



FIRST NATIONS ELECTIONS: THE CHOICE IS INHERENTLY THEIRS

**Report of the
Standing Senate Committee
on Aboriginal Peoples**

The Honourable Gerry St. Germain, P.C.

Chair

The Honourable Lillian Eva Dyck

Deputy Chair

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MEMBERSHIP

THE STANDING SENATE COMMITTEE ON ABORIGINAL PEOPLES
40th Parliament, 3rd Session
(March 3, 2010 -)

The Honourable Gerry St. Germain, P.C.
Chair

The Honourable Lillian Eva Dyck
Deputy Chair

and

The Honourable Senators:

Patrick Brazeau
Larry Campbell
Jacques Demers
* James S. Cowan (or Claudette Tardif)
Elizabeth Hubley
*Marjory LeBreton, P.C. (or Gerald Comeau)
Sandra Lovelace-Nicholas
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Other Senators who have participated in this study:

The Honourable Senators Bert Brown, Sharon Carstairs, P.C., Jane Cordy, Joan Fraser, P.C.,
Daniel Lang, Yonah Martin and Robert W. Peterson.

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Research Service of the Library of Parliament:*
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ORDER OF REFERENCE

Extract from the *Journals of the Senate* of Tuesday, March 16, 2010:

The Honourable Senator St. Germain, P.C. moved, seconded by the Honourable Senator Greene:

That the Standing Senate Committee on Aboriginal Peoples be authorized to examine and report on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Metis peoples and on other matters generally relating to the Aboriginal Peoples of Canada;

That the papers and evidence received and taken and work accomplished by the Committee on the subject during the Second Session of the Fortieth Parliament be referred to the Committee; and

That the Committee submit its final report no later than December 31, 2011, and that the Committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

After debate,

The Honourable Senator Cools moved, seconded by the Honourable Senator Day, that further debate on the motion be adjourned until the next sitting.

The question being put on the motion, it was negatived on division.

The question was put on the motion of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Greene:

That the Standing Senate Committee on Aboriginal Peoples be authorized to examine and report on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Metis peoples and on other matters generally relating to the Aboriginal Peoples of Canada;

That the papers and evidence received and taken and work accomplished by the Committee on the subject during the Second Session of the Fortieth Parliament be referred to the Committee; and

That the Committee submit its final report no later than December 31, 2011, and that the Committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

The motion was adopted on division.

Gary O'Brien

Clerk of the Senate

CHAIR'S FOREWORD

‘Where there is no vision, the people perish’¹¹

The very heart of the human condition and the survival of any people depend on having a righteous vision. The Canadian constitution speaks of peace, order and good government, but these things do not constitute vision. They are goals and objectives. A vision requires an understanding and acceptance of the proper steps necessary to actually bring about peace, order and good government. It's how we get there, from here.

Ever since the arrival of the colonizers and the imposition of their governance systems throughout Canada, the Aboriginal peoples have resisted and struggled to reconstitute their traditional forms of political representation and governance practices, to maintain control of their own affairs, and to have governments be accountable to them. This involvement is ironic, because as is pointed out by Professor Bradford Morse, ‘prior to the *Indian Act*, or where the *Indian Act* regime is not applied, First Nations were global leaders in democracy. Democracy does not mean elections with ballots; it means the voice of the people in the selection of their leaders and in the decision-making of governments.’

The first task in advocating Aboriginal government must be to develop and advance that meaningful vision. But having vision is not enough – a people must also be free to implement their vision. The Aboriginal people, themselves, must be able to translate their vision into policy proposals, organizations, and political movement.

The committee makes the point that each First Nation's citizenry must be involved directly in the determination of their self-government regime. This can be in the form of legislative amendments to the electoral provisions of the *Indian Act*, or in transitioning to community-designed election codes. And such a process does not preclude other policy and/or legislative options from being pursued, if so desired, by First Nations. Regardless of the pathway a First Nation chooses, Canada should respect whatever is in progress.

As long as First Nations governance is dominated by laws and policies of a by-gone era, and imposed by outside powers, it is difficult to see how meaningful governance practices and culturally appropriate institutions can be created. The challenge facing Canada is to recognize First Nations who want better governance, to make those in power accountable to the people, and to transform governance into an agency for positive change. To do otherwise, or to continue the status quo, simply means that the people will continue to perish.

¹ Proverbs: chapter 29, verse 18

INTRODUCTION

The issue of how we select our leaders and how we choose those who will represent us is at the very heart of our people.²

For over a century, Canadian policies have eroded the traditional political systems of Aboriginal peoples, and imposed a governance system – band council and elections – disconnected from, and alien to, their cultures. Aboriginal peoples are now struggling to reconstitute their traditional forms of political representation and governance practices. A key aspect of this struggle for self-determination is the fundamental right to determine both their process of leadership selection and the basis upon which these leaders derive and exercise their authority.

