Consultations
with the Indians people (1972)
/ Indian and Northern Affairs Canada

CONSULTATIONS WITH THE INDIAN PEOPLE

The discussion handbook "Choosing A Path" has been circulated throughout the Indian community. Many Bands have chosen their spokesman to attend the meetings with officials of the Department of Indian Affairs and Northern Development.

The attached papers have been prepared to assist the spokesmen in the discussions. They deal with the principal questions raised in the handbook and are intended to supply further background information. These are being sent to all spokesmen, chiefs, councillors and officials of Indian organizations.

In some cases alternative courses are set out, there are explanations of some of the provisions of the present Indian Act. The papers do not cover every question which could be raised or every part of the Indian Act. Any other questions which spokesmen wish to discuss and which concerns the Indian Act can be brought up at the meetings.

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WHY HAVE AN INDIAN ACT?

The Indian and the Indian Act

There have been suggestions that the whole of the Indian Act should be repealed and that no special legislation is necessary. Some people have said that the Indian Act has set the Indian people apart and that this has hampered their development.

The agreements or treaties which were made with the Indian people required legislation to implement some of the provisions in them. Some of the problems which might arise are discussed here. They deal with the question of who is an Indian, what is a band, what is a reserve and who is entitled to use it, whether a reserve should be treated separately from other land or whether the same rules which govern most landholdings should apply to land reserved for Indians.

Reserve Lands

If the Indian Act were abolished there would be no specific law which would say how lands set aside for the Indian people should be managed. Who could then sell, lease or otherwise manage Indian lands? In some cases the Indian treaties or the various agreements with the provinces might be used as a guide although these do not provide detailed rules such as those found in the Indian Act. The reserve land in some instances would come under the control and administration of the provincial government. This might be considered a desirable step by some bands as it might be possible for them to make arrangements that would suit their particular needs. If the provinces concerned agreed, the land could be kept in the hands of the bands. Each province might then have a different system and this could be better than having one system which covers all reserve lands across Canada. However, it would seem necessary to have some legislation to make certain the Indian people retain title to their lands.

In other cases, the reserves would remain as Crown land under the federal government and it could be managed in the same way as any other Crown land. It would also be possible to turn the land over to the various bands occupying them. They could acquire title to the lands. This would raise some problems, particularly with respect to taxation and seizure in the event taxes were not paid unless there was some legislation to exempt such land from taxation or seizure.

It seems clear that repeal of the Indian Act is not a simple matter. Without having other laws to deal with most of the land matters now covered by the Indian Act, there would be a great deal of doubt and confusion regarding the status of reserve lands.

Band Membership

Unless there are some rules to say who is a member of a band and who is not, no one could know for sure that he had a right to live on a reserve or to share in band funds. How would this problem be resolved? There are over 550 bands and each could well adopt their own rules on membership. The band or council would still be faced with problems that arise as a result of marriage between Indians and non-Indians, adoptions, illegitimacy, divorces, separations and other matters which almost always come up when trying to keep a list of people entitled to share in property. While the band could set its own rules they could be changed by the majority at any time and in some cases the majority might decide a person was not a member for no reason at all. This could happen wherever there were two groups not getting along together in a band.

It would be necessary to establish some regulations to define an Indian so that programs to help "Indians" could be carried on. This is done now for Eskimos although there is no Eskimo Act.

Band Funds

Band funds could be turned over to the bands. This is fine for most bands but it could lead to problems about distribution of income as soon as doubts arose about membership. As the funds belong to every member of a band, including children, there would have to be some regulation by the band to prevent a few from misusing the money which belongs to all.

Other Matters

While there may be advantages in not having an Indian Act it seems clear some serious problems might arise if all the provisions of the Act were suddenly withdrawn. Many of them could be met over a period of time by each of the 550 bands making its own rules, by using other federal legislation and by making agreements with each province. This would be necessary to meet some of the problems which Indian people would face in dealing with their property so long as they wished to keep it for themselves. At present, the Indian Act provides the legal framework. However, this does not mean that other legislation cannot be used or that it need be overly protective or restrictive or that it need apply to some of the matters now included in it. Over a period of years, as Indians take on more authority and responsibility themselves, as avenues are opened to use general legislation available to other Canadians there would be less need for special legislation and indeed some bands may wish to withdraw from the operation of most of the provisions of any new legislation. If the answer is that an "Indian Act" is not necessary some of the questions posed in "Choosing A Path" will not need to be considered. If an "Indian Act" is desired, the questions and any other related matter might be considered. All bands may not wish to do this at the same time and adequate provision would be needed for each band to proceed at its own pace.

A NEW NAME?

1. Should the name of the new Act be "The Indian Act" or would another name be better?

There has been an "Indian Act" in the book of Canadian laws for many years. The name describes the Act, which governs some of the affairs of the Indian reserve communities and sets up some rules for the management of Indian business. However parts of the Act have met resentment, some have been felt to be out of keeping with modern times. For this, and other reasons, the words, "Indian Act" are unpleasant to the ears of some Indian people.

Some have suggested that the Act should be given a new name. It is not necessary to suggest a suitable name at these meetings. If the Indian people believe that a new name is required, that could be said at the meetings. As the Summer and Fall go by, the Indians could decide what name they would like to see given to a new law. They could then send the names in to the Department where the suggestions could be sorted out and counted. The suggestions could then be reported to the Bands who could discuss them. They could then state their preference so it will be known what the Indian people want when the time comes for Parliament to decide what should be in the new law.

DELEGATION

2. Should the Act permit delegation of authority so that Band Councils and field staff can make more decisions?

The Indian Act states in many sections that the Minister must do certain things. The new Act could give individual Indians and Band Councils authority and responsibility to carry out many of the functions which the Act now says the Minister must do. The Minister will continue to have certain authority which he must exercise. So long as the Minister is required to issue permits, approve land transactions and the many other things set out in the Act it means that a great many documents must be signed and decisions made by the Minister. Under Section 3(2) of the present Act the Minister can authorize the Deputy Minister and the Chief Officer in charge of Indian Affairs to act for him and make decisions and sign documents. But this is not satisfactory for too many things have to be sent to Ottawa. If Section 3(2) were changed to allow Band Councils and field staff to make more decisions locally, it would also be possible to lessen the time it takes to get things done.

CONSENT

3. At present, persons or Bands can be excluded from the provisions of the Act without their consent. Should their consent be required?

Section 4 of the Indian Act provides that with the exception of Sections 37 to 41, which say that reserve lands cannot be sold or alienated without the consent of the band members, the Governor in Council may by proclamation declare that any other Sections of the Act shall not apply to an individual Indian, to a band or to a reserve or surrendered land.

It has been the practice in recent years for the Department to consult with each band council involved before taking action under this Section. It can be a very useful provision when the Act prevents a band from acting in a way they wish to do, or where it is not sufficiently broad to permit the particular action desired. However, the present Act does not require the Governor in Council to consult the band before making a decision. It has been suggested that the Governor in Council should not be able to exercise the powers now outlined in Section 4 unless the band council is in favour.

BAND MEMBERSHIP

Indian status and band membership have been safeguarded in the past, and they will continue to need safeguards as long as there are lands set aside for a specific group of people and special programs are in effect for this group.

Prior to 1951 it was difficult to define these safeguards because

(a) the definition of "Indian" was not clear;

(b) the provisions of the Act were not broad enough to apply to every situation, nor clear enough to avoid misinterpretation;

(c) there was no adequate record of band membership.

The 1951 Act, based on the recommendations of a Joint Senate-Commons Committee, was designed to overcome these problems by

(a) specifying who was eligible for band membership;

(b) establishing a central Indian Register at Ottawa on which all persons entitled to be recognized as Indians were to be registered;

(c) ensuring that this Register would be compiled systematically and kept up to date with any changes in Indian status;

(d) permitting individuals, groups of people, band councils, or the bands themselves to protest any names added to or removed from the Register, and to appeal the Registrar's decision to the courts.

But the Act did not solve all the problems and changing conditions and attitudes among the Indian people since that time have raised many new ones. The Indian people are now being asked what they want to see changed concerning band membership and withdrawal. The following questions outline some choices which are open to them and indicate how these choices might affect them.

Children of Unwed Mothers

> 4. Should the children of unmarried Indian mothers take their mother's status regardless of who the father might be?

