidated by any defect of form, if it is substantially consistent with the intent and meaning of this Part.[3]

Amendments to the 1906 Act were introduced in the House of Commons on 19 January 1911 (Bill C-95). As Mr. Sharpe, Member of Parliament from Lisgar, indicated, the problem of "fences" was to be left to the discretion of the Superintendent General:

> We have a band of Indians in my constituency and the line fences between the white settlers and the Indians have been in disrepair for many years. Application has been made to the department, but no remedy has been applied. The object of this amendment is to make the band of Indians amenable to municipal by-laws relating to line fences.[4]

In 1914, section 92 was amended to allow the Superintendent General to make sanitary regulations for prevention of disease, cleansing of streets, yards and houses, and to supply necessary medical aid, medicine and other articles and accommodation to prevent disease.[5] The Superintendent General's authority took precedence over the Band Council in this regard:

> In the case of any conflict between any regulation made by the Superintendent-General and any rule or regulation made by any band, the regulations made by the Superintendent General shall prevail.[6]

This enactment enabled the department to deal effectively and arbitrarily with epidemics, to establish quarantine, etc., and to commit to hospitals and sanatoria persons suffering from tuberculosis, and other communicable disease. Moreover, the Superintendent General now had authority to send these people, without their consent, to receive medical attention.[7]

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Although the authority of the Superintendent General increased during the period 1906-1927, some bands gained a measure of self-control. In early 1912, for example, the Masset and Skidegate Bands of the Queen Charlotte Agency adopted the provisions of the Indian Advancement Act. Indian Agent Thomas Deasy commented on the level of advancement of these bands:

> The Indians now have the advantage of the provisions of the Advancement Part of the Indian Act, and their best man will supervise the internal affairs of their settlements. They appear to realize, more and more, that we are among them for their benefit. There is no part of the Pacific coast, and it is doubtful whether there is in the whole dominion, a body of Indians to compare with the Masset and Skidegate bands.[8]

He also stated that the formation of rules and regulations aided their advancement:

> The introduction of town councils, working under approved by-laws, appears to show improvement in many ways. The residents take an interest in the elections, and the proceedings, and the agent has an authorized body of men to consult, when business of local interest is to be transacted. It is noticeable that the Indians elect some of the best of their bands as councillors. Fortunately, they understand all that is said; they study the by-laws, and are in favour of improving things. They even want to go further than the by-laws allow... There is no doubt that they are not content with being wards of the Government. They are ambitious, and are looking ahead, and wondering why they have not the same privileges with men who have no interest in the country. They have all the qualifications necessary-not as a band - but individually, among the educated Indians. They feel that the Indian Act requires amendment, in many ways, and they should be privileged to take up pre-emptions, and give up community life.[9]

The by-laws passed by the Masset and Skidegate band councils in 1913 remained in force without modification throughout this period.[10] By the mid-Twenties, however, the general situation had changed. On 5 February 1924 Thomas Deasy reported that "the Skidegates are making a hard endeavour to advance, the Massets are retrogade".[11]

In 1918, Section 90, subsection 2, of the Indian Act, dealing with expenditure of band capital, was amended as follows:

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> In the event of a band refusing to consent to the expenditure of such capital moneys as the Superintendent General may consider advisable for any of the purposes mentioned in subsection 1 of this section, and it appearing to the Superintendent General that such refusal is detrimental to the progress or welfare of the band, the Governor in Council may, without the consent of the band, authorize and direct the expenditure of such capital for such of the said purposes as may be considered reasonable and proper.[12]

Duncan C. Scott, Deputy Superintendent General from 1913 to 1932, rationalized this amendment in the Annual Report for 1918:

> [T]o deal with cases wherein the council of a band, through some delusion, misapprehension or hostility, acts in a manner contrary to the best interests of the band, and refuses to sanction expenditures which the Governor in Council may consider necessary for the welfare and progress of the band, and, as, for example, some permanent improvement such as drainage system. The need for expenditure which would greatly increase the productiveness of the soil is particularly emphasized at the present time.[13]

The new amendment, however, was not intended to deprive a band of its right to determine whether funds should be expended in the purchase of reserve lands, cattle, or construction on the reserve, or in the carrying out of rules and regulations which would be of permanent value to the band.[14]

During the Debates of the House of Commons on this issue, some Members of Parliament argued that the powers conferred upon the Superintendent General were not extremely wide. Mr. Rudolphe Lemieux, Member for Maissonneuve Gaspé, reasoned that in some cases a band might want to use its finances in a certain way while the Superintendent General might prefer to follow another course. In addition, he stated that he would not object to the increase in power as long as there was a competent deputy head such as Duncan Campbell Scott.[15]

Also amended in 1918 was section 90, sub-section 3, and the new provision allowed the Superintendent General to lease uncultivated reserve lands without a surrender.

> Whenever any land in a reserve whether held in common or by an individual Indian is uncultivated and the band or individual is unable or neglects to cultivate the same, the Superintendent General, notwithstanding anything in this Act to the contrary,

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> may, without a surrender, grant a lease of such lands for agriculture or grazing purposes for the benefit of the band or individual, or may employ such persons as may be considered necessary to improve or cultivate such lands during the pleasure of the Superintendent General, and may authorize and direct the expenditure of so much of the capital funds of the band as may be considered necessary for the cultivation or grazing of the same, and in such cases all the proceeds derived from such lands, except a reasonable rent to be paid for any individual holding, shall be placed to the credit of the band. Provided that in the event of improvements being made on the lands of an individual the Superintendent General may deduct the value of such improvements from the rental payable for such lands.[16]

In the western provinces there were large areas of land on Indian reserves capable of pasturing cattle or producing wheat; hence, subsection 3 would remove all obstacles to utilizing these lands.