There is growing evidence that it is through the exercise of self-government and the development of legitimate and culturally appropriate institutions that the challenges confronting Aboriginal communities might best be addressed. Prominent among this research has been the work of the Harvard Project on American Indian Economic Development, which suggests that effective governance practices and institutions, rooted in a community's culture, are a crucial prerequisite to addressing the social and economic circumstances in Aboriginal communities.³

Increasingly, First Nations are attempting to address the limitations of the *Indian Act* electoral system, imposed upon them in the late 1800s, through the negotiation of self-government agreements and the creation of community-designed election codes. At the forefront of many of these efforts is the struggle to deal with the historical roots of these contemporary governance challenges and to revitalize traditional forms of governance. While First Nations have called for fundamental reforms to the *Indian Act*, including reform to its electoral provisions, such

² Standing Senate Committee on Aboriginal Peoples, *Proceedings*, Shawn Atleo, Regional Chief, British Columbia, Assembly of First Nations, 12 May 2009. Following his appearance before the Committee, Shawn Atleo was elected National Chief of the Assembly of First Nations.

³ The findings and related publications of the Harvard Project on American Indian Economic Development can be consulted on line at: <http://www.hks.harvard.edu/hpaied/>.

processes are often protracted. The question of how to address the common concerns around the *Indian Act* electoral regime, in a respectful and judicious way, is a matter this Committee has sought to address in its examination of this issue.

THE COMMITTEE'S DECISION AND PROCESS

The selection of Council for many First Nations is governed by the provisions of the *Indian Act*. First Nations and the federal government have acknowledged that there are many problems with respect to *Indian Act* elections and that it has produced election systems often fraught with administrative difficulties and inconsistencies, resulting in frequent appeals.⁴ For a variety of reasons, previous attempts by the federal government to introduce legislative amendments to the *Indian Act*, particularly as they relate to its governance provisions, have been largely unsuccessful.

There are differing views regarding how the electoral provisions of the *Indian Act* should be amended, if at all. First Nations contend that “leadership selection goes to the root of self-government” and that legislative amendments to the *Indian Act* would require extensive consultations with, and agreement by, First Nations.⁵ There are some who advocate for an incremental approach, while many others prefer broader change, such as legislation that allows First Nations to opt into a new electoral regime designed by them, which would ultimately replace the *Indian Act* in whole or in part. What appears certain, however, is that the status quo is not acceptable to First Nations leadership and community membership.

This Committee has undertaken to examine the issue of *Indian Act* elections with a view to considering how First Nations leadership selection (elections) can be strengthened. The Committee's decision to study this issue is, in part, based on concerns raised by First Nations that the requirement under the *Indian Act* to have elections every two years makes it difficult for First Nations leaders to set longer term strategic direction, as well as to plan for and implement

⁴ Standing Senate Committee on Aboriginal Peoples, *Proceedings*, Angus Toulouse, Ontario Regional Chief, Chiefs of Ontario, 16 June 2009. [Hereafter referred to as *Proceedings*].

⁵ Assembly of First Nations/Indian and Northern Affairs Canada LTS Joint Initiative for Policy Development, “Elections and Leadership Selection, Policy Options,” March 2000, p. 84.

sustainable processes before they must face another election. As we noted in our previous 2007 report on Aboriginal Economic Development, effective governance practices, institutions and procedures are a key factor in determining economic success.⁶

The Committee began its public hearings in Ottawa in May 2009. It also travelled to Manitoba and British Columbia in May and October, respectively. First Nations that currently hold elections under the *Indian Act* or that have recently converted to custom elections comprised the majority of witnesses. The Committee also set aside a prescribed amount of time for open sessions where community members could tell us about their concerns and provide ideas on how to improve First Nations elections. The Committee convened a total of 17 hearings, and now reports on its findings.

ORIGINS OF *INDIAN ACT* ELECTIONS

In order to understand why First Nations tend to resist widespread amendments to the *Indian Act's* electoral provisions, it is important to understand the origins of those provisions. Prior to European settlement, Aboriginal peoples and communities in Canada had their own distinctive political institutions and methods of political representation. Soon after Confederation, however, the *Indian Act* imposed upon these communities the British colonial political ideal of elected local government.⁷ The goal of Canadian Indian policy at that time was to “civilize and assimilate” Aboriginal peoples into the dominant society, and the elective system was a key feature of this program.⁸ Traditional political systems were generally regarded as a hindrance to acculturating Aboriginal people in the political mores of the dominant society. Consequently, the

⁶ Standing Senate Committee on Aboriginal Peoples, *Sharing Canada's Prosperity – A Hand Up, Not a Handout*, March 2007. This report can be consulted on line at: <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/abor-e/rep-e/rep06-e.pdf>.