Under the present Act, one child of an unwed Indian mother can be given Indian status, while a second child of the same mother and father can be denied it. This is possible because the status of some children as band members may be protested by the band, while other children of the same parent may be admitted. Sometimes the question of whether a protest is made or not may depend on the influence of the mother's family in the community, on the attitude of the band council, which may change from year to year, or on the attitude of the band itself. Most bands do not protest the admission of children considering them their responsibility (see Appendix, Table 1, for the number of protests received and the decisions made from 1961-68). But the Indian people should consider whether they want the Act to be changed so that all children of unwed mothers would be treated the same.

This could be done by removing section 12 (1a) of the present Act. If this were done, all illegitimate children would acquire their rights through their mother, as is now the case under provincial law in all provinces.

> 4. (a) "Should the child of an unwed Indian woman be required to give up Indian status if its Indian mother and non-Indian father subsequently marry?

When the mother and father of a child who was illegitimate when it was born get married, the child is legitimate under provincial law. If the child was registered as an Indian when it was born, it took its status from its mother. If it is decided that the mother should lose her status when she marries a non-Indian, the child would become the legitimate child of two non-Indians and might lose its status on that basis. This is a different situation than that which arises when the husband is not the father of the child. In that case the child is still illegitimate and unless formally adopted by the parents, remains so. Should such an adoption be treated differently from other adoptions?

Question 9 deals with other cases of the children of women who later marry non-Indians.

5. Should an Indian woman marrying a non-Indian take the status of her husband? Should each retain their own status as it was before they married? Should a non-Indian woman who marries an Indian, gain Indian status?

(See Appendix, Table 2 for the number of non-Indian women marrying a band member and Indian women marrying non-Indians, 1965-67.)

As mentioned above, the present Act requires the wife in an Indian-non-Indian marriage to take her husband's status. It considers the family as a unit, both the wife and the children taking their status from the male head of the family. But it means that two families, one with an Indian father, the other with an Indian mother, may be treated differently:

(a) When an Indian woman marries a man who is not a band member, she loses her membership in the band and cannot hold property on the reserve. She can continue to inherit reserve property, but must dispose of it within a limited period of time.

(b) When an Indian man marries a non-Indian woman, he loses none of his membership rights. Moreover, his wife acquires full rights to membership in the band, including the right to hold reserve property.

Many Indians feel the Act discriminates against women because their status is changed by marriage but that of their husbands' isn't. Others feel that the law does not discriminate because marriage is a voluntary act.

If the Act were left unchanged, the family would continue to be considered a unit, with the wife taking her husband's status. This would still allow more generous provisions to be made regarding the disposition of reserve land held or inherited by Indian women who marry non-Indians.

The Act could be changed to consider the family as individuals. There are choices to be made if this is decided upon.

(a) an Indian woman who marries a non-Indian could be free to either retain her membership and property rights in the band or withdraw.

(b) A non-Indian woman marrying a band member could be free to either retain her original status or become a member of the band.

The question of what happens to any children an Indian women who marries a non-Indian might have, must also be determined. Question 9 discusses some of the matters which arise when a family withdraws from membership. Should the same general rules apply to the family of an Indian woman who marries a non-Indian?

Under Section 108 (2) any minor unmarried children may continue in membership or withdraw from Indian status. The practice at present is that children under 16 lose their Indian status if they are living with the mother and foster father off the reserve and the mother consents. Those who are between 16 and 21 lose their status if they live with the mother and the foster father off the reserve and both the mother and the child give their consent.

If the present provisions on marriage are changed, are children still to have their status governed by that of their father? Are they to be free to make their own choice? At what age do they make this choice?

The new law could say that children of married couples take their status from their father, while children of unmarried mothers take theirs from the mother. Question 4(a) in this paper asks about children of an unmarried mother who later marries the father of the children. There may be a difference if an unwed mother marries a man who is not the father of her children.

Adoption

6. Should non-Indian children adopted by Indian families have Indian status?

(See Appendix, Table 3, for the number of Indian children adopted by Indian parents and by non-Indian parents from 1961-67. The number of non-Indian children adopted by Indian parents is unknown.)

Under the present Act, adoption does not change membership status. An Indian child adopted by non-Indian parents continues <u>in</u> membership. A non-Indian child adopted by Indian parents continues <u>out</u> of membership.

Under the laws of most provinces, adopted children are regarded as natural children. Welfare groups generally feel that for the sake of family well-being adopted children should have the same relationship with adoptive parents as if they were born to such parents, and many Indians support this view.

Others, however, want to see this clause continued in the new Act because they feel a change of status would deny both the Indian and non-Indian child his birthright.

If the Indian people wanted the adoption clauses in the present Act changed, there are two courses of action open:

(a) Legal adoption could mean a change of status. Non-Indian children adopted by Indian parents would become members of their parents' bands; Indian children adopted by non-Indians would lose their band membership.

(b) The Act could leave the choice with the child once he reached the age of 21. No Indian child would lose membership unless he decided to withdraw from Indian status once he reached the age of 21 which is the case now; a non-Indian child would automatically become a member of the band of its adopting parents but would have the option of withdrawing from band membership once he was 21.

A decision depends on what is most important to the Indian people. The well-being of the band, the child and the family are all important.

Withdrawing from Indian status

7. Should an Indian be able to withdraw from Indian status by simply deciding that he wishes to do so?

Under the present Act an Indian person can withdraw from Indian status in three ways: on application, automatically in the case of a woman when she marries a non-Indian, or as a member of a band which becomes enfranchised.

Under Section 108 of the present Act individual applications for withdrawal need the approval of the Governor in Council. Some Indians feel that this restricts freedom and that no approval should be necessary if an Indian who is of age and who is living off a reserve wants to withdraw from Indian status. The Act could be changed to reflect these wishes.

The present Act contains a provision under which some people at a time in the future lose their Indian status on the basis of blood count. Section 12 sets up rules under which certain persons who are the grandchildren of couples married after September 4, 1951, could be disqualified if both their mother and their grandmother were not Indians.

Although this clause cannot affect anyone for many years, many Indians believe it should be withdrawn because persons who might lose their status under this clause might very well have a higher proportion of Indian blood than some others who would not lose their status.

Young Couples

8. Should married couples, where the husband or wife or both are under 21 years of age, be able to withdraw from Indian status?

(See Appendix, Table 4, for the number of band members who have withdrawn from Indian status between 1958-68.) In the past, federal and provincial laws have considered a person to be an adult when he has reached the age of 21. Some provincial laws, however, now give adult privileges to persons at a younger age.

The present Act already allows Indians to get married when one or both of the partners is under 21. Should they not also be able to withdraw from Indian status if they wish? The Act could be changed, for example, to allow all married couples who are 18 years of age or older to withdraw.

When the husband is over 21, the present Act makes his decision to withdraw from Indian status binding on his wife and their minor unmarried children unless man and wife are living apart. Should the law require that the wife must agree where the couple are living together before her status can be changed?

Children

9. When a family withdraws from Indian status, should their children lose their Indian status too? At what age should children be allowed to choose for themselves? Should children be allowed to retain their membership, if their parents have dropped theirs?

When an Indian woman loses her Indian status by marrying a non-Indian, there are certain clauses in the present Act which prevent an automatic loss of status for her minor unmarried children (see question 5). It has been proposed that the minor unmarried children of an Indian couple who withdraw from band membership should have similar protection. There is no choice now; all minor unmarried children lose their membership in their band when their parents decide to withdraw.

Many Indian people feel this is unfair. If change is desired, it would be necessary to remove the clauses which make the father's decision to withdraw binding on his wife and minor unmarried children. Once this were done, a number of choices would be opened up:

(a) The new Act could provide that the withdrawal of parents does not change the status or membership rights of their children. This would mean that the children can make their own decision when they become 21.

(b) It could provide that only children under 16 would have to withdraw with their parents. Those between 16 and 21 could remain or withdraw as they wished. Should they need their parents' consent in either case?

(c) It could provide that the parents have the right to decide whether children under 16 will or will not withdraw with them.

Band Withdrawal

10. When a Band wishes to give up its status, should it require a two-thirds majority vote, or is a simple majority enough? Should a minority have the right to remain under the Act?

At present under Section 111 of the Indian Act if a simple majority of the electors of the band consents to become enfranchised the Governor in Council may proceed. Since withdrawing from the operation of the Indian Act is a serious step some have suggested that consent by more than a simple majority of the electors of the band should be required.