Arthur Meighen, Superintendent General of Indian Affairs and Minister of the Interior from 1917 to 1920, explained the change to the House of Commons on 23 April 1918:

> The Indian Reserves of Western Canada embrace very large areas in excess of what they are utilizing now for productive purposes.. We want to be able to use the land in every case; but of course, the policy of the department will be to get the consent of the band whenever possible.. in such spirit and with such methods as will not alienate their sympathies from their guardian, the Government of Canada.[17]

Finally, section 92 of the Indian act was amended to enable the Superintendent General to make by-laws for the taxation, control, and destruction of dogs and for the protection of sheep.[18] As Meighen suggested, the Indians had power to make by-laws which would be ratified, if necessary, by the Governor in Council. He pointed out, however, that Indians had been extremely sensitive on the subject of by-laws and did not move very rapidly "along the path of civilization" in this respect.[19] The department had received frequent complaints from farmers residing near Indian reserves, and also from municipalities, regarding damage to sheep and other stock by Indian dogs. Similar representations had been received from the Departments of Agriculture of Ontario and New Brunswick.[20]

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In 1920, a set of rules and regulations was submitted by the Port Simpson Band of British Columbia, a band which previously had been placed under the Advancement Act. One of their by-laws related to street lighting even though the Act did not provide specific authorization for such a by-law. R.B. Moffat, of the Indian Affairs Department, suggested that he could see no reason why any band, whether under the Advancement Act or not, should not have authority to deal with such matters as street lighting and other essential utilities on Indian reserves.[21] The Department would always act as a check against the passage of an undesirable by-law, as any by-law had to be submitted to the Department for approval. He recommended that the section of the Indian Act dealing with improvements on reserves be amended:

> Under Subsection (g) of Section 194 of the Indian Act [one of the Advancement Clauses] a band which has been brought under the said clauses may make by-laws, subject to the approval of the Superintendent General, on the subject of 'the construction, maintenance and improvement of roads and bridges',etc. etc. I would suggest that at the coming session of Parliament this Section be amended to read 'the construction, maintenance and improvement of roads, bridges and <u>other essential utilities</u>'- etc., etc.[22]

Thus by 1927 it was apparent that extremely wide and arbitrary powers had been vested in the Governor General in Council, and more particularly in the Superintendent General or the local Indian Agents. Indeed, may Indians felt that one of the main reasons for their failure to govern themselves successfully had been interference by Department of Indian Affairs representatives. Historian Robert J. Surtees, for example, has suggested that the influence and wide discretionary powers of local Indian Agents as well as the complex administrative process have come under attack. It has also been noted that because some Indian agents were often contemptuous towards the Indians they simply did not take their suggestions very seriously. But even Indian agents who did perform their tasks with sensitivity and concern, the system within which they operated often made them appear to be discriminating. Agents were expected to know the local situation and to protect the Indians. Yet they were also expected to clear all decisions with their superiors. This process of "communication" through several levels of administration often caused considerable delay; in most cases the local agent appeared - to the Indians - as an autocrat.[23]

The position of the Superintendent General became pre-eminent. Since rules or regulations made by the Superintendent General took precedence over band council legislation, no stable foundation for self-government existed. It should be emphasized, however, that

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the position of the Superintendent General was an anomalous one in that he was required to act both as agent for the Crown and as representative of the Indians. Theoretically, Indians were wards of the Crown and therefore enjoyed the advantages which the Crown extended to them through its agents. On occasion, however, the Superintendent General "found it impossible to advance the interests of both parties at the same time".[24] Therefore, periodically, he had leaned in favour of the Crown, it being the strong, more vocal of the two parties.

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Endnotes

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11. Ibid., p. 126.

12. Canada. Department of Indian Affairs. Annual Report, 1918, p. 19: Duncan C. Scott, Deputy Superintendent General, to Superintendent General of Indian Affairs.

13. Ibid., p. 20.

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17. CP, House of Commons Debates, 1 Sess., 13 Parl., Vol. 1, pp. 1048-49: Indian Act Amendment Bill, 23 Apr. 1918.

18. Canada. Department of Indian Affairs. Annual Report, 1918, p. 20: Duncan C. Scott to Superintendent General.

19. CP, House of Commons Debates, 1 Sess., 13 Parl., Vol. 1, p. 1055: Indian Act Amendment Bill, 23 April 1918.

20. Canada. Department of Indian Affairs. Annual Report, 1918, p. 20: Duncan C. Scott to Superintendent General.

21. PAC, RG10 Vol. 6810, file 470-2-3, pt. 7, V. 12: R.B. Moffat, Indian Affairs Department, to Duncan C. Scott, Deputy Superintendent General, 29 Jan. 1920.

22. Ibid.

23. Robert J. Surtees, The Original People, Toronto, 1971, pp. 75-76.

24. CP, House of Commons Debates: Minutes of Proceedings and Evidence of the Specil Joint Committee of the Senate and the House of Commons appointed to examine and consider the Indian Act (Ottawa; King's Printer, 1947), p. 588.

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CHAPTER FIVE

A Period of Uncertainty: Indian Legislation During the Depression, 1927-1945

When Parliament again consolidated its Indian legislation in 1927 (Revised Statutes of Canada, chapter 48), Canada appeared to be enjoying a period of economic prosperity. One of the effects of the depression of the 1930's, however, was that government priorities did not include any new policies on Indian matters. By 1938 the Senior Staff of the Indian Affairs Department realized that many provisions of the 1927 Act were not meeting Indian needs adequately and began to prepare a new Indian Act. The process was stalled, however, by the outbreak of World War II and matters of Indian concern were again a low priority.

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On 10 February 1927, Superintendent General Stewart introduced new Indian Act amendments to the House of Commons and indicated that their main purpose was "to give the Superintendent General power to deal with small amounts accruing to the bands in the way of band funds where in some cases the bands had become almost extinct, and to allocate these moneys in the interest of the Indians."[1] This applied mainly to the Indians of British Columbia where there were about 100 bands whose capital ranged from $9.17 to $2000. Many of the bands consisted of new members and in some instances there was no means for the disposal of money. Superintendent General Stewart explained further that:

> The purpose of the proposed amendment is to enable the Governor in Council to dispose of small amounts among the Indians in any way that may be deemed beneficial to them. When the amount involved is under $2,000. the distribution of interest entails a great deal of book-keeping inasmuch as the individual member of the band receives so very small an amount. We are asking for authority to distribute these moneys amongst the bands interested and so clean up the situation.[2]

The second provision, which referred to subsection 1, section 92, empowered the Superintendent General to regulate the operation of pool rooms, dance halls, and other places of amusement on the reserve.[3] Stewart explained that although band councils could make local by-laws on these matters, the Superintendent General's regulations would apply nationwide.[4] During the Debates on this proposal, Mr. F. Smoke, Member of Parliament from Brant, stated that in his constituency the Six Nations Indians, particularly in

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the Townships of Tuscarora and Oneida, were quite "advanced" and capable of managing their own affairs:

> [I] do not think the Indian Department should longer assume the position of superiority implied by the Indian Act. I would ask the minister if he will not take into consideration the question of excluding the Six Nations Indians from the provisions of the bill now before the House.[5]

Stewart pointed out that he was not prepared to judge whether the Six Nations Indians were at the stage of development where they could take full responsibility for their own affairs:

> [J]ust whether or not these Indians are at a stage of development where they can take full responsibility for their own affairs I am not prepared to say... I may say, however, that this act applies to all the Indians in Canada; under section 92 the Superintendent General may do a great many things, subject always to the councils selected by the Indians themselves, whose business it is to work under this Act for the good government of their reserve. They themselves are desirous of having more stringent regulations governing the licensing of pool halls, dance halls and other places of amusement on the reserve. In the bill there are a great many clauses enumerated having to do with sanitary regulations, regulations for taxation, the control and destruction of dogs, destroying sheep and all that sort of thing. The council administers these by-laws in running the reserve, and this amendment simply asks for more control over the pool halls and other places of amusement.[6]

The final change in 1927 was to repeal subsection (c) of Section 98, which referred to "the repression of intemperance and profligacy". The original subsection was substituted by "the prevention of disorderly conduct and nuisances".[7] In a circular to all Indian Agents and Inspectors T.R.L. MacInnes, Acting Secretary, indicated that the amendment was passed because the original subsection was considered inherently unsound and confusing for Indian Councils to regulate matters within the Criminal Code and the general provisions of the Indian Act:

> The effect of such regulations, moreover, was varying and discriminatory as between members of diverse Indian bands and its lack of uniformity, having regard to the nature of the subjects in question, was found to be unsatisfactory.[8]

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This amendment would give Band Councils power to deal with disorderly conduct and other "nuisances". The new wording would better serve Band needs than "the repression of intemperance and profligacy" phrase, which had resulted in some confusion as to the scope and powers of the Council.[9]

Between 1921 and 1926 a number of Orders in Council under the Indian Act had confirmed band regulations dealing with "the repression of intemperance and profligacy".[10] Since the 1927 Act, however, repealed the relevant provision, the following rule applied:

> All regulations, orders, ordinances, rules and by-laws made under the repealed Act or enactment shall continue good and valid, in so far as they are not consistent with the substituted Act or enactment, until they are annulled and others made in their stead.[11]

In 1930, band councils acquired the power to make regulations for control of public games and amusements on the Sabbath. Superintendent General Stewart's explanation for this increase in band council powers was basic:

> It is simply an additional power to the ones they already have, such as revenue, assessments, rates, payment of Indian's share on his default, appeals, et cetera. It is adding somewhat to the powers of the Indian Council.[12]

Thus band councils could restrain, in some way, undefined features connected with Sunday amusements.

Further centralization of powers in the Superintendent General occurred with amendments in 1933. One in particular empowered him to determine where roads should be located on a reserve. It had become advisable that the Superintendent General should have such power in order to avoid having some improvements delayed or barred by opposition of band council members. In addition, an amendment "regulating the operations of hawkers, peddlers or others coming on the reserve to sell, or take orders for wares or merchandise", added to the powers of the band councils.[13] Complaints had often been received about hawkers, peddlers or others coming on the reserve, selling or taking orders for merchandise to the disadvantage of Indian merchants. Since Indian merchants could not go into an adjoining town or city and peddle without a licence, band councils felt that they should have some control over peddlers coming on their reserve.[14]

Deputy Superintendent General W. McGill outlined the powers of Indian councils in his Annual Report for 1932-33:

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> The case of the public health; the observance of order and decorum at assemblies of the Indians in general council, or on other occasions; the prevention of disorderly conduct and nuisances; the prevention of trespass by cattle, and the protection of sheep, horses, mules and cattle; the construction and maintenance of watercourses, roads, bridges, ditches and fences; the construction and repair of school houses, council houses and other Indian public buildings, and the attendance at school of children between the ages of six and fifteen years; the establishment of pounds and the appointment of poundkeepers; the locating of the band in their reserves, and the establishment of a register of such locations; the repression of noxious weeds; controlling of prohibiting participation in, or attendance at, public games, sports, races, athletics contests or other such amusements on the Sabbath.[15]

The effects of the depression may have been reflected in the Government's ad hoc approach to Indian matters. Professor John L. Tobias has suggested, however, that perhaps this lack of attention was a result of the realization that all previous policies had failed to attain the goals established for Canada's Indians.[16] Whatever the reason, during the period 1933-1945 there seemed to be no coordinated policy in respect of local government.

The amendments of 1936 exemplified this approach. The first and third clauses of this legislation indicated that, in spite of the desired goal of integrating Indian and "white" communities, the Department still wanted to keep reserve lands intact for a band.[17] The band council could henceforth purchase any reserve land which had been inherited by someone not entitled to live there. With band consent, the Governor in Council could use band capital to purchase "the possessory rights of a member of the band in respect of any particular parcel of land on the reserve".[18]

The second clause authorized the Superintendent General to make special regulations for Indians or apply appropriate provincial laws. Three areas were mentioned: game laws; destruction of noxious weeds and prevention of plant disease; and speed and operation of motor vehicles on highways within reserves.[19] Essentially, the Superintendent General acquired the power to apply existing provincial laws in these three areas to reserves as he saw fit.

The duties of the Agent with regard to band council meetings had not been defined in the Indian Act and, as differences had arisen concerning the extent of the Agent's authority, it was considered advisable to define his duties. Clause 5 of the new legislation outlined these duties as follows:

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(a) preside, and record the proceedings;
(b) control and regulate all matters of procedure and form and adjourn the meeting to a time named or sine die;
(c) report and certify all by-laws and other acts and proceedings of the Council to the Superintendent General;
(d) address the Council and explain and advise the members thereof upon their powers and duties.[20]

In 1938, a "revolving loan fund" was instituted for Indian people. Senator Raoul Dandurand commented on the nature of the proposed Bill:

> Under the proposed provisions the Minister of Finance will have authority to advance as specified in the bill sums of money up to a total of $350,000 for the purpose of making loans either to individual Indians or to Indian reserves, or in relation to other matters connected with Indian welfare work. The Indians are at present, and of course will remain, even under this legislation, the wards of the Government ... One of the things that has impressed itself on my mind in the brief period I have had to do with Indian administration is the need to develop a spirit of self-reliance and independence in our Indian wards. I must confess that I think in the past our attitude has often not been conducive to the achievement of that very desirable end.
>
> This fund is created for the purpose of lending money either to individual Indians or to the bands of Indians for productive purposes, or perhaps in certain cases to residential schools for the purpose of developing handicraft arts, with the understanding that these loans must be paid back into the fund to the credit of the Minister of Finance, or rather to the credit of the receiver general to be administered by the Minister of Finance.[21]

Senator Arthur Meighen, nevertheless, had some doubts regarding the prospects of a "revolving fund":