⁷ Wendy Moss and Elaine Gardner O'Toole, *Aboriginal People: History of Discriminatory Laws*, Library of Parliament, 1991.

⁸ For a comprehensive treatment of the historical development of the *Indian Act* electoral system, see W. Daugherty and D. Madill, *Indian Government Under Indian Act Legislation 1868-1951*, Indian and Northern Affairs Canada, 1980.

election provisions of the Act were “developed without any reference to previous tribal systems of government, and they were implemented with little sensitivity to traditional values.”⁹

Writing in the late 1800s, William Sprague, the Deputy Superintendent of Indian Affairs, noted that the purpose of replacing traditional political institutions with elected band councils was to prepare “Indians” for municipal type institutions. He wrote:

The Acts framed in the years 1868 and 1869 relating to Indian Affairs, were designed to lead the Indian people by degrees to mingle with the white race in the ordinary avocations of life. It was intended to afford facilities for electing, for a limited period, members of bands to manage, as a Council, local matters; that intelligent and educated men, recognized as chiefs, should carry out the wishes of the male members of mature years in each band, who should be fairly represented in the conduct of their internal affairs.

Thus establishing a responsible for an irresponsible system, this provision, by law, was designed to pave the way to the establishment of simple municipal institutions.¹⁰

Accordingly, the elected band council system was intended to repress tribal systems and to direct the civilization of Aboriginal peoples by replacing, in the words of Deputy Superintendent Sprague, an “irresponsible” with a “responsible” system of government. The view at that time, writes historian John Tobias, was that the only impediment to civilization and assimilation was a lack of training in the Canadian political system.¹¹

The elective system of government under the *Indian Act* provided only very limited powers of local government to bands. In contrast, the Act gave considerable powers to the colonial government to manage and direct the political affairs of bands. For example, the Superintendent-General, or an agent delegated by him, was empowered to call elections, to supervise them, to call band meetings, and to preside over and participate in them in every way except by voting or adjourning them. In subsequent amendments to the Act, the government continued to expand its control over band political affairs by removing elected traditional leaders and prohibiting their re-

⁹ Leroy Little Bear, Menno Boldt, J. Anthony Long ed., *Pathways to self-determination: Canadian Indians and the Canadian State*. Toronto: University of Toronto Press, 1984, p. xii.

¹⁰ *Ibid.*, p. 184.

¹¹ John L. Tobias, *Canada's Indian Policies: Actions and Reactions*, *The Western Canadian Journal of Anthropology* (1976) Vol. VI, No. 2, p. 19.

election. In 1895, the Minister was further granted the power to depose chiefs and councillors where the elective system did not apply. “This amendment was included because the band leaders in the West were found to be resisting the innovations of the reserve system and the Government’s effort to discourage the practice of traditional Indian beliefs and values.”¹²

The *Indian Act*’s restrictive electoral system and imposition of federal control was widely resisted among Indian bands. Despite Indian opposition to the *Indian Act* system of elective government, attempts to suppress traditional forms of government continued. For example, in 1880, West Coast potlaches, an important means of affirming leadership and social order, were banned, and, in the 1920s, the Canadian government jailed the traditional leaders of the Haudenosaunee and installed an *Indian Act* council.

The 1996 *Report of the Royal Commission on Aboriginal Peoples* illustrated the difficulties experienced by Aboriginal peoples with respect to the imposition of the *Indian Act* elective system. The Report concluded that: “for the past 100 years the [Indian] Act has effectively displaced, obscured or forced underground the traditional political structures and associated checks and balances that Aboriginal people developed over the centuries to suit their societies and circumstances.”¹³ Thus, the *Indian Act* electoral regime is rooted in a colonial mentality, and amendments to the Act, from the perspective of First Nations, do not erase colonial control over band elections. Instead, First Nations are attempting to develop their own tools to manage their leadership selection processes and are doing so through negotiated self-government agreements and the development of their own community-designed election codes.¹⁴

BACKGROUND TO INDIAN ACT AND CUSTOM ELECTIONS

There are currently several methods by which First Nations select their leaders. First Nations with self-government agreements have their own leadership selection processes and are not subject to the electoral provisions of the *Indian Act*. According to the Department of Indian

¹² John L. Tobias, *Protection, Civilization, Assimilation: An Outline of Canada’s Indian Policy*, The Western Canadian Journal of Anthropology (1976), Vol. VI, No. 2, p. 13.