An alternative approach might be to provide for a minority group remaining in membership. It has been pointed out that in some areas there is a substantial movement of Indians off reserves. A situation could arise where the majority of a band resided off a reserve and might desire to withdraw from the operation of the Indian Act. They would have the voting power to achieve this result despite opposition from a minority still resident on the reserve. It seems reasonable that the rights of a substantial minority should be protected in such a case. On the other hand should a few members in a large band be in a position to obstruct the wishes of the majority?

One way might be to include in the new Act, a provision for enabling a minority group of reasonable size to apply to be constituted as a new band and to be given a fair proportion of the lands, monies and other assets of their former band. This would mean that those who wish to withdraw from the Act could do so and those who wish to retain their status and rights could do so as members of a new band.

ESTATES

13. Should Indians have the right and responsibility for dealing with their estates under provincial law?

Since 1880, the Minister has had jurisdiction and authority to deal with Indian estates. The authority of the Minister is found in Sections 42 to 48. As mentioned in the booklet "Choosing a Path" the Minister acts as a court. For other Canadians, there are laws passed in each province which deal with wills, descent of property when a person dies without a will and how the estate is to be distributed to the heirs in such cases. One advantage of the present Indian Act is that it provides uniform provisions in respect to wills, descent of property and distribution of property on intestacy. However, Indians do not have the right to manage their estates with the same freedom as other people. Indian Affairs Branch staff carry out many of the functions. In certain cases the Minister may direct that the estate be dealt with in the same provincial court that a non-Indian would use.

If provincial laws governing wills and estates were made applicable to Indian estates the Indians themselves instead of the Department would have the responsibility to see that the estate was dealt with. Where the assets consist of a few personal possessions, a small bank account and an old age security cheque, there would be no real difficulties encountered. Advice would be available on the steps to be taken.

About one third or more of all estates have reserve land as an asset. Where reserve land is involved the Department would provide information as to who was recorded as being in possession of land from the register of Indian Lands. In order to keep track of the ownership it is necessary to ensure that all estates dealing with land are administered. It is not foreseen that any substantial difficulties would be encountered where the land is of considerable value. In such cases the executor or heirs will likely take the time to make sure administration of the estate is undertaken and completed.

Where the value of the land asset is small the executor or heirs might not bother at all. If this were the case then it would not take long for the land records to become very inaccurate and no one would know for sure who owned what piece of land.

This could be overcome in part by having the Minister retain the right to intervene and have estates settled where land is an asset and the Indians have not acted. He would not be required to do it but would have the power when necessary. Where he does intervene and the estate is small, but still complicated, it might impose an undue burden on the estate to pay for the cost of administration and accordingly the Minister should have the right to relieve the estate of part or all of the costs which are usually a first charge against estates.

The administration of the estates of mentally incompetent Indians is authorized under Section 51 of the Indian Act. This only refers to property. They must have been found mentally incompetent within the meaning of the applicable provincial law before Section 51 comes into use. At present the provinces have officials who are specifically charged with responsibility for administering the property of mentally incompetents. The service of these officials are now being used extensively except where questions of Indian lands are to be settled.

There would not appear to be any need to continue special powers in the Indian Act to deal with the property of mentally incompetent Indians and it has been suggested this section be dropped from the Act.

The property of infants provided for by Section 52 is a different matter. Monies become available under the Indian Act to which an infant is entitled. Some authority is required to pay out monies to the parent, guardian, a public trustee, or like official and in some cases to hold the property in trust for the infant until he reaches the age of 21 or other proper arrangements can be made.

14. Should Indians and the Band be able to pledge all property other than real estate as security for loans with the lender being able to seize the pledged property if the debt is not paid?

15. Should individual Indians be able to pledge their right of possession to land to their Band Council (or the government) as security for loans?

16. Should Indians be able to borrow from any source using their income from leased out property as security for the loan?

The problem that gives rise to these questions comes from the fact that although we live in what is often called a "credit" society, not all the normal sources of credit are available to most Indians.

The main reason for this is the existence of Section 88 of the Indian Act. The Section prohibits real or personal property of an Indian or band situated on a reserve from being pledged or mortgaged to anyone other than an Indian. This places a serious limitation on the ability of Indians and bands to obtain credit. The Section was originally designed to protect Indians against losing their property.

Today, however, many Indians believe the need for this type of protection is far outweighed by the need to make additional sources of credit available to the Indian people. They point out that unless this is done most Indians on reserves will have difficulty in achieving economic advancement. The need for action has already been recognized in representations made by a number of Indian spokesmen. The question then is what changes could be made in the new Act to meet the problem without completely disregarding the need to protect Indian lands from alienation. There are several possibilities that the Indian people may wish to consider, under the headings, Personal Property, Real Property and Leasehold Income.

Personal Property

Question 14 seeks the views of the Indian people on the idea that Indians and bands should be able to pledge personal property as security for loans. It would be a simple matter to change the Act to allow Indians or bands to pledge chattels such as cattle, tractors, fishing boats, cars or trucks, equipment and other personal property as security. This would enable individuals and bands to borrow from banks and other sources of short term credit. However, enabling an Indian or band to give security would have to be coupled with a right being given to the person or institution who lent the

money to take legal action which could result in seizing the property if the loan was not repaid. Failure to repay would mean that the Indian or the band might lose the chattels that had been pledged. The seizure of chattels would require a Court Order so that the Indian would have the same protection in respect to improper seizures that the law gives to non-Indians.

Removal of this restriction would also mean that if anyone obtains a Court Judgement against an Indian and the Indian fails to pay whatever the judgement orders, it would be possible for the person holding the judgement to take steps to have enough of the Indian's personal property seized to pay the judgement.

At present the law simply states that individual Indians and bands cannot pledge their chattels to anyone but an Indian. It, therefore, denies them the right to decide whether the advantages of pledging their chattels to gain credit outweigh the possible risk of losing them should their business ventures fail. Many Indians feel that the individual Indian and a band should have the right to make this decision and that the law should not deny them the opportunity to do so.

Real Property

Question 15 seeks the views of the Indian people on the question of pledging real property (land) as security for a loan. It will be obvious that if the Act is changed to permit individuals or bands to pledge real property as security for loans, the person or corporation granting the loan would need to have the right to take over the property if the loan was not repaid. Real property security would be meaningless unless this right existed. However, the result would be that the land would be taken from the reserve and it is doubtful if any band would wish this result. In fact, therefore, sources of intermediate or long term credit which would require real property on reserves as security are not likely to be available to Indians or bands through the normal lending sources.

The bands interest in, rather than title to, a parcel of land could be placed as security for a loan if the lender agreed to make a loan on this basis. The Act would have to provide that if the loan was not repaid, the lender would have the right to make use of the land for whatever period was required to recover his loan. The land would not be taken from the reserve in this case. The lender of the money would simply be permitted to use the land for a term of years.

The Act could also provide for an individual Indian to pledge the land he holds as security for a loan from his band or the government. If he borrowed from the band and failed to repay the loan the Act would need to provide that the band might take possession of the land from him and depending on the circumstances, either lease it until the loan is repaid, sell the land to another band member, retain it as band land or re-allot it to another band member. In the case of a loan from the government, the Act would have to

provide means for it to recover the money if the Indian failed to repay. It would seem reasonable in such a situation that the government could lease out the land until it had recovered the amount of the loan or if this is not possible it could sell the land to either a band member or the band.

Leasehold Income

Question 16 seeks the views of the Indian people on the question of whether Indians should be able to pledge income from leases as security for loans. If this idea is approved, it would open some sources of credit to Indians and bands. There are many more long term leases to-day than there used to be. This means that individuals and especially bands, know that they will have a certain income over a fixed period of years. If they could pledge this future rental income as security for a loan, the lender could be confident that the loan would be repaid. Such a provision in the new Act would certainly help many Indians to get short term credit. There would, of course, have to be a provision in the Act enabling the lender to collect the rent in the event the Indian or band defaulted on the loan. It would simply entitle the lender to receive the rent. He could not make use of the land or do anything that would affect its remaining part of the reserve.

THE CANADA PENSION PLAN AND THE QUEBEC PENSION PLAN

17. Should Indians whose income is earned on reserves and not taxed, contribute to the Canada Pension Plan, or if they live in Quebec, the Quebec Pension Plan?