> My guess is that the fund provided for by this Bill will revolve until the fund is exhausted, when the revolving will cease and the State will bear the loss of the whole amount. Unless a very extraordinary man is placed in charge of the fund, and unless he stays in charge of it for years to come, we may as well kiss good-bye to all the money right now. It will never come back. Government loans to white people, where the individual obligation always obtains, are not often repaid. How much slimmer are the prospects of repayment of money placed in a revolving fund for Indians, who are not individualists and who as a rule do not understand the meaning of an obligation! And those

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> prospects are still slimmer when the loan is made to a group or tribe, and the obligation is a communal one, whatever that may mean. Surely the Government does not think that in these circumstances Indians will understand there is a real obligation.[22]

T.R.L. McInnes, writing for the Director of Indian Affairs, agreed with Superintendent General Crerar's sentiments regarding self-reliance and independence and expressed his opinion on advancement and enfranchisement:

> 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.[23]

By the early 1940's it was evident that there were a number of administrative problems concerning the "Indian Advancement" portion (Part II) of the Indian Act. The practice of the Indian Affairs Department regarding location tickets, which dated back to the 1880 Indian Act, had not been, in some instances, in accordance with the Act.[24] Under the "Advancement" regulations band councils could make by-laws for the subdivision and allocation of reserve land. On the Caughnawaga and Six Nations Reserve, the Indian Affairs Department had permitted a system of land registration; however, the scheme of location tickets had never been enforced.[25] As late as 1940, there had been violent opposition from band councils who insisted on some other form of recognition from the Department concerning their occupation on reserves other than location tickets.[26] Dr. D.A. Cory of the Department of Justice was concerned that the location ticket system was not functioning as planned:

> At the present time, therefore, the sections of the Act dealing with location tickets on these two reserves which are given here only as examples are not being lived up to and the purpose of this memorandum is chiefly to point out that the Act contemplated location tickets in these cases. Possibly, some

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> compromise may be, at this date, effected with the Councils of the said reserves but in all cases, where possible, it is urged that the Branch comply with the Indian Act in this regard. If this practice becomes uniform then one of the greatest problems of the administration would, in my opinion, be solved.[27]

By the mid-forties in British Columbia, problems had arisen with Part II of the application of the Indian Act. It was obvious that Indian bands such as the Kincolith, Port Simpson, and Metlakatla had not maintained the necessary degree of "advancement".[28] D.M. MacKay, Indian Commissioner for British Columbia, pointed out various factors that should be considered in bringing a band under Part II or allowing them to continue under it. These included a demonstrated ability to handle their affairs; integrity; morality and absence of crime; a degree of self-support; progressiveness and living standards; and loyalty.[29] He also suggested that the provisions of Part II should be cancelled when the band failed to continue at the desired standard. Experience had shown that the standards of a band could deterioriate very rapidly.[30]

Another problem encountered was that some band councils were exercising powers provided under Part II even though they had not been placed under its provisions. Mr. M. Gillett, Indian Agent (Skeena Agency), explained the nature of this administrative difficulty:

> All the Bands that have Councillors have passed regulations and exercised powers provided under the Advancement part of the Act such as, By-Laws concerning Statutory labour, curfews, pedlers, Village lights, etc., This also applies to the Bands who have not been placed under the Advancement Act, namely: Aiyansl, Greenville, Kincolith and Hartley Bay. These Bands are under the impression they are under Part 2. Since the Department doesn't wish to interfere with the practice that has been well established, the only way, therefore to regularize the Bands would be to have an Order in Council passed and have all the above mentioned Bands placed under the Advancement part of the Act.[31]

While Gillett's comments referred to bands in British Columbia, the situation was similar regarding Part I in Manitoba and Saskatchewan. Many northern bands in the Pas Agency, for example, who were perceived as border-line cases and perhaps too "primitive" for Part I, exercised powers in regard to regulations, band fund expenditures, and other items as if they were under Part I.[32] Their powers in this respect were affirmed in an opinion from the Department of Justice, dated 9 January 1943.[33] It should be noted also that many other bands such as Grand Rapids, (Order in Coucil 2506, dated 23 September 1893) in the District of Saskatchewan and Cumberland, (Order in Council 1972 dated 18 June 1895) situated in

the North-West Territories, had passed by-laws even though they were not under Part I.[34] The by-laws included "the attendance of children at school, the performance by the male members of the band of twenty-one years of age and over, and the protection of cattle on the reserve."[35]

In 1943, the Director of the Indian Affairs Department, H.W. McGill, submitted regulations with respect to statutory labour under Section 101, subsection (e) passed by the Chief and Council of The Pas Band.[36] The question arose as to whether a band of Indians, such as The Pas Band, which still followed the old tribal system, could establish by-laws which came under the elective system. Following a series of discussions with Indian Affairs personnel it was decided that the proposed regulations, which concerned the maintenance of bridges, ditches, and fences, would be established under the provisions of Section 47 of the Indian Act.[37]

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Endnotes

Chapter Five

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13. Canada. Department of Indian Affairs. Annual Report, 1933, p. 10: Report of the Deputy Superintendent General (Harold W. McGill), 31 August 1933.

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16. John L. Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy", The Western Canadian Journal of Anthropology, Vol. VI, No. 2. 1976, p. 24.

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21. CP, Senate Debates, 3 Sess., 18 Parl. 9 June 1938, Vol. IV, p.471.

22. Ibid., pp. 472-73.

23. PAC, RG10 Vol. 6810, file 470-2-3, pt. 9 v. 12: T.R.L. MacInnes, Secretary to the Deputy Minister, 28 Jan. 1938.

24. PAC, RG10 Vol. 6810, file 470-2-3, pt. 10, v. 12: D.M.Cory, Solicitor, to Mr. Jackson of Justice Department, 12 Jan. 1940.

25. Ibid.

26. Ibid.

27. Ibid.

28. PAC, RG10 Vol. 7127, file 984/3-5, Vol. 1: D.M. MacKay, Indian Commissioner for B.C., to Indian Agent J. Gillett, 24 Feb. 1942.

29. Ibid: See also RG10 Vol. 7127, file 984/3-5, V. 1: Memorandum: D. M. MacKay, Indian Commissioner for B.C.

30. Ibid.

31. Ibid., Indian Agent J. Gillett to Major D.M. MacKay, Indian Commissioner for B.C., 15 May 1942.

32. PAC, RG10 Vol. 7115, file 1/3-5, T.R.L. MacInnes, Secretary, to the Director of Indian Affairs, 28 Feb. 1946.

33. Ibid.

34. PAC, RG10 Vol. 7151, file 1/3-10, v.1: Memorandum: John J. McGee, Clerk of the Privy Council, 23 Sept. 1892.

35. Ibid.

36. PAC, RG10 Vol. 7151, file 1/10-3: G.W. Jackson, Acting Deputy Minister of Department of Justice, to the Deputy Minister, Department of Justice, 7 May 1943.