¹³ *Canada: Report of the Royal Commission on Aboriginal Peoples*, Vol. 2, Part 1, 1996, p. 346.

¹⁴ In 1971, for example, 385 First Nations (or 71%), conducted their elections pursuant to the *Indian Act*. That number has been steadily declining, with only 41% of First Nations conducting elections pursuant to the electoral provisions of the Act.

Affairs and Northern Development (DIAND)¹⁵, the method of leadership selection breaks down as follows:¹⁶

- 252 Indian bands (or 41%) hold elections in accordance with the election provisions of the *Indian Act*.¹⁷
- 334 bands (or 54%) conduct “custom elections” under custom codes developed by the band.
- 29 First Nations (or 5%) select leaders pursuant to the provisions of their self-government agreements.
- Approximately 10–15 bands follow other leadership selection mechanisms, such as the hereditary or clan system.

The reason for this mix of leadership selection processes can be traced to subsection 74(1) of the *Indian Act*. Under this provision, the Minister has the statutory authority to declare - when advisable for the good governance of a band - that the Council of the band shall be selected according to the election procedures set out in the *Indian Act*.¹⁸ Historically, Indian bands would continue to select their leadership by way of custom until it was determined that they were “sufficiently advanced or civilized” to select their leadership pursuant to the provisions outlined in the *Indian Act*.¹⁹ Subsection 74(1) provides that:

Whenever he deems it advisable for the good governance of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act.

¹⁵ The acronyms DIAND and INAC (Indian and Northern Affairs Canada) are used interchangeably in this report to describe the department.

¹⁶ Department of Indian Affairs and Northern Development, Submission to the Committee tabled 13 May 2009.

¹⁷ The *Indian Bands Council Elections Order* lists the bands that hold elections pursuant to the *Indian Act*.

¹⁸ Prior to 1956, the power to make an order pursuant to subsection 74(1) was exercised by the Governor in Council.

¹⁹ Joint Ministerial Advisory Committee, *Recommendations and Legislative Options to The Honourable Robert Nault, P.C., M.P., Minister of Indian Affairs and Northern Development, Final Report*, 8 March 2002.

This provision of the *Indian Act* implies that the “default” leadership selection process has always been the custom method. This method remains in place until the Minister determines that the election provisions of the Act should apply. Thus, when a new band is established, for instance, its Council is selected according to custom, unless the Minister makes a declaration that *Indian Act* election procedures will govern the election processes of that band.

Indian Act Elections

Sections 74–80 of the *Indian Act* set out the framework for band council elections. The provisions of the Act are quite general, setting out only the basic rules governing the size of councils, voting rights of members, term of office, vacancies in office and setting aside of elections. The *Indian Band Election Regulations*, which accompany the Act, are far more detailed and provide rules for nominations, voters’ lists, polling stations, casting of ballots and election appeals.²⁰

Selected electoral provisions of the Act are as follows:

- Section 74 provides that Indian bands may be brought under the *Indian Act* elective system by ministerial order.
- Subsection 74(2) provides that the band council be comprised of one chief, and one councillor for every one hundred members of the band, but that the number of councillors shall not be less than two or greater than twelve and that no band shall have more than one chief.
- Subsection 74(3) provides that the Chief shall be elected by a majority of the votes of the electors or by a majority of votes of the elected councillors.
- Subsection 76(2) provides for secrecy of voting.
- Section 77 provides for the eligibility of voters.²¹

²⁰ *The Indian Band Election Regulations* can be consulted on line at:
<http://www.canlii.org/en/ca/laws/regu/crc-c-952/latest/crc-c-952.html>

²¹ Subsection 77(1) of the *Indian Act* provides for the eligibility of voters, stipulating that an elector must be 18 years of age and be “ordinarily resident on reserve”. On 20 May 1999, in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, the Supreme Court of Canada found that the words “and is ordinarily resident on reserve” were contrary to the equality rights of off-reserve members under section 15 of the *Charter of Rights and Freedoms* and struck down that section of the provision.

- Subsection 78(1) deals with tenure of office and states that “the chief and councillors of a band hold office for two years”.

Custom Elections

As previously noted, the power of bands to establish their own leadership selection processes by way of custom has always been recognized by the *Indian Act* and is in fact the “default” selection process. There is some confusion with respect to the usage of the term “custom”. Custom under the *Indian Act* and as used by the Department of Indian Affairs and Northern Development does not refer to any traditional method of leadership selection. Rather, it simply serves to distinguish band councils elected pursuant to the *Indian Act* from those elected according to the rules established by the band. These rules, however, may not necessarily be based on traditional methods of choosing leaders. Unless otherwise specified in this report, the use of the term custom refers to “community-designed” electoral codes rather than hereditary, clan or consensual based systems of leadership selection.