Among the most important of all Canada's social stability programs are the contributory pension plans — the Canada Pension Plan and the Quebec Pension Plan. As the legislation now stands, Indians whose income is earned in the Reserve community do not benefit from either of these programs.

Persons who pay into these plans are building pension benefits which they collect after they reach retirement age. There are other benefits in case of disability or death.

Almost all persons who work for others or who operate their own businesses are covered. The amount each person pays in is based on the amount they earn and which they report in their Income Tax return.

Those who earn more than $600 a year if they work for others or $800 a year if they operate their own business contribute a part of the amount they earn over $600. Those whose income is more than $5,100 pay their contribution, but it is a fixed amount and the contribution does not get greater after this income has been reached.

Section 11 of the Canada Pension Plan says, *"the amount of the contributory salary and wages of a person for a year is his income for the year from pensionable employment, computed in accordance with the Income Tax Act. . ."*

Section 13 of the Canada Pension Plan provides that the amount upon which a self-employed businessman bases his contribution is his income less his losses as computed under the Income Tax Act.

The Quebec Pension Plan has the same rules. Thus the Canada Pension Plan and the Quebec Pension Plan only apply to persons who have a taxable income according to the rules of the Income Tax Act.

Section 10 (1) (a) of the Income Tax Act says that a person shall not include in his income *"an amount that is declared to be exempt from income tax by any other legislation of the Parliament of Canada."*

Section 86 (1) of the Indian Act provides as follows:

> "86 (1) Notwithstanding any other Act of the Parliament of Canada or any other Act of the legislature of a province, but subject to subsection (2) and to section 82, the following property is exempt from taxation, namely,
>
> (a) the interest of an Indian or a band in reserve or surrendered lands, and
>
> (b) the personal property of an Indian or band situated on a reserve, and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of such property. . . ."

Because of the provisions of Section 86 of the Indian Act, the income earned by an Indian on a reserve has not been included as part of the income for Income Tax purposes. Thus, due to the provisions of the three Acts, the Canada Pension Plan (or the Quebec Pension Plan), the Income Tax Act and the Indian Act, an Indian cannot contribute to the Canada Pension Plan on the basis of his earnings on the reserve.

The one exception is that Indians employed on reserves and contributing to the Public Service Superannuation Act are covered by the plan even though their income is exempt from taxation. This is because Section 33 of the Statute Law (Superannuation) Amendment Act, 1966 reads:

> *"There shall be included in calculating, for the purposes of the Canada Pension Plan, the amount of the contributory salary and wages for a year of a person who is a contributor under the Public*

Service Superannuation Act and whose salary as defined in that Act is not otherwise included in computing income for the purpose of the Income Tax Act."

Indians living on the reserve and earning their wages off the reserve are covered by the pension plans if their income is over $600 and those who operate businesses off the reserve are covered if their income is over $800.

There are two ways of bringing the benefits of the pension plans to Indians who earn their living on reserves:

(a) Remove personal property from section 86 thus making all income earned on reserves subject to Income Tax and the pension plans, or

(b) Make provision in the new Act so that income which is exempt from taxation could be used for calculating contributions and benefits under the Canada Pension Plan. The same provisions could be made for Indians living on reserves in Quebec to be covered by Quebec Pension Plan.

If the first proposal were followed it would mean that all Indians earning income on a reserve who earned enough income to be subject to Income Tax would have to pay tax. They would be treated equally with Indians earning their income away from reserves and all other Canadians.

If the second alternative were to be followed it would be necessary to provide in the new Act for the following:

(1) Continue the exemption from income tax on income earned on reserves.

(2) For the purposes of the Canada Pension Plan, an Indian's income earned on a reserve would be computed as though it were taxable even though it would not in fact be taxed.

(3) Authority would be included in Section 66(2) to authorize payments to the Canada and Quebec Pension Plans or future contributory social security programs and plans on behalf of band employees.

(4) A starting date would have to be established. Both plans became effective January 1, 1966.

(5) The Province of Quebec would be asked to make similar provisions for Indians living there.

EDUCATION

18. Should provincial laws, with special provisions for separate schools where there is no legal provision for them now, replace the present educational sections of the Act; or should provincial laws with no special provisions replace them? Do you have other views about education?

During the period 1948 to 1951 when the present school provisions of the Indian Act, (Sections 113 to 122), were being proposed, most Indian children attended federal schools. In 1949, for example, only 1,300 children attended provincial schools. There has been a great deal of change since then. In 1967, over 34,000 out of 66,000 Indian children or 52.5% were being educated in non-federal shcools. This trend indicates that fewer schools will be operated directly by the Department in the years ahead.

It would appear that school attendance regulations for Indian children will need to be revised to bring them into line with current developments. All provinces have regulations regarding attendance at school and it would be possible to permit Indian children to attend school under these rules and also provide that religious rights will be protected through the operation of separate schools.

Indian parents have expressed a desire to participate in the operation of the schools their children attend. There have been some developments in this field in recent years. Provincial governments have been requested to provide for Indian representation on school boards. Some provinces have already made this possible. In some cases, Indians may be appointed to a Board, as in Ontario, or have the status of electors as in New Brunswick. In Saskatchewan and British Columbia they may make application for the status of electors. Local school committees could also enable Indian parents to assume more responsibility for the educational program in the community.

PRAIRIE PROVINCES PRODUCE PERMITS

22. A Section of the Act says that Indians in the Prairie Provinces must get permission from the Agency Superintendent before they can sell animals or produce off the reserve; do you agree that this section should be repealed?

Section 32 of the Act which contains this provision has been in the Indian Act for many years. Since it applies only to the Indians in Manitoba, Saskatchewan or Alberta, it would impose restrictions on them that do not apply to Indians elsewhere. Some Indians in these provinces feel that the

section infers that they are not as capable of managing their affairs as other Indians. In so far as can be ascertained today the provisions were introduced into the Act in the early days of the development of Western Canada, when Indians were turning from the habits of earlier years to farming and raising cattle on reserves. Unscrupulous persons were taking advantage of the Indians' limited knowledge of prices and times when prices would be highest and what appears to have been an extremely dictatorial provision was originally intended to protect the Indians and ensure that they received maximum benefit from farm produce or cattle.

There have been representations from many Indians to have such restrictive provisions removed from the Indian Act. In the view of the government there is no reason why this provision should be continued.

JUSTICES OF THE PEACE

23. Do you agree that the section giving authority to appoint the Agency Superintendent as Justice of the Peace should be repealed?

In past years it was standard practice to have Agency Superintendents appointed Justices of the Peace to hear charges laid under the Indian Act. Such appointments were often necessary to ensure that laws would be observed, particularly in the remote areas where other Justices of the Peace or magistrates were not readily available for many miles from where the offence might have been committed. Also there were early problems concerning the authority of these persons to act in respect to offences created under the Indian Act.

The situation is much different today and it is the belief of the government that the same justice should prevail for all residents of an area. The functions are not being exercised today and it is, therefore, proposed to eliminate Sections 105 and 106 of the present Act.

LIQUOR

24. Do you agree that the sections on liquor should be repealed?

All Indian Acts have contained provisions restricting the use of liquor by Indians. These were designed as protective measures. Only after 1951 was there any relaxation. Limited access to drinking was premitted provided the province and the Government of Canada agreed. This was relaxed further in 1956 to permit drinking on reserves following a referendum and approval of the Government. At present Indians in all provinces and territories may drink liquor off a reserve and nearly 200 bands have voted in favour of allowing liquor on the reserves.

1. Many Indians believe, as does the federal government, that the special liquor provisions (Sections 93-99) of the Indian Act are not necessary and should be excluded from a new Indian Act. If this were done it would mean that the provincial laws respecting the use and sale of intoxicants would apply equally to all residents of a province, Indian and non-Indian alike.

2. Some Indians are opposed to any changes in the provisions because they think they would not be in keeping with the provisions of their treaties. Treaty No. 6, covering some of Alberta and Saskatchewan, is typical of the provisions of those treaties that contain a reference to liquor. It is partly quoted below:

> "Her Majesty further agrees with Her said Indians that within the boundary of Indian reserves, *until otherwise determined by Her Government of the Dominion of Canada,* no intoxicating liquor shall be allowed to be introduced or sold, and all laws now in force, or hereafter to be enacted, to preserve Her Indian subjects inhabiting the reserves or living elsewhere within Her North-west Territories from the evil influence of the use of intoxicating liquors, shall be strictly enforced."