37. PAC, RG10 Vol. 7151, file 1/3-10, v. 1: W.M. Cory, Depart. of Justice, to G.M. Jackson, Acting Deputy Minister, 3 Aug. 1943.

CHAPTER SIX

The Indian Act of 1951

After 1945, public interest in Indian Affairs was awakened to an unprecedented degree. This interest was due in most part to the strong Indian contribution to the war effort. Veterans' organizations, churches, and pressure groups called for a Royal Commission to investigate the administration of Indian Affairs and conditions on Indian reserves, to revise the Indian Act, and an to end discrimination against Indians. No Royal Commission was appointed; however, a Joint Committee of the Senate and House of Commons was created in 1946 to study and make proposals.

A description of the degree of Indian "advancement" to date was presented by Mr. Robert A. Hoey, Director of Indian Affairs, to the Joint Committee:

> 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 think also of the nomadic bands in the north who still live in tents, dilapidated shacks or tepees. This group has, in my judgment, 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.[1]

In 1948 the Joint Committee recommended a complete revision of the Indian Act and that the new Act be designed to facilitate the gradual transition of Indians from "wards" to full citizenship. The new Indian Act, moreover, should include the following: bands should attain more self-government and financial assistance; bands should be able to incorporate as municipalities; and Indian Affairs officials should assist the Indian in the responsibilities of self-government.[2]

In effect, as John Tobias has pointed out, the Joint Committee approved the goal of Canada's previous Indian policy - assimilation -but disapproved of some of the earlier methods to achieve it.[3]

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The Joint Committee assumed that the process of "civilization" was almost complete and consequently, many of the protective features of earlier Acts could be withdrawn and Bands could be allowed more self-government and less governmental interference. W.E. Harris, the Minister of Citizenship and Immigration, suggested on 12 April 1951 in the minutes of the Special Committee Appointed To Consider Bill 79: An Act Respecting Indians that advanced reserves would become fully autonomous:

> It was, I believe, the opinion of the committee that ultimately Indian reserves would be incorporated as municipalities and take their place not under the federal government but under the provincial governments in those cases. There have been efforts along that line and in particular there is one band which has indicated a desire to have this proceeded with respect to it, and the matter is being pursued now.
>
> There is no provision in the bill for this particular recommendation because the law officers of the Crown felt that you could not make reference in the Indian Act to the municipal incorporation of an Indian band in that being a municipal matter it would be between the band and the provincial government. The parliament of Canada cannot legislate upon it because it would thereby invade the provincial field.[4]

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In the Minutes of the Special Joint Committee considerable space was devoted to statements by Indian witnesses and to briefs submitted by various Indian and white groups, and government officials, as well as experts on specific subjects, particularly band government.[5] From British Columbia, recommendations submitted by the Okanagan Society for the Revival of Indian Arts and Crafts (1946) and the Native Brotherhood of British Columbia (1947) stated that the Chief and his Band Council should be regarded as a municipal council with similar powers within their territory. They should have law-making and law enforcement powers similar to those of municipal councils.[6]

Similarly, the Protective Association for Indians and their Treaties (Alberta) argued that band councils were little more than debating societies since wide powers had been invested in the Governor General in Council, and more particularly, in the Superintendent General. Further, it was recommended that certain matters should be reserved exclusively for the control of the band, and other matters should be reserved exclusively for the Governor in Council and/or the Superintendent General. Bands should have complete power and authority to enact rules and regulations touching on those matters over which it had control.[7]

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In April 1947, John Calihoo, President of the Indian Association of Alberta, stated a similar position:

> 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 people 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 their chiefs and councils must have far greater authority than in the past.[8]

Calihoo also wanted the powers of the Superintendent General to dispose of trust funds and to lease lands without band consent removed.

Various factions of the Six Nations argued that they were a sovereign nation while representatives of the hereditary chiefs demanded abolition of the Indian Act. The elected council members, on the other hand, suggested certain amendments and changes in policy.[9] In 1942 the Caughnawaga Indians had requested that their old tribal laws be restored in place of the Indian Act.[10] In addition, during the special Joint Committee hearings in 1947, they charged that the Act was too dictatorial and that their treaty rights, which guaranteed self-government, had been abrogated:

> 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 vested 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.[11]

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Indian Agent A.D Moore pointed out that the Indians of the Tyendinaga Reserve were dissatisfied with certain provisions of the Indian Act, as well as their position as wards of the state:

> 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 of their future destiny as citizens of this country.[12]

Finally, members of the St. Regis Band advocated the retention of the old tribal system:

> 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...
>
> [W]e 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 distiny and rights! (Witness - Elective form of trustees appointed and started by Canadian Government without our consent; Indian Act 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!)[13]

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The 1951 Act met most of the criteria established by the Joint Committee. Not since the 1876 Act had the Minister's power been so limited, and in some cases was reduced to a "supervisory role but with veto power".[14] According to Senator Thomas Reid, the Minister had the power to initiate action in seventy-eight sections of the previous Act.[15] Bill C-267 (1950) reduced this to twenty sections. Bill C-70 (1951) contained twenty-six clauses giving such powers to the Minister.[16] Nevertheless, the principle of allowing the various bands to set up their own forms of self-government appeared nowhere.

In certain areas band councils were granted more authority than they had had under previous Acts, particularly with respect to the management of surrendered and reserve lands, band funds, and the administration of by-laws. A provision not in the earlier Acts ensured a degree of control by the band council in the allotment of lands to Indians. Under general provisions, band councils could be granted further powers to manage their own property.[17]

Greaterscope was also given to the Indian band councils with respect to the expenditure of band funds. Capital moneys derived mainly from the proceeds of land sales and leases and the disposition of timber, mineral, and oil rights could be spent on specific purposes without the consent of the Minister (e.g. the construction and maintenance of roads, purchase of land, livestock and farm implements, permanent improvements, and loans to Indians). Revenue moneys made up of interest on band funds and from other sources could be spent, with band council consent, for purposes that would promote the general progress and welfare of the band. With few exceptions, expenditure of capital and revenue moneys, formerly at the discretion of the Governor in Council or the Minister, required only the consent of the band council.[18]

Indian bands also benefitted from a change which allowed rents from lands leased on their behalf to be paid locally. Formerly, under statutory provisions, all rental moneys had to be forwarded to Ottawa and then returned to the field for payment.