Generally, there are two categories of custom bands:

- Bands recognized by the federal government as having always selected leaders by custom and which never came under the *Indian Act* election process.
- Bands that were once under the *Indian Act* election process but later “reverted” to the custom method by meeting the requirements of federal policy.

Since 1988, the federal government’s *Conversion to Community Election System Policy* requires that bands wishing to revert to custom elections from the *Indian Act*’s election process develop written codes which provide for, among other things, consistency with the Canadian *Charter of*

Rights and Freedoms; provision for the settlement of election appeals; participation of off-reserve members; and community approval of the custom code.²²

The Department of Indian Affairs and Northern Development (DIAND) also requires that First Nations converting to custom elections have community election codes that comply with the principles of natural justice and procedural fairness. According to the Department's policy, "off-reserve band members must be allowed to vote, and there must be an acceptable process, such as a mail-in-voting scheme, that allows them to participate in voting."²³ It also prescribes that off-reserve electors be provided the opportunity to hold positions on the band council. First Nations reverting to custom elections must have their code approved by a majority of band members, who are 18 years of age or older, voting by secret ballot. An alternate process may be used to approve the code, provided that it is agreed upon in advance by DIAND and the band. While the *Indian Act* itself does not prescribe rules for "custom" leadership selection, at no time have bands been permitted to "revert" to a non-electoral leadership selection regime.

There is considerable jurisprudence on the nature of customary elections. Some key observations regarding the nature of this category of elections include:²⁴

- The power of bands to establish their own leadership selection rules through custom has always been recognized by the *Indian Act*.
- The power of bands to establish their own leadership selection rules through custom is not a power granted by the *Indian Act*; rather, it is an inherent power of the Band. It is a power the Band has always had, which the *Indian Act* only interferes with in limited circumstances, as provided for under section 74 of the *Act*.
- The interference with this power under section 74 of the *Act* has not extinguished the power.

²² Department of Indian Affairs and Northern Development, *Conversion to Community Election System Policy*. Copies of the policy may be obtained by contacting the Department.

²³ Brian Craine, Robert Mainville, and Martin W. Mason, *First Nations Governance Law*, LexisNexis Canada Inc., 2006, p. 183.

²⁴ Report of the Joint Ministerial Advisory Committee, p. 63.

- Customs are not frozen in time; they can evolve into rules that are quite different from traditional methods of leadership selection.
- In order to be validly adopted, a leadership custom does not need to be adopted by a majority of the electors of the band under section 2(3) of the *Act*. There does need to be a broad consensus of the membership. In the absence of rules specifying how such a consensus is to be demonstrated, courts will determine the issue based on the facts of the case.

Every custom election code is different. Some make only minor modifications to the *Indian Act* electoral system, such as lengthening the terms of office, while others may provide for more significant changes. These can include blending traditional forms of governance (custom councils) with contemporary governance structures (elected chief and council).

THE ROLE OF THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

The Department of Indian Affairs and Northern Development and the Minister exercise greatest authority in relation to First Nations who conduct elections pursuant to the *Indian Act*. The Act and its regulations set out the operation of the electoral regime, thereby regulating, to a great extent, First Nations' leadership selection processes. Importantly, under the *Indian Act* system, election appeals are reviewed and investigated by the Department. If a determination is made that there was a "corrupt practice in connection with the election, or a violation of the *Indian Act* or the Regulations that might have affected the election",²⁵ the Minister may advise the Governor-in-Council to set aside the election. Departmental officials also provide training and support for electoral officers. In contrast, the Department is only minimally involved in the leadership selection process with regard to First Nations under self-government agreements. However, the Department does require that the First Nation develop and ratify a constitution that is compliant with the *Canadian Charter of Rights and Freedoms* and that the rules governing the leadership selection process are clear and transparent.

²⁵ Department of Indian Affairs and Northern Development, *Submission*, 13 May 2009.