In short, the effect of the treaty provision was to prohibit the use of liquor by Indians until such time as the government might decide the prohibition was no longer required.

The following alternatives would appear open for consideration:

1. Return to complete prohibition which was the position before 1951. There has been very little support for this in recent years.

2. Leave the liquor provisions as they are. This would allow Indians to have liquor in accordance with provincial law on or off a reserve where the necessary action has been taken by the band, the province and the federal government. It would also mean that Indians would continue to be treated differently than other Canadians and that they would be subject to penalties which are not imposed upon other Canadians.

3. Remove all reference to liquor from the Indian Act. This would mean that the Indian people would be subject to the same rules and the same penalties that apply to other residents of the province or territory in which they live.

MANAGEMENT OF BAND FUNDS

27. Should Band capital funds be used for making grants, loans and guarantee loans to individuals? Should revenue funds be used for such purposes? How wide should Band Council's powers over Band funds be?

Band councils are restricted in many ways because there are many things the Act does not allow the department to approve. It has been suggested that a more flexible approach will allow Band Councils to meet more of the needs of the people. To broaden the scope of Band Councils' authority, the Minister should be allowed to do some things when the Band Councils ask, which he cannot do at this time.

Section 59 of the present Act, for example, allows the Minister to reduce or adjust balances owing to the band in respect of sale, lease or other disposition of surrendered lands or other band assets. Even if the band councils agree, however, he may not in any of these cases cancel an uncollectable debt. If the Indian people believe that such a cancellation would help them in the orderly management of their own affairs, the Minister should be given the power and authority to cancel the debt and any interest on it.

If this is agreed, then the spokesmen will want to consider whether the Minister should also be able to cancel debts, and the interest on the debts, which are owed to the band by Indians who have borrowed from the Band funds. These changes would enable a Band Council to write off uncollectable debts and not have them continued on the books indefinitely.

Welfare Costs

In broadening the powers of the Band Council, consideration could be given to allowing the expenditure of Indian monies to provide for the health and welfare of all persons, Indian or non-Indian, resident on reserves. There are occasions when Band Councils need this authority. For example in one province Bands are considered to be a "municipality" for the purpose of the Provincial Welfare Assistance Act and receive grants of 80% of the cost. To take advantage of this legislation the Band must agree to help everyone in need who lives on the reserve.

Capital Funds

Where the expenditure of capital funds has been approved, it would be more efficient if the Act permitted the necessary funds to be transferred into the revenue account of the Band. It would then be accounted for as either "Capital" or "Operation and Maintenance" as the case may be. This would enable accounting of Bands funds to follow more closely municipal practice.

An addition could also be made to the Act to let a Band Council place any income received by the Band Council in the Band capital funds so that money spent from this fund can be paid back.

The present wording of Section 62 of the Act only allows for monies from the sale of capital assets to be placed in capital funds. Band Councils have been approving the spending of capital funds for projects such as the building of community halls, the development of farm lands and park sites, etc.

They have then repaid capital funds, either from revenue from the operation of these projects or from the annual revenue budget over a number of years. If Bands wish to continue repaying capital funds from their revenue, then the Act must be changed accordingly.

Rental Income

Section 63 of the present Indian Act allows money, belonging to an Indian and paid to a Superintendent under any rental or other agreement, to be paid directly to the Indian. Should money received by Superintendents on behalf of Bands be treated the same? At present, money belonging to a Band and paid to a Superintendent under any rental or other Agreement made under the Act must be sent to Ottawa and credited to the Band funds. It can be paid out again to the Band only if the Band has permission to control, manage and spend its revenue moneys as outlined in Section 68 of the Act.

Bands having the right to rent out lands may want to be able to collect this money, place it in their bank accounts and manage it under Section 68 of the Act. If so, they should also be allowed to collect such money and forward it to the Branch for deposit in their Band funds, or alternatively any rentals collected by the Superintendent might be paid to the Band for deposit in the band's bank account.

Income From Sales

Section 64(a) of the Act allows up to one half of the proceeds from the sale of surrendered lands to be equally distributed to Band members. This section could be amended to allow equal distribution of up to half the Band money which came from the sale of any capital asset of the Band, not just from surrendered lands. The amount which may be distributed should be clearly stated and might be limited to half the total received from the sale of any capital asset.

The rest of Section 64 outlines the conditions under which the Bands' capital money can be spent. These are restrictive and the Act would be more flexible if they were dropped. Instead there could be a general provision that the Band Council could request the use of the capital funds for any purpose which will help the Band or any member of the Band, including grants, loans, and the guarantee of loans. Authority could be included to make rules for use of capital money. These could be changed at any time to meet new needs.

Consent of Council

Section 65(b) allows the Minister to spend capital funds *without the consent of the Band Council* to prevent or stop grass or forest fires or to protect the property of Indians in cases of emergencies. This provision has not been used for years and it has been suggested that it be dropped from the Act.

Section 66(1) states that with the Band Council's approval the Minister may authorize and direct the spending of revenue monies for any purpose which he feels will help the Band or any member of the Band. This could be amended to specifically include us, of revenue monies for grants, loans and guarantees of loans.

Section 66(3) outlines certain purposes for which Band revenue monies can be spent by the Minister *without consent of the Band Council.* This could be removed since it is no longer used.

Support for Dependents

Section 67 of the Act has to do with the payment of money for the support of dependent Indians who are deserted by the husband or wife. At present it is left to the Minister to decide whether to pay money to a dependent or not. This could be changed so that money belonging to an adult Indian, and held by the Department or a Band, may be used to assist any dependent who has been deserted and who first gets a court order giving the right to such payments.

Managing & Investing

Section 68(1) allows the Governor in Council to permit a band to control, manage and spend, in whole or in part, its revenue monies. Some bands believe that the Governor in Council should also have the right to allow a band to control, manage and spend, all or part of its capital monies. This would permit a band, if it wished, to manage all its funds. It would be able to have its own bank account in a local bank and pay all its own accounts for its own capital and operating expenses.

When a band takes over full control and management of its band funds it will have to decide what it is going to do with the money not needed for current expenses. At present such funds are held by the Government of Canada and interest at the rate of 5% per annum is paid on them. Some bands may wish to invest their surplus capital and revenue funds themselves. The money belongs to all the members of the band and it must be safely invested. This could be done by allowing band funds to be invested only in securities which are guaranteed by the Government of Canada or by a province. This would make sure that the band funds would be protected. At the same time each band managing its own funds would have an opportunity to get the highest safe income.

BAND ELECTIONS

Although at the present time band councils may be chosen according to band customs, most band councils are elected according to the regulations set out in Sections 73 to 79 of the present Indian Act. The following questions discuss the ways in which these regulations could be changed to reflect the needs of Indian communities.

Vote Before Change

28. The present practice is to take a band vote before changing the local government system from band custom or before making any other change; do you agree that this should be required by law?

Under Section 73(1) the Minister may order that the elective system apply to a band. The Minister is not required to ask band members whether they wish to have their councils chosen by elections rather than by tribal custom. While it has been the practice to have bands vote for or against having the elective system the law does not require this. It has been suggested that the law should provide that changes regarding the system of elections that a band wishes to adopt, should require a vote of the band and only if the majority of those voting agree should any change be made. If the Indian people desire this kind of safeguard it could be included in the new Act.

Voting Age

29. Should the voting age be that for provincial elections?

Under the present Act, a voter in a band election has to be 21 years old, a registered band member, and living on the reserve. It has been suggested that the right to vote now be given to all members of the band who are old enough to vote in the elections of their province, whether they live on the reserve or not. The age for voting in the provinces is as follows:

British Columbia	19
Northwest Territories and Yukon	21
Alberta	19
Saskatchewan	18
Manitoba	21
Ontario	21
Quebec	18
New Brunswick	21
Nova Scotia	21
Prince Edward Island	21
Newfoundland	19

If these changes were accepted, a voter or elector would be defined in the new Act as a person who is a registered member of the band holding the election, who is of the legal voting age, and who may live on or off the reserve.

Canadidate's Age

30. Should candidates for Band Council have to meet the age requirements of provincial laws for municipal office?

Under the present Act, there are two requirements for a band council candidate. He must live on the reserve, and his nomination for election must be moved and seconded by band members who also live on the reserve and are electors. He must be 21 years of age. If the voting age is lowered, minors might be elected as councillors. This cannot happen on municipal councils except in Newfoundland because all the other provinces require candidates for office to be 21 years old, even if the voting age in the province is lower. A similar provision could be made in the new Act.