The new Act continued the revolving fund set up in 1938 to provide loans for the purchase of farm implements, machinery, livestock, fishing and other equipment, seed grain, and material used in native handicrafts. New uses included the purchase of motor vehicles, fencing materials and other equipment, petrol and oil, and repairs and wages. This provision was designed to encourage Indians to use reserve resources.[19]

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W.E. Harris advised the Special Joint Committee in 1951 that the main problem besetting band councils was money:

> [T]he 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 that the band 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 amnibus clause whereby the band council can spend its moneys for anything that will be in the interest 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.[20]

The powers of band councils to make by-laws were broadened somewhat to correspond generally with those exercised by councils in rural municipalities. Harris was concerned that some band councils might exercise greater powers than those of municipal governments:

> I think, sir, that our policy should be to extend self-government to all the reserves as soon as possible. It might be argued that this would give to band councillors 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.[21]

From 28 February to 3 March 1951 a conference was held in Ottawa to discuss Bill 79, the second draft of the new Act; the first, Bill 267, had failed. A summary of the proceedings of this conference, which was appended to the House of Commons Debates of 16 March 1951, revealed that several of the Indian representatives were concerned about the regulation of motor traffic through their reserves.[22] In discussing section 80 (powers of the band council) Indian representatives were informed by Department of Indian Affairs officials that band councils would be able to make by-laws regarding the regulation of traffic within the reserve.

On the general question of by-laws, it was explained that those by-laws which did not conflict with regulations made by the Minister or the Governor in Council would stand. Moreover, it was generally felt that the powers of band councils had been

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considerably broadened. With respect to section 82, dealing with money by-laws, some Indians feared that the Governor in Council might have the power to force Indians to pass taxation by-laws. The conference was assured, however, that once this section had been applied to a band, action under it would be by the band council.[23]

In the final analysis, the 1951 Act differed only slightly in tone from the Indian Act of 1876.[24] Both provided for a cooperative approach between Government and Indian towards the goal of Indian "advancement" and assimilation. Nevertheless, while band council powers had been extended somewhat since the 1876 Act, by 1951 ultimate authority still remained with the Minister or Governor in Council. During the Debates of the House of Commons in 1951, J.W. Noseworthy, Member of Parliament for York South, argued that band councils should be given more responsibility:

> One of the criticisms I have had 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.25

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Endnotes

Chapter Six

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CHAPTER SEVEN

Epilogue: Local Government Constraints, The Post - 1951 Period

In 1954 the Department of Citizenship and Immigration commissioned Dr. Harry B. Hawthorn of the University of British Columbia to assess the Indian situation in British Columbia, to obtain data, and to recommend future policy direction.

Hawthorn, with his associates Dr. C.S. Belshaw and Dr. S. Jamieson, discussed at length the constraints on band council powers under the Indian Act. They were particularly critical of the wording, "The Minister may with the consent of the council of a band", and recommended as more appropriate, "The council may, subject to the consent of the Minister ...." In addition, they recommended that it would be preferable to establish the idea that a council's decision was acceptable unless on review the Minister found reason to object to it. The appropriate phrase would then be, "The council may, provided the Minister does not indicate dissent...."[1] It had been well established in British colonial policy that the Secretary of State for the Colonies would assent to colonial legislation by publishing a "Non-Disallowance Order". In this case a native local authority usually considered its by-laws valid unless specific review action was taken against them.

Another significant observation was that many councils were not passing by-laws. The Superintendent General believed that the by-laws should follow patterns set by Ottawa, which were not always appropriate. Dr. Hawthorn suggested that band councils should develop their own by-law practice, and he observed that councils did not seem to be aware of their potential powers to pass by-laws under certain sections of the Indian Act. At the same time, Superintendents and Indian Agents seemed to lack the time and interest in ensuring that the band council was an effective instrument of social control.[2]

In 1964, Dr. Hawthorn received another commission to undertake, in conjunction with scholars from other universities, a study of the social, educational, and economic situation of Canada's Indians. The project concerned itself, to a large extent, with the internal organization of Indian reserves, the operation of passing by-laws, and the intricate process of checking and approving them:

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> In the initial stage a by-law will be formulated and discussed among band council members. If the by-law requires enforcement by the Royal Canadian Mounted Police or other police forces, these officials will be approached for their views. The superintendent is also involved at this initial juncture. It is his function to report the proposed by-law to the regional office of the Indian Affairs Branch Regional officials and check the purpose and adequacy of the by-law before sending it to Indian Affairs Branch headquarters. Here financial and technical aspects are investigated prior to the signing of approval. At any stage the proposal may be referred back to a previous procedural stage for changes or for more information. This is not to say that by-laws always take a long time to be approved or that delay is necessarily a bad thing. However, if bands are to be given the formal powers to develop local self-determination, any practices which might stall such a policy should be given more examination.[3]

Thus, with such a complex legislative-administrative process, the number of by-laws passed between 1951 and 1964 was extremely low.[4]

That this complex process delayed the passing of by-laws was justified as follows. Section 80 of the Indian Act authorized band councils to pass by-laws on, for example, public health or traffic regulations. Yet, by the early seventies fewer than two-thirds of the band councils had permission to do so.[5] This meant that unless the minister deemed the band "capable" he could veto any band council decisions. Perhaps a clearer example is provided by section 82 which allowed the more "advanced" bands to pass money by-laws. However, this happened only when the Governor in Council considered a band as having reached a "high state of development" (e.g. Six Nations). Fewer than fifty bands had been defined as such, and of these, most concerned themselves only with the construction of waterworks.[6] Moreover, section 68 allowed a band to "control, manage, and expand in whole or in part its revenue moneys", subject, of course, to the authorization of the Governor in Council. The first band permitted to do so received authority in 1959 and by 1971, fewer than one-half of such bands had been given permission.[7]

Between 1951 and 1964, 118 bands passed a total of 338 by-laws.[3] The average number of by-laws per band was about three.[9] The by-law is usually an unfamiliar instrument to Indians who often perceive it as a device of the Indian Affairs Department for reserve administration. Only 23 per cent of all bands in Canada

passed at least one by-law, but this group was relatively active. Of the bands passing one or more by-laws, 54 per cent passed three or more.[10] (For additional statistics see the Charts on pages 87-89)

In retrospect, the result of the imposition of a political system from outside the local community was somewhat predictable. Hawthorn explained some of the factors which contributed to the ineffectiveness of local government on many reserves:

> Many Indians did not perceive their communities as viable bodies.... and continued to orient themselves primarily to family, extended kinship or other groupings that either cut across the residential community or were but one of several segments within it... Where interest is shown in local government was frequently dissipated by lack of real power to make meaningful decisions at the local level. With the elaboration of rules and regulations designed to protect Indian interests, as then defined, very many matters had to be sanctioned by the Indian Affairs Branch. There was a paucity of important matters about which decisions could be made in their communities. Band councils persisted in Indian communities, not because they were perceived as responding to important local government needs, but because the government insisted on dealing through them.[11]

Furthermore, Professor Adelard Tremblay, Associate Director of the research project, stated the position of the more progressive bands regarding the failure of full self-government:

> [A]s long as the Indian Act remained unamended, it will constitute an impediment to full autonomy on the part of Indian bands.... The relative autonomy presently enjoyed by certain more advanced bands is far from being complete. The Indian Affairs Branch still possesses final authority over the administration of Indian lands and moneys.[12]

The failure of local government on some reserves, particularly in the isolated reserve communities or rural areas, can also be viewed in terms of "an objective reaction to the reality of the situation".[13] By accepting local autonomy band government members would be responsible for various administrative decisions, except, of course, those subject to Ministerial veto. By remaining dependent upon the Agent's supervision some Bands receive more welfare grants and cannot be held responsible for any decisions.

Anthropologist R.W. Dunning has argued that the "agency system" in isolated communities, where the traditional subsistence-type economy existed, has produced a protective and static effect:

> These bush communities are developing under an apparent policy of governmental sponsored education and welfare benefits. The latter in the form of housing, medical services and monetary welfare and relief grants create an atmosphere of permanence... Any one who would change the sytem for local government must cut across the conformity/withdrawal and client/patron patterns of behavior. This is difficult to achieve as these patterns are in accord with the 'agency system'. It seems clear that at least in some reserves a change to local autonomy and responsibility would be voted down in favour of the present guaranteed dependency status.[14]

Another Anthropologist, F.E. LaViolette, however, could not understand why some Bands wished to remain as wards of the Federal Government:

> [T]he common antipathy of the Indian towards the rules of wardship seem, just on a basis of common sense, to provide the foundation for unified action on the part of the Indians. It is therefore difficult to comprehend the political atomization of the Mohawk reserve at Caughnawaga near Montreal, or the absolute unwillingness of Indian Lorette to become a municipality, completely freed of the rules of wardship. In fact, the further one goes with examples the more incomprehensible the whole system becomes.[15]

Perhaps the most significant constraint on band council powers concerned control over revenues. The strength of a band council was determined to a great extent by the wealth of that band, that is, the degree of autonomy of an Indian band council is, in effect, directly proportional to its degree of control over its revenues. Some Indian Councils, most often those which lacked band revenue, had come to rely on other influential people to perform important functions. Real power, in these cases, remained in the hands of outsiders such as traders, missionaries, or government officials.[16] These included bands under the Indian Act which sometimes did not take advantage of passing simple by-laws essentially because they lacked the funds to do so. However, where bands controlled their own revenue (Six Nations for example) the council resembled a municipal government. Band Councils, in these instances, took full advantage of enacting rules and regulations, usually under the Indian Advancement Act.

The Six Nations Band Council was the most active. A number of external and internal problems, however, delayed the passing of by-laws. As suggested by Anthropologist John A. Noon, the formulation of by-laws was the direct result of many disputes between the Council and the Dominion Government on matters concerning land problems, control of band funds, and the abolition of the traditional tribal system.[17] A constant undertone in their relations with the British Crown and then the Dominion Government has been the claim that the Six Nations were a sovereign people.[18] The Six Nations Council was regarded as the means by which full independence and self-determination could be attained. The establishment of the Elective Council in 1924, nevertheless, did not bring about complete autonomy because in forming the new government the question of sovereignty was not defined.

Those who opposed the elective system and wished either the return of the hereditary council or the establishment of sovereignty showed their antagonism by disobeying some of the by-laws.[19] When the elected Council was able to pass by-laws, the intrusion of the Dominion Government prevented it from exercising effective control. In the final analysis, no political unit can be totally effective when it must share its authority with another governmental body.

In contrast, at Tyendinaga, there have been no recent attempts to govern through a hereditary council. Anthropologist C.H. Torok has suggested that the Tyendinaga Band Council has managed the affairs of the reserve in a manner similar to that of a municipal council:

> In summary, the Band Council of Tyendinaga, a body elected by all resident Band members 21 years of age and older, manages the affairs of the Band in a manner increasingly similar to that of municipal councils. At present the office of the Superintendent still performs most of the administrative paperwork, but if the present trend continues the Band Council will gradually take over this sphere of activity.[20]

The Band Council has also managed a welfare program, established a Physicians' Services Incorporated Committee, (Costs of membership are shared by the individual, the Band Council, and the Department of Indian Affairs), and set up a duck-hunting preserve. Tyendinaga has operated under Section 68 of the Indian Act since 1958 giving them the opportunity to manage their own revenues; in fact they were the first band to do so. Later in 1958 this right was extended to the Moravian and Walpole Island Bands. By 1966 the Indian Affairs Department

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was able to report that "since 1959 control over the expenditure of their revenue funds in whole or in part has been transferred to a further thirty-six bands".[21] Tyendinaga Band Councillor R.M. Hill commented on the benefits of operating under Section 68:

> In the Province of Ontario, any Band operating under Section 68/ of the Indian Act/ has the privilege of entering into an agreement with the Department of Public Welfare whereby we administer all welfare expenditures on our Reserve and obtain a refund of 30% of the cost from the Ontario Department of Public Welfare. This is a beneficial arrangement as under it we receive 80% subsidy on relief expenditures and we are therefore able to issue relief to needy Indians on much the same basis as non-Indian municipalities.[22]

While the White Paper of 1969 proposed to continue the assimilation process and to introduce new policy directives on local government, it ignored the "spirit and intent" of the Hawthorn Report.[23] The Hawthorn report had emphasized federal responsibility for Indian Affairs.[24] When it became obvious that the 1951 Indian Act was not promoting assimilation, an alternative means was sought. Indeed, this had been provided in part, as early as 1946 by the recommendation by the Joint Committee of the Senate and House of Commons to turn over responsibility for Indian services to the provinces. The result was that provincial governments were delivering education and health services well before the 1969 proposal.[25] In the 1969 White Paper, the Federal Government proposed to negotiate "with the provinces[to] conclude agreements under which Indian people would participate in and be serviced by the programs of the provincial and local systems."[26]