As discussed, the Department also requires that First Nations “reverting to custom” adhere to the requirements set out in its policy. All electoral codes developed by First Nations must be submitted to the Department for approval. These are subsequently reviewed by departmental officials for compliance with the policy. If a positive determination is made, a ministerial order may be issued to remove the First Nation from the application of the election provisions of the *Indian Act*. Once a First Nation is removed from the *Indian Act*’s electoral provisions, the Department no longer “oversees the evolution of the community’s election code”.²⁶

The Department does not oversee a community’s election code, once approved, owing to legal considerations. The Courts have ruled that custom elections arose out of an inherent power of the Band, and not from a delegated authority under the *Indian Act*. In *Bone v. Sioux*, the Court held that the power of a band to select its council in a customary manner

...is an inherent power of the Band; it is a power the Band has always had, which the *Indian Act* only interferes with in limited circumstances, as provided for under s.74(1) of the Act.²⁷

Similarly, in *Campbell et al v. British Columbia* [2000], Justice Williamson referred to the case law on custom, and observed that:

Not only have Aboriginal peoples retained post-Confederation the power to elect their leaders, and that Aboriginal peoples have the power to determine how they will make those choices, but that the form or method of the exercise of Aboriginal rights may evolve. Manifestly, the choice of how one’s political leaders are to be selected is an exercise in self-government.²⁸

The power, therefore, to determine leadership selection rules is “almost certainly an Aboriginal right protected by section 35 of the *Constitution Act, 1982*.”²⁹ Accordingly, any attempts by the Department to regulate custom leadership processes, once in place, could constitute an unjust interference of those rights.

²⁶ Ibid.

²⁷ *Bone v. Sioux Valley Indian Band No. 290 Council*, [1996] 3 C.N.L.R. 54 (F.C.T.D.)

²⁸ *Campbell v. British Columbia* 2000 BCSC 1123

²⁹ *Proceedings*, Jim Aldridge, 2 June 2009. Section 35(1) of the *Constitution Act, 1982* reads “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”

PRESSURE AND ATTEMPTS AT REFORM

Pressures to reform the *Indian Act* election system have come about for a variety of reasons. Key among them is the dubious legitimacy of *Indian Act* governments, which, from a First Nation perspective, are widely considered to be at odds with First Nations customs and values.

A second reason is the weakness of the Act's electoral system. Problems include administrative weaknesses such as loose nomination procedures and a mail-in-ballot system that is open to abuse and fraud.³⁰ Other, more substantive concerns include the degree of ministerial intervention, the lack of an adequate and autonomous appeals process, inadequate removal provisions, accountability of elected officials to the Department rather than to community members, and the lack of flexibility to set terms of office and determine the size of Council.

A third and significant source of pressure relates to legal challenges being brought against First Nations elections under the *Charter of Rights and Freedoms* or Aboriginal rights law. In particular, the on-reserve residency requirements to vote in elections and run for elected office (councillor) have been invalidated by the courts.³¹ Ongoing litigation, however, is seen by First Nations and federal officials to be an unsatisfactory method of resolving these matters, as the court process can be costly, time-consuming, unpredictable and destabilizing.

Attempts to reform the *Indian Act* election system arise from the growing dissatisfaction with the operation of the regime. One key attempt at policy reform was the 1998/2001 Assembly of First Nations/Indian and Northern Affairs Canada Joint Initiative on Policy Development (Lands and Trusts Services). The Joint Initiative arose in response to the 1996 *Report of the Royal Commission on Aboriginal Peoples* and was intended to provide policy options on key themes: elections, membership, additions to reserves and environment. With respect to elections, a key proposal was to develop community leadership selection systems and remove the application of

³⁰ Department of Indian Affairs and Northern Development, *Submission*, 13 May 2009.

³¹ *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203; *Canada (Attorney General) v. Esquega*, 2008 FCA 182 (CanLII)

the *Indian Act* as a preliminary measure to re-establishing traditional forms of leadership selection. To accomplish this, the following steps were suggested:³²

- Community level development of custom codes;
- Community development of local dispute resolution procedures;
- Regional First Nations capacity and advisory bodies;
- Explore the use of section 4(2) of the *Indian Act* to opt out of specific provisions such as length of term, number of councillors;
- Policy renewal to result in reformed conversion to custom policy, opening the system to a wider range of electoral models, and joint development of policies to limit and redefine the Department's role in dispute resolution.

Despite widespread praise, the initiative failed to move forward. The failure rested, to a significant degree, on a difference of opinion between First Nations and the federal government on how the policy proposals could link up to legislative reform. Reform had become the government's priority after the 1999 *Corbiere*³³ decision, which invalidated the residency restrictions preventing off-reserve members from voting in band elections.³⁴

In anticipation of federal legislation, in November 2001, the Joint Ministerial Advisory Committee (JMAC) was established to provide the Minister with technical advice in respect of possible amendments to the governance provisions of the *Indian Act*. Specifically, advice was sought in relation to the following: legal status and capacity; leadership selection and political accountability; governance structures, powers and authorities; and, financial management and accountability.