The present Act is silent on other matters concerning council candidates. There is nothing to prevent an election official from being a candidate, but if he were, he could, for example, make it difficult for those who opposed him, to vote. This cannot happen in federal, provincial or municipal elections because the election laws prevent anyone involved in carrying out the election from being a candidate. It has been proposed to include such a law in the new Indian Act to make the elections as fair as possible.

The present Act does not exclude police officers from being candidates either. Most municipal acts, however, specifically exclude policemen as candidates, because they might use their position to try and force people to vote for them, and if they were elected, it would be difficult for them to enforce the law without favour to anyone. It has been suggested that the Act be changed to exclude constables from being candidates.

Should full-time employees of the band be eligible to run for office of Chief or Councillor or hold office while they are employed by the band? Municipal, provincial and federal laws specifically exclude employees of these governments from being candidates to make sure that there is no conflict between the interests of the candidate and that of the community as a whole. Such an employee must resign or get leave of absence from his job before he can run for office. Should there be such provision in the new Indian Act for candidates in band elections?

Single List

31. Should it be possible for a Band to choose its chief and councillors from a single list of candidates, with the person getting the most votes becoming the chief and a number of others becoming councillors?

At present, band members vote separately for a chief and for the councillors. It is proposed to keep this but it has been suggested that in addition there be a provision in the new Act to allow bands who wish to do so to choose their chief and councillors from just one list of candidates. The candidate who received the highest number of votes would become the chief and a certain number of the others become councillors. The present Act also requires that both candidates and voters in band elections live on the reserve. This has been questioned because it denies those who have to go away to work the right to vote or run for office. All members have a stake in the reserve and many Indians believe that anyone interested in returning to the reserve on election day should be able to vote or run for office.

Council Term

32. Should the length of Councillors' terms have a fixed time limit of one, two or three years as decided by the Band? Should Councillors' terms overlap so that only part of the Council comes up for election at one time?

Under the present Act, a Chief or Councillor is elected for a two-year period. Some bands have said this is too short. In many cases if the band council starts a project, there is a possibility that it will not be continued or completed within the two-year period. By extending the length of time a councillor is in office, more of the work started could be completed. Most municipal councils in Canada are elected for terms of two or three years. Some bands, on the other hand, do not want a longer term of office as it would mean they might have to wait a long time before they could change their chief and councillors, assuming these people did not do things the community wanted done. Provisions could be made under the new Act to take all these opinions into account by giving bands the choice of having 1, 2 or 3 year terms of office for their chief and councillors.

Some bands also suggested that the terms of office for councillors overlap, so that not all of the councillors would be elected at the same time. This would mean that there would always be someone with experience on the band council.

Invalid Elections

The present Act gives the Minister the authority to decide whether an election is a proper one. On his advice, the Governor in Council may set aside elections if there has been a violation of the Act or if there has been corrupt practice in connection with the election. In addition, the Minister may declare the office of Chief or Councillors vacant on the basis of a person being convicted of an offense, being absent from council meetings three times in a row without being authorized to do so, or being guilty of corrupt practice in connection with an election. The Minister acts like a judge in these cases, and many bands feel this should be changed. Under municipal

law the courts are used for this purpose and it has been suggested that the same practice be followed in connection with band elections. This would mean changing the Act so that any elector questioning the validity of an election or asking to have the seat of an elector declared vacant must apply to the courts. The power of the Minister and the Governor in Council to declare offices vacant or elections invalid would be removed.

Municipal acts make it illegal for persons to remain in office after they have been disqualified or defeated in an election. Those that do so usually have to pay a fine ranging from $20.00 to $50.00 for each day they continue to hold office after they are no longer entitled to do so. It has been suggested that a similar safeguard be included in the Indian Act.

Filling Vacancies

Under the present Act, a special election can be called to fill the office of chief or councillor if this becomes vacant more than three months before another election would ordinarily be held. There is a lot of work to be done before the election, however—nomination meetings to be held, voters' lists to be prepared – which in many cases will mean that the person who is elected is only in office a very short time before the regular election is called, and it has cost the band a lot of money in the meantime. One way of getting around this would be to extend the three-month period to six months. An alternative would allow the council to appoint a qualified elector of the band —perhaps the defeated candidate who was next in line for the position – to fill the unexpired term as is done in some municipalities. This would mean the position could be filled quickly at no extra cost to the band.

There are a number of other procedures under the present Act having to do with the holding of elections, the nomination of candidates, secrecy of voting and the conduct of the poll. These can be covered by regulations as they are under the present Act. They can then be easily changed if necessary to suit changing conditions.

TRADING WITH INDIANS

Section 90 of the Indian Act provides that no teacher on a reserve, missionary engaged in mission work among Indians, or an employee of the Department shall trade for profit with an Indian, or directly or indirectly sell him any goods or chattels without a license from the Minister. In addition, full-time employees of the Department may not trade with Indians under any circumstances. These provisions were first included in the Indian Act many years ago when farming instructors, Indian agents, missionaries and teachers often operated farms or small stores and it was felt desirable to protect Indians from possible exploitation.

In recent years, more Indians have become full or part-time employees of the Department and under the present law they may not trade for profit or sell any goods or chattels to other Indians. For example, a part-time Indian employee could not operate a small store on a reserve and sell cigarettes, chocolate bars and other goods to an Indian. He cannot sell a car, a horse, or any other goods without first obtaining a license from the Minister. A full-time employee is barred completely.

There would appear to be little need to continue the present provisions. They have fallen into general disuse. Employees can be adequately dealt with, without a special provision in the Indian Act.

Local Government

33. Should individual bands be able to select the kind of local government which suits it so that each community can manage its own affairs to the degree that each band wishes?

Local government is merely an organized way for any community to administer programs or do certain things within the community for, generally, the peace, health, and welfare of the residents of that community. Such an organization is often referred to as a municipality and is governed by either an appointed board or en elected council depending upon the circumstances. Under the British North America Act the provinces were given complete control over "municipal institutions. . .". As a result the type of organization and the powers of the local government vary from province to province.

In Canada these local governments are called by such names as cities, towns, villages, rural municipalities, townships, counties, parishes or districts. How and why any particular area has the name that it does will vary between provinces and depend upon the provincial legislation. For instance, in some provinces the name depends upon the number of people living in any particular area and as the population increases the name changes from village, to town, and finally to city, and the powers each can exercise change also. In other provinces there is considerable flexibility.

The powers which each type of local government may exercise also vary between provinces and between the different types. For instance, in some provinces a city may do some things which a rural municipality may not do or may do in a different way. What a local government may do in one province may not be exactly the same as permitted in another province. In any case what each may do is set out in provincial laws or regulations, and general guidance and assistance is provided through a provincial department of municipal affairs or board or both. For many years the Indian Act has contained provisions so that Indian people could have their own form of government in reserve communities.

Although, as indicated above, the function and powers of local governments vary between the provinces and the kind of organization, the type of powers, programs, projects and regulations in which they are involved usually include:

(a) powers to construct and maintain, sidewalks, roads, bridges and other local works;

(b) powers to construct, maintain, and operate sewer systems, water systems, hydro systems, street lighting, gas system, transit systems, drainage systems, garbage systems;

(c) powers to regulate the license businesses, trailer camps, and marinas;

(d) powers to purchase, construct and maintain buildings for public purposes;

(e) powers to operate and maintain libraries, parks and recreation programs;

(f) powers to prevent cruelty to animals and to license and regulate dogs;

(g) powers to regulate exhibitions, shows, fairs, pool halls;

(h) powers to regulate noise, public nuisances, fireworks, firing of guns; guns;

(i) powers to protect the health of the residents by such things as regulations related to water supplies, sewage and garbage disposal, infectious diseases, inspection of restaurants and stores and the operation of a health program;

(j) powers to operate an education system (although this is usually done by a special body such as a school board under the direction of a Department of Education);

(k) powers to control and prevent fires;

(l) powers to regulate and control buildings and other structures such as fences or billboards;

(m) powers to make grants to certain types of organizations;

(n) powers to operate a police force, enforce laws to control and prevent crime;

(o) powers to regulate traffic;

(p) powers to provide for the proper planning of the community;

(q) powers to enter into contracts for public works;

(r) powers to operate a social welfare program including general welfare, child welfare, homes for the aged, child nursery services;

(s) powers to levy property and business taxes and service fees;

and many others.