There were three major responses to the 1969 White Paper: the Brown Paper of the British Columbia Indians, the Red Paper (or Citizens Plus) of the Alberta Indians, and the Manitoba Indians' "Wahbung". All three argued that local band councils should be given more decision-making powers so that they could take the initiative in social, political, and economic development. Specifically, the Brown Paper, submitted on 17 November 1970, emphasized that band councils needed more power to enter into agreements with non-Indian municipalities. Bands should be able to incorporate as municipalities with all the power of municipalities.[27] The Manitoba Indian Brotherhood (Wahbung), submitted in October, 1971, suggested also that the Federal Government should change its role so that self-government would be recognized:

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> The principal change required of the Federal Government is that it recognize that it is the facilitator of a social change process designed to enhance and to facilitate equality of opportunity by the economically deprived and the socially dispossessed. Its role must shift from one of administrator to one of consultant and facilitator, and it must divert itself of the mantle of paternalism and decision making that has imposed its desire upon us for the past century.[28]

In 1975 a series of Departmental Programme Circulars concerning Indian local government, known as the "Local Government Guidelines, D-1 to D-5,"were introduced.[29] The purpose was to further Indian self-government and self-determination through the transfer of federal programmes to bands.[30] Marie Smallface Marule, a member of the Blood Tribe, commented on government rationale regarding band autonomy:

> On the one hand, some bands are managing their own affairs with minimal financial support, thus demonstrating the approach's success. On the other hand, Bands deemed unready for self-government provide continued justification for the department and its nine thousand civil servants. This approach has the added feature of appearing to demonstrate to Indian leaders and their communities who have had to return programme administration to the Department of Indian Affairs that they are not yet competent to govern themselves and that they should no longer criticize Indian Affairs officials for poor services since they themselves failed to improve upon the services when given the opportunity to do so.[31]

Donald Rowat, Professor of Political Science at Carleton University, has suggested that one of the problems in implementing local autonomy on reserves concerned the range of government services to be administered by band councils and the extent of their powers:

> There is also a need for categorizing Band Councils according to their size and level of development in order to determine objectively which transferred powers they are capable of assuming, rather than leaving the government to make a paternalistic decision on each request from a Band to assume a power or service.

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> The limits of the powers to be transferred to Bands and the specific nature of the ultimate supervision to be retained by the Government over these powers would need to be worked out at the national or regional level through machinery for consultation, and would probably be in the form of legislation or orders-in-council. The categorization of Bands to receive less than full powers could perhaps be worked out by joint agreement at the regional level.[32]

During the 1970's the principles of local government and self-determination have been linked with the broader issue of land claims.[33] The James Bay Agreement of 1975 established the principle of provincial program jurisdiction and the incorporation of Indian band governments as municipal authorities.[34] In August of 1979 eleven Bands of the Lesser Slave Lake Agency in Alberta were given administrative control of all Federal Government programs on their reserves. These programs included education, social and economic development, road maintenance, and local government finance and administration. The eleven Bands saw the transfer as an important step toward "self-determination and Indian government"; in effect, the elected council became a form of local government for 5,000 Indians in the Lesser Slave Lake Area. Mr. Jake Epp, Minister of Indian Affairs in 1979, has indicated that he hopes that further administrative control can be transferred to all bands across Canada. He has stated that "local concerns can best be met at the local level where the best delivery of services can occur."[35]

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The original intent of Canada's post-Confederation Indian policy was to further the principles of "civilization" and "assimilation". The ineffectiveness of Sir John A. Macdonald's National Policy of gradually training Indians in the Euro-Canadian political ideals of local government was critical. The ramifications of this failure in respect of band government were far-reaching. Various amendments to the Indian Act, particularly after the turn of the century, increased the Superintendent General's powers and, in most cases Indian band councils did not become more than consultative or supervisory bodies.

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The slow transition, particularly of Western Indian bands, to a self-supporting agricultural life and the reluctance of some eastern tribes to adopt "more advanced" self-governing schemes disillusioned many Indian Affairs officials. The change in life-style, however, was not reflected in extended band council powers and by-laws practices. The complex legislative-administrative process of passing by-laws seemed to frustrate some band councils who did not understand the intricate process of checking and approving by-laws.

The 1951 Indian Act, in attempting to accelerate "assimilation" and to provide some type of municipal government, failed to allow Indian bands to set up their own forms of local government and to grant band councils decision-making powers. While it had become increasingly evident that special treatment and legislation was necessary, given the regional differences and the varying stages of development of Indian bands across Canada, there was no significant change in policy direction to accommodate those differences.

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Endnotes

Chapter Seven

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APPENDICES

TABLE I

BY-LAWS PASSED BY YEAR	NUMBER OF BY-LAWS PASSED
1951	Nil
1952	15
1953	17
1954	47
1955	37
1956	38
1957	24
1958	33
1959	31
1960	20
1961	32
1962	22
1963	21
1964	29
1965	36
1966	29
1967	44
1968	35
1969	58
1970	40
1971	79
1972	41
1973	55
1974	33
1975	43
1976	58
1977	198
1978 (as 31 July 1978)	43
Total Number of By-laws passed	1,158

Source: Statutory Requirements Division,
Elections and By-Laws Unit.

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APPENDICES

Table II Types of By-Laws Passed*

Subject Matter	Number
Administrative and Financial Regulations	20
Appointment Band Officials	43
Burning Grass, Weeds and Rubbish	3
Construction and Repair Bldgs. and Roads	11
Curfew	69
Disorderly Conduct	20
Dog Control	2
Electric Power	6
Expenditure of Money	10
Fencing	4
Fire Department	2
Fire Prevention	3
Fish and Game	47
Garbage and Waste	65
Hawkers and Peddlers	26
Licencing	26
Local Development Commission	2
Pounds - Animal	44
Raising Money	3
Recreation Program	21
Sanitation and Health	32
Traffic and Traffic Signs	114
Use of Community Hall	4
Water Supply and Sewage	57
Weed Control	24
Zoning	13
Other	10
Total By-Laws	681

*Includes all Band By-Laws passed from 1951 to 29 Nov. 1971.

Source: The Canadian Indian: Statistics, Information Canada, Ottawa, 1973, p. 18.

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APPENDICES

Table III Bands Administering Own Revenue Moneys, Section 69 (As of 31 March 1971)

Region	Number
Maritimes	15
Quebec	25
Ontario	70
Manitoba	38
Saskatchewan	46
Alberta	27
British Columbia	83
Total	304

Source: The Canadian Indian: Statistics, Information Canada, Ottawa, 1973, p. 16.

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