In March 2002, after consulting widely with First Nations leadership and other Aboriginal organizations, the JMAC released its report. The committee examined how the *Indian Act* might be amended to improve the current rules concerning leadership selection and voting rights. Its recommendations in this respect were based, in part, on the following assumptions:

³² Assembly of First Nations/Indian and Northern Affairs Canada, *First Nations Leadership Selection and Elections*, Discussion Paper, March 2008, p.3.

³³ *Supra*, note 19.

³⁴ John Provar, *Reforming the Indian Act: First Nations Governance and Aboriginal Policy in Canada*, *Indigenous Law Journal*, Vol. 2, Fall 2003, pp.117-169.

- Legislative amendments would not infringe Aboriginal and treaty rights;
- Legislative amendments would provide default rules for leadership selection by way of elections, and allow bands to design their own leadership selection processes, subject to certain statutory requirements.

In 2002, the federal government introduced Bill C-7, an Act respecting leadership selection, administration and accountability of Indian bands, and to make related amendments to other Acts [also referred to as the Governance Act]. From the government’s perspective, the intent of the legislation was to “modernize” the *Indian Act’s* governance provisions and to address gaps in the regime by providing First Nations with the tools to manage their affairs effectively and responsibly. First Nations argued that the proposed legislation violated their inherent right of self-government. The legislation’s “single option open to section 74 bands might have risked infringing their right to opt for a customary regime, while the time restriction applicable exclusively to custom bands might de facto subject them to a regime not of their selection.”³⁵ The JMAC report noted, “Imposing a regime on a band that prefers to select its leaders using some other regime would therefore be an infringement of those rights.”³⁶

For a variety of complex reasons, Bill C-7 proved to be exceedingly contentious. The overwhelming majority of testimony provided to the House of Commons Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources revealed that there were sharp differences as to the “objectives, merits and effects” of the proposed legislation. Bill C-7 died on the Order Paper with the prorogation of Parliament on 12 November 2003 and was not reintroduced.

³⁵ Assembly of First Nations, *First Nations Elections: choosing a path forward from a First Nation perspective*, March 2009, p. 22.

³⁶ *Report of the Joint Ministerial Advisory Committee*, p. 63.

THE INDIAN ACT ELECTORAL REGIME: WHAT THE COMMITTEE HEARD

ISSUES AND CHALLENGES

Elections and leadership selection are a central issue to our governments and may be the single-most telling demonstration of how we still face cultural oppression and denial of our basic rights as indigenous peoples and First Nation governments.³⁷

The *Indian Act* is regularly described as an outdated and anachronistic piece of legislation. Not surprisingly, then, the elective system provided for under the Act tends to reflect administrative structures and practices that were features of public institutions of the early and mid-twentieth century.³⁸ While most governments have since improved upon those practices, the electoral provisions of the *Indian Act*, as suggested by Shawn Atleo, continue to be “largely devoid of principles relating to modern and accountable governance.”³⁹

Witnesses testifying before this Committee identified a number of broadly shared concerns with the election provisions of the *Indian Act* and its accompanying regulations. Many First Nations witnesses spoke of how the *Indian Act* system of governance has fostered divisions within their communities and eroded systems of accountability. They also told us how the introduction of the *Indian Act* election system has had negative effects on traditional governance systems and on customs related to leadership selection. The following section summarizes the issues most commonly raised by First Nations witnesses throughout our hearings on this matter.

A. The *Indian Act* Electoral System

The *Indian Act* electoral system is widely considered to embody a leadership selection system that neither reflects nor responds to First Nations needs or values. The historical imposition of the *Indian Act* electoral system was motivated not by any high ideal of democracy, as Jim

³⁷ *Proceedings*, 16 June 2009, Angus Toulouse, Ontario Regional Chief, Chiefs of Ontario.

³⁸ Frances Abele, *Like an Ill-Fitting Boot: Government, Governance and Management Systems in the Contemporary Indian Act*, report prepared for the National Centre on First Nations Governance, June 2005.

³⁹ *Proceedings*, 12 May 2009, Shawn Atleo, then Regional Chief, British Columbia, Assembly of First Nations.

