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DISCUSSION NOTES ON THE INDIAN
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DISCUSSION NOTES ON THE INDIAN ACT

Introduction

We are now ready to proceed with an important review of the Indian Act. Perhaps the first step should be to examine together some of the main features of the Act which appear to require amendment, and to consider what changes in the underlying principles are necessary in order to reflect the needs, objectives, and desires of the Indian people.

The purpose of this paper is to focus attention on some of the present provisions and objections or suggestions that have been made with respect to them. The comments herein are intended to facilitate and promote discussion. They do not necessarily represent the Government's view, for the Government does not wish to come to any firm views in regard to changes in the Act until it has the benefits of your advice. However, we have taken into account submissions by Indian bands and associations, as well as interested non-Indian groups to the Joint Committee on Indian Affairs, along with subsequent representations made by Indian groups and individuals and our own experience with the problems and needs of Indians.

Background of the Indian Act

The Indian Act, c. 149, R.S.C. 1952, provides the legal framework within which the affairs of the Indians are administered by the Government of Canada in accordance with the exclusive legislative jurisdiction vested in it by the British North America Act. It does not embody all the laws applicable to Indians, for generally speaking they are subject to the same laws as non-Indians. Rather, the Indian Act represents special legislation taking precedence over provincial legislation which the Parliament of Canada considers is essential to the needs of the Indian people not only as a safeguard to protect their treaty and property rights, but as a means of promoting their advancement. It does not include, however, many of the programs operated by the Indian Affairs Branch which are authorized each year by Parliament through the Estimates and Appropriation Acts.

Prior to 1951 the last complete revision of the Indian Act was in 1880. That Act has been amended from time to time but it had become increasingly apparent that many of the provisions of the old Act were outmoded and did not provide a sufficient framework within which the needs and aspirations of the Indian population could best be met. During the years 1946, 1947 and 1948 a Special Joint Committee of the Senate and House of Commons considered the Indian Act and the administration of Indian affairs in general. As a result of the work of this Committee and the representations made to it by Indian organizations, Indian bands, and groups and individuals interested in the welfare of Indians, a new Indian Act was passed by Parliament in 1951.

In considering the whole question of Indian legislation, it must be realized that there are a great many Indian bands widely scattered throughout Canada, speaking different languages, differing in racial and cultural background, and in various stages of economic, political, and social development. In view of these varied and diverse Indian interests, a comprehensive Indian Act must be broad enough to accommodate the different Indian groups and communities. The 1951 Act modernized and improved existing legislation in

It has also been suggested that provision be made for automatic withdrawal from membership in cases where the birth of an illegitimate child of an Indian woman is legitimized by the subsequent marriage of its Indian mother and non-Indian father.

Distributions on Withdrawal

The present Act recognizes that a band member has an interest in the assets of his band. Upon enfranchisement, he is entitled to receive a share of band funds and annuity moneys, where these are payable. It has been suggested, therefore, that the existing entitlements following enfranchisement might also apply in the case of a withdrawal from membership. Exceptions to this might be made as in the case of illegitimate children who are struck off a band list because their births have been legitimized. It has been suggested, however, that an adopted child who ceases to be a member of the band by reason of adoption should receive the usual entitlements.

It has also been suggested that no person who withdraws or was previously enfranchised or commuted should be paid the entitlements more than once.

Withdrawal of Bands

In the present Act provision is made for bands to become enfranchised. If the enfranchisement provisions are removed, this would no longer be possible. Some provision could be made which would enable a band to withdraw from the operation of the Indian Act, if it so desires. For example, a band might wish to incorporate and receive title to all its assets and be free to administer them in accordance with provincial laws in the same manner as any company or partnership or it might wish to acquire the status of a separate municipality. Presumably, some provision could be worked out to meet this.

Schools - Sections 113 to 122

The importance of education was stressed by the Joint Parliamentary Committee on Indian Affairs, which stated in its final report in 1961 that education is the key to the full realization by Indians of self-determination and self-government. Indians generally, and parents in particular, are recognizing more and more the need for a good education as a basis for economic and social development.

Sections 113 and 122 of the Indian Act provide authority and set out principles governing Indian educational services. For instance, the federal government may itself operate schools, or may enter into agreements for the education of Indian children with provincial governments, school boards or religious or charitable organizations; it may make regulations covering various phases of the educational program, provide for transportation to and from school, and arrange for the maintenance of children at schools operated by religious organizations. These sections also cover such matters as school-age limits, rules regarding the school to be attended, truancy, and the religious denomination of the teachers at Indian day schools.

More than 40% of Indian students now attend provincial schools with non-Indians, and attendance at day schools on reserves is also higher, relative to residential schools. Experience has shown that Sections 113 to 122 do not provide sufficient authority to meet some of the current problems: for example, it has been pointed out that more elastic provisions are needed to meet the various aspects of joint agreements with local and provincial school authorities, and to facilitate agreements with private schools and the education of non-Indians in Indian schools. Also the provisions covering the support and maintenance of Indian pupils might be broadened to ensure that there is adequate authority to deal with this important matter.

In non-Indian schools, there are variations between provinces in the rules and procedures covering school attendance and truancy. On the other hand, at present Indian pupils are governed by relevant sections of the Indian Act. However, it has been suggested that in these matters Indian pupils in each province might be made subject of the same rules and procedures as non-Indian pupils. It has also been pointed out that the choice of the school to be attended should rest with parents to a greater extent than it does at present.

Kindergarten classes for children under six years of age, and educational assistance for Indians over 16, including university courses and technical training and adult education, are already provided. It has been pointed out, however, that specific authority should be provided in the Indian Act for educational services to Indians under and over the school-age group.

School committees are operating on a number of reserves, where they are carrying out valuable functions, and it has been suggested that such committees be recognized formally by including a provision in the Indian Act.

Local Self-Government

There is a quickening desire on the part of many Indian leaders for local control.

One of the basic problems, therefore, is to meet in the Indian Act the varied conditions and needs of Indian people across Canada. One way by which this might be met is to provide for a broadened system of local or municipal self-government, which might be adopted to the needs of various Indian bands. The exact manner by which this could be accomplished would have to be worked out. In broad terms any Indian band residing on a reserve might, with the approval of the Governor in Council, have the right to organize for their common welfare and advancement and may adopt an appropriate constitution and by-laws by a majority vote of the members of the band of the full age of twenty-one years, at a special meeting or referendum held for the purpose. Such constitution and by-laws could become effective upon approval by the Governor in Council and may be revoked or amended by a majority vote of the members of the band with the approval of the Governor in Council.

The Governor in Council upon application by the council of a band could issue a charter of incorporation to such band provided that such charter would not have force or effect until ratified by a majority vote of the members of the band, of the full age of twenty-one years, voting at the meeting or referendum held for the purpose.

A charter, when granted by the Governor in Council, might convey to the incorporated band the power to purchase, take by gift, or bequest or otherwise own, hold, manage, operate and dispose of property, real and personal, including power to purchase the interest of Indian owners in reserve lands and such further powers as may be necessary in the conduct of corporate business not inconsistent with the provisions of the Indian Act or any other act of the Parliament of Canada. A proviso could be included that no reserve land would be sold or granted without the consent of the majority of the voting members and approval of the Governor in Council.

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