Under the present Indian Act band councils have many of the powers listed above which they are able to use if they wish. In most provinces the

municipalities must do certain things - they have no choice. In other cases the provinces give the municipalities the right to do certain acts or not to do them as the local council chooses. In some instances the local council, if it chooses to perform a certain function, must do so according to specified regulations.

Programs require money in order to carry them out. Most provinces, to assist the local government, have extensive grant programs, but the local government must raise some of the necessary funds itself. For this purpose the local government is given the power to raise money within the municipality by levying taxes of one type or another such as property tax, poll tax, local improvement tax or service fee. How much they raise is up to the local council except that normally it must raise sufficient funds to pay for every program or project which they propose to undertake in any year. For large projects it may be permitted to borrow money but in these cases it must raise sufficient resources in subsequent years to meet the annual payment on the loan and the interest charges. Section 82 of the Indian Act provides similar authority to band councils to raise money from land assessment and licensing businesses.

The Indian Act could be amended to broaden the powers of local band councils to bring them close to the same type of powers which the provinces give to their municipalities. Not all bands will want or have the resources available to carry out the functions usually carried on by local governments. Some may wish to do only certain things and not others; and some may want to do everything possible. To accomplish this would require flexible and permissive legislation that would enable each band to decide for itself just how far it wished to go. It would also require some regulations to be made to ensure that the band's resources were properly accounted for and to ensure fair play and justice to individual band members.

INDIAN RESERVE LAND

Over the years, land has been set aside as Indian reserves for various tribes or Indian bands. This has been done by way of grants from the French or British Crown; as part of a treaty agreement with the Indians; by laws of the federal, provincial or, in the early days, colonial governments; by an outright purchase by either the Crown or Indian bands; by an agreement with provinces; or by a combination of two or more of these arrangements.

With but few exceptions, all such land is held by the Crown for the use and benefit of the various Indian bands. However, many reserves are subject to the terms of an agreement with the province in which the reserve is located. The title to some of this land is held by the Crown in right of Canada while others are held by the Crown in right of a province. In either case, Indian bands have the use of this land which may be administered by the federal government under the terms of any agreement that applies.

In view of the many ways and varying agreements under which reserves have been established in the past, it is necessary to weigh carefully every proposal relating to the use of disposition of the reserve land. It should be pointed out out that neither the provisions of the present Indian Act nor any new Act can be applied in exactly the same way on every reserve. Each reserve situation must be examined separately and arrangements made which will allow each band to operate in a way that will benefit each most.

Rights in Reserve Lands

11. Page 14 of "Choosing A Path" gives a list of suggested changes in property ownership regulations for reserve property. Are they suitable suggestions for your band?

The present Act enables band councils to give band members rights to possession of parcels of reserve land. The system set out in the Act, Sections 20-27, has not been very satisfactory. Nor has it been accepted by all bands for various reasons.

It has been suggested that the system be continued with changes that would not only set out clearly what the rights of band members are when they have lawful possession to parcels of land, but also protect the general right of the band in the reserve and enable band councils to control the allotment of land in a way that will help the band.

One of the weaknesses in the present Act is that it does not state clearly and in one place all the various ways in which an Indian may acquire lawful possession of land in his reserve. This fault could be overcome by making it clear that an Indian is in lawful possession under the new Act (a) where he holds a location ticket issued under the authority of previous Indian Acts; (b) where he holds a Certificate of Possession under the present Act or a Certificate of Occupation and is entitled to have it converted into a Certificate of Possession; (c) where he has received and registered an allotment from his band council under the new Act; (d) where he has bought the land from, or been given it by, a member of his band; (e) where he has received the land from the estate of a deceased member of his band; (f) where he has acquired the land through legal action arising from non-payment of a loan he made to a band member.

It has been suggested that the new Act should broaden the authority of band councils to impose conditions upon the allotment of land to individuals and should set out the authority more clearly than the present Act. Councils could control allotments by zoning or land use by-laws as well as by imposing conditions by resolution in particular cases. With this authority, councils would be able to draw up plans for the orderly development of their reserves and impose conditions on allotments to make sure that the allotments fit the plan and are in the general interest of the band.

It is also important for both individual members and band councils to clearly understand the rights of an individual who has lawful possession to a parcel of land in a reserve. Most of these rights are stated in the present Act but they appear in various sections and for that reason have not always been understood. The new Act could set all this out in one section in clear terms. The Act could say that an individual who has lawful possession of a parcel of land has –

(1) The exclusive right to the use of the surface of the land subject to (a) the right of the band to limit such use by by-laws with respect to zoning and land use; (b) the land or part thereof being taken from him as provided in Section 18 and Section 35, and (c) the land being leased without his authority if he neglects it and the state of neglect is causing damage to others.

(2) The right to transfer possession of the land to his heirs.

(3) The right to give away or sell the land to another member of his band or to the band.

(4) The right to pledge his land to his band or the government as security for a loan (if your answer to Question 15 in "Choosing a Path" is in favour of this proposal).

(5) The right to ask the Minister to lease the land on his behalf.

(6) The right to personally lease his land (if it is agreed that individuals should have this right).

Some Indians have pointed out that the present Act does not provide adequate means of settling land disputes between individual Indians or between an Indian and his band council. The new Act might include a provision enabling disputes over property to be dealt with by the Courts if the persons involved cannot settle their dispute or feel that they have not been fairly treated.

Other changes in the proposed land system are described on page 14 of "Choosing a Path" under the title "Reserve Lands".

Management of Reserve Lands

Questions 12, 19, 20, 21, 25, 26 and 34 all seek answers to problems concerned with the management of reserve lands.

Historically, the general management of reserve lands has been undertaken by the Minister responsible for Indian affairs. The management has been controlled in some degree by the wishes of the bands. For example, a surrender by the band is required before the Minister may sell reserve land. Band councils have been given some limited authority in land matters but in practice the real management authority has been retained by the Minister.

There has been increasing criticism of this fact. Many Indians believe that they are quite capable of managing their own affairs and feel that they should be given the legal authority to do so. The government also believes that the situation should be changed and that bands that wish to do so should be able to take on increased authority.

To achieve this result there would have to be changes in the Indian Act. The question is what changes in respect to what matters. It may help the Indian people to express their views on this if management of reserve lands is considered under a number of topics such as (a) sale of reserve land, (b) leasing of reserve land, (c) community aspects of land management, (d) disposal of miscellaneous reserve resources.

Sale of Reserve Lands

12. Should the present rules about selling reserve land be kept, or changed?

The present law requires that there cannot be any sale of reserve land unless there has first been a surrender by the band. Such a provision has been in the Act from the beginning. It ensures that such a serious matter as selling part of a reserve must be considered and voted on by the band members. The Indian people seem generally satisfied that this protective feature of the present Act be retained.

19. Should all adult members of a band whether or not they live on a reserve be allowed to vote on surrender proposals?

Section 39 of the present Act provides that only members of a band who are "electors" – that is, who are 21 years of age and ordinarily reside on their reserve, may vote on a land surrender proposal.

There have been complaints that this provision of the Act discriminates against band members who although property holders on a reserve and frequently part-time residents, live off the reserve.

Many Indians in this position maintain that they have just as much interest in their reserve as if they resided on it, that their absence is not necessarily permanent, and that their individual property rights could be affected by a surrender proposal. They maintain that if they are interested enough in what is taking place on the reserve to travel to it to vote on a surrender, they should be entitled to vote.

Leasing Reserve Lands

25. Should band councils be able to enter into short term leases on their own authority? How long a term?

Under the present Act only the Minister can lease lands and he is restricted to leasing unused or uncultivated lands for agricultural or grazing purposes unless there has been a surrender for leasing.

These leasing provisions seemed adequate in 1951 but do not meet the increase in the number of leases now negotiated apart from the fact that they give band councils no leasing authority. It seems reasonable that there should be provision for a band to have authority to lease if it wishes to exercise it. The suggestion has been made that bands wishing to do so should have authority to lease where there are adequate reserve zoning or land use by-laws which establish a pattern of development for the reserve. Leases conforming to the band by-laws for orderly development could be within the council's authority, but some band members might be doubtful about allowing a council to enter into long term leases without consent of band membership.

It would be reasonable to allow such leases for a period. Most business people regard any period up to and including 21 years as a short term lease. The Indian people will want to establish the limit, if any, for band council's to enter into leases without a vote.

Long term leases are those for 22 years or more. Few leases are made for periods longer than 99 years. The Act could allow leases up to this, or any other length provided a vote had been taken.

> 26. Should the Minister at the request of the band council be able to enter into leases up to twenty-one years without a vote of the band? Should a vote be required for longer term leases?

It is unlikely that all bands will want managerial authority immediately in respect to leasing their lands and that some of the provisions of the present Act should be retained to meet this situation. It was mentioned that at the present the Minister can only lease band lands for restricted purposes without a surrender. Experience has shown that it is frequently difficult to get leasing surrenders, not because the members opposed the idea but because not enough of them vote on a surrender proposal. There have been suggestions that the Act is too restrictive and that on leasing matters the band council should be able to speak for the band without the need to take a surrender vote. One suggestion is that where councils do not wish to lease reserve land themselves the Minister be given the right to lease land for up to 21 years *at the request of a band council* and for longer terms with the consent of the band members.

Community Aspects of Land Management

> 20. Do you agree that the band council, rather than the Minister, should have the authority to order surveys and subdivisions undertaken?

While band councils have authority under the present Act in respect to many internal matters on reserves the Act reserves authority in the Department on certain matters. For example, Section 19 gives the Minister sole authority to authorize surveys, sub-divide reserves, and determine location of roads. Various Indians have suggested that these duties should be the normal functions of band councils.

Section 34 of the Act enables a superintendent to give instructions to a band in respect to maintaining roads, bridges, fences, etc. It has been proposed that this section of the Act be deleted from the new Act leaving authority with band councils.

21. Do you agree that the provisions giving the Minister authority to operate farms on reserve land should be replaced?

Under Section 70 of the present Indian Act, the Minister can operate farms on reserves without consulting the band. The authority has been in the Indian Act for many years and in earlier times was used in respect to many reserves, particularly in Western Canada where efforts were made to interest Indians in the agricultural development of their reserves, and the establishment of departmentally-operated farms served as a training ground for Indians who were interested in farming.

The Minister's authority has not been used in recent years and there seems to be no apparent reason why the provision should be retained in the new Act. If a band wishes to have such a community farm operated on a reserve it is clearly within the authority and ability of the band council to undertake such a project. All such farms are under the direction of the band councils now.

Disposal of Miscellaneous Reserve Resources

Sub-section 4 of Section 58 of the Act provides that the Minister may, without a surrender, dispose of wild grass or dead or fallen timber and with the consent of the council of the band dispose of sand, gravel, clay or other non-metallic substances upon or under lands in a reserve. It has been suggested that this function could be undertaken by band councils as part of their managerial responsibility.

There would appear to be three choices: one, to continue on as at present; second, to delete all reference to the Minister and give the authority to the band council. The third way would be to retain the present provision but make it possible for the Minister or the Governor in Council to grant the necessary authority to such band councils who ask for it.

Leasing of Individually held Lands

The fact that the title to reserve land is held by the Crown for the use and benefit of the members of the band is a complicating factor. Nevertheless, the failure to provide a means for an individual Indian to assume personal responsibility for the management of his land holding, leaves the Indian in an inferior position compared to other persons who hold land. While recognizing that so long as reserves are held by the Crown in trust for a band there may have to be some limitations, it would appear that an individual member who has lawful possession of lands in a reserve should be able to carry out his own transactions, collect his rental monies and generally be personally responsible for the land he holds.

At present under Section 58(3) of the Indian Act the Minister may, at the request of the Indian, lease land held by an individual Indian. There are no restrictions of any kind on the purpose or length of the lease. Although in practice the individual Indian may enter into negotiations with the lessee off the reserve and decide on the terms of the lease, he must, however, obtain the approval of the Minister. In fact, the present law Section 28(1) states clearly that a lease of land to any person who is not a member of the band is void. It is not legal for an individual Indian to lease land himself in his own name.

The alternative to allowing individual members authority to enter into leasing by themselves is to continue to have the Minister or the band council do all the leasing on behalf of the individual. There is no guarantee that the Minister or the band council could bring greater returns to the individual. In fact it can be argued that the individual, because he is personally interested, is likely in the long run to make better bargains than a body with no personal interest at stake. This does not mean that an individual band member should have the right to make any kind of lease he wanted. First of all the council, in making an allotment of land, could impose conditions and if it wishes it could say that no leasing could take place. But where leasing was allowed it could also be a condition that, except for agricultural purposes or for renting a house, all leases for any other purpose by an individual would have to be in accordance with land use or zoning by-laws. If this were a condition set out in the law then the band could control what leasing took place. For example, it would want to protect itself from some member deciding to lease part of his property for a dump, garage, or some undesirable business in a residential area.

If it is considered desirable that individual members should be able to lease land they hold then a specific provision in the Act would be required. Individuals would not necessarily have to undertake leasing themselves if they did not wish to do so. It would probably be necessary to continue authority in the Act for the Minister to lease lands on behalf of individuals.

In the belief that many Indians want to take control of their own affairs the following general proposals might be considered:

1. Where land use or zoning by-laws have been passed by the band council, an individual Indian who is in lawful possession of lands in a reserve may be granted the right to lease lands for periods up to 21 years. All leases would be subject to the band by-laws. This would be a means to protect the members as a whole from undesirable leasing.

2. Continue authority such as under Section 58(3) whereby the Minister could lease land of an individual Indian upon his request. Where there is no adequate land use or zoning by-laws perhaps the period should be limited to ten years. This would prevent tying land up in long term leases which might not be in accord with the best use of the land. As more bands undertake land use surveys, the need for long term development plans and controls becomes increasingly apparent.

3. Where land use or zoning by-laws have been passed which are adequate to ensure economic growth, the Minister could be authorized to grant leases which conform to such by-laws for longer periods at the request of the individual, and provided the majority of the electors of the band voting at a meeting or referendum have consented to leasing for periods in excess of 21 years. This would provide authority for leasing where industrial, commercial or residential developments are undertaken on reserves. Large investments require long term leases, otherwise development will not take place. Today some leases are 99 years. No maximum term is set in the present Act.

In summary, the band could be granted authority to lease band land for short or long terms not exceeding 99 years. Secondly, the Minister could be given authority to lease on behalf of a band or an individual where requested. Thirdly, an individual might be given authority to lease land for a period not exceeding 21 years. All leases would have to conform with land use or zoning by-laws, and in some instances such by-laws could be required before leasing takes place.

APPENDIX

Table 1

PROTESTS

Fiscal Year	Received	Decisions Made		
		Confirmed in Membership	Deleted From Membership	Total*
1961-62	49	28	19	47
1962-63	100	46	14	60
1963-64	77	35	20	55
1964-65	68	29	19	48
1965-66	57	27	19	46
1966-67	13	22	8	30
1967-68	22	9	2	11
Total	386	196	101	297

* Unsettled protests are carried forward into succeeding years.
Of the total 386 protests received during the seven-year period, 89 are still outstanding.

Table 2

Calendar Year	Non-Indian Women Marrying Band Members	Indian Women Marrying Non-Indians
1965	258	450
1966	273	523

Table 3

Fiscal Year	Indian Children Adopted by Indians	Indian Children Adopted by non-indians	Total
1961-62	63	58	121
1962-63	35	66	101
1963-64	74	94	168
1964-65	43	93	136
1965-66	43	122	165
1966-67	86	93	179
1967-68	54	98	152
Total	398	624	1022

Table 4

Enfranchisements 1958-59 – 1967-68

Fiscal Year	Adult Indians enfranchised upon application together with their minor unmarried children		Indian Women enfranchised following marriage to non-Indians together with their minor unmarried children		Total number of Indians enfranchised
1958-59	138	52	612	–	802
1959-60	221	248	433	221	1,123
1960-61	125	70	592	167	954
1961-62	94	47	435	140	716
1962-63	90	50	404	109	653
1963-64	46	38	287	102	473
1964-65	46	34	480	176	736
1965-66	38	18	435	147	638
1966-67	31	22	457	148	658
1967-68	62	28	470	56	616
Total	891	607	4,605	1,266	7,369