Aldridge notes, but rather was clearly intended to “promote assimilation and to replace traditional forms of government.”⁴⁰ Witnesses spoke passionately about how the *Indian Act* electoral system has, for generations, distorted and displaced the political cultures and political systems of Aboriginal communities. In discussing the historical development of the elected band council as a means of suppressing traditional indigenous political systems, Shawn Atleo told the Committee:

The aims of the *Indian Act*, in the way elections and leadership selection was incorporated, always has been founded on a notion of undermining our historic systems and incorporating new externally imposed systems. This has caused tremendous challenges within our communities. This disregard for historic traditional systems and our authority is still embodied in the Act today.⁴¹

Many First Nations witnesses underscored the point that, in imposing the elected band council system on First Nations, the government intentionally meant to replace traditional Indian leadership systems with the political practices, institutions and philosophies of the prevalent society. Wendy Cornet explains that the goal was to eliminate the vestiges of traditional governance structures and “to make First Nations governments resemble, as much as possible, non-Aboriginal visions of governance and democracy, without much of a reciprocal effort to explore or understand in any depth First Nations' concepts of governance and democracy.”⁴² Noting that the paramount purpose of the *Indian Act* electoral system was to serve the needs of the colonial government rather than those of First Nations, Theresa Hood of the Nuxalk First Nation told the Committee that:

The *Indian Act* election policies were written by non-Indian people for the benefit of non-Indian people who are not accountable to the First Nations people and they have never met the needs of our First Nations people.⁴³

⁴⁰ *Proceedings*, 2 June 2009, Jim Aldridge.

⁴¹ *Proceedings*, 12 May 2009, Shawn Atleo.

⁴² *Proceedings*, 12 May 2009, Wendy Cornet.

⁴³ *Proceedings*, 30 September 2009, Theresa Hood, Interim Band manager, Nuxalk First Nation.

Chief Terrance Nelson of the Roseau River First Nation in Manitoba told the Committee that the electoral system is a key facet of the *Indian Act*'s overall broader objective of controlling and regulating the lives of First Nations peoples:

The *Indian Act* was not about rights, it was about making sure that the government controlled the First Nations. The election system is just part of that *Indian Act* system that controls the First Nations.⁴⁴

The result of these externally imposed systems has not necessarily been the development of open, accountable and democratic governments. Rather than establishing “responsible” governments, witnesses told the Committee that the imposition of the *Indian Act* electoral system has, in fact, limited the ability of First Nations to shape more accountable and democratic governments. According to Chief Gilbert Whiteduck of the Kitigan Zibi First Nation, this “systematic eradication” of traditional systems and cultures has led to the development of band election procedures that “today echo this failed agenda”.⁴⁵ Chief Angus Toulouse explains:

The *Indian Act* has produced election systems fraught with problems, inconsistencies, and an overabundance of appeals. Ultimately, the systems have served to destabilize our governments.⁴⁶

Similarly, Chief Lawrence Paul states:

The *Indian Act* election system, in which the majority of our First Nation members still operate, has severely impacted the manner in which our societies traditionally governed themselves. It has displaced our inherent authority as leaders and has eroded our traditions, culture and belief systems. It does not reflect our needs and aspirations. It has also not kept pace with principles of modern and accountable governments.⁴⁷

Partly as a result of its inauspicious history, the elected band council system is seen by many to be an illegitimate and unacceptable denial of Aboriginal rights to self-government. The lack of legitimacy of *Indian Act* governments continues to manifest itself today. Those who favour traditional means of community leadership often refer to these leaders as “Indian Act Chiefs”,

⁴⁴ *Proceedings*, 26 May 2009, Terrance Nelson, Chief, Roseau River Anishinabe First Nation.

⁴⁵ *Proceedings*, 7 October 2009, Gilbert Whiteduck, Chief, Kitigan Zibi First Nation.

⁴⁶ *Proceedings*, 16 June 2009, Angus Toulouse, Ontario Regional Chief, Chiefs of Ontario.

⁴⁷ *Proceedings*, 27 October 2009, Lawrence Paul, Co-Chair, Atlantic Policy Congress of First Nations Chiefs Secretariat.

suggesting that their power is rooted in the colonial system and not in the community. Derik Nepinak, Chief of Pine Creek First Nation, told us that these leaders are often referred to in his community as “ogimakhan”, meaning artificial leader.⁴⁸ In her testimony to the Committee, Ellen Gabriel, President of the Quebec Native Women Inc., talked to us about the low voter turnout in her community of Kahnawá:ke, located just south of Montreal. She told us that a significant number of Kahnawa’kehró:non do not consider the Mohawk Council to be their governing body and, as a result, only 28% of eligible voters cast ballots in the 2006 election. She further describes the refusal of the federal government to deal with the traditional Mohawk government as unacceptable:

I am a longhouse person. As I said, I do not vote in my band council elections because we had a government and still have a government that existed before Europeans arrived here. It was made illegal in the 1920s and it is still illegal. The government refuses to deal with traditional people's governments. They are violating section 35 of the Constitution that talks about inherent rights.⁴⁹

This situation is not unique to Kahnawá:ke. In 1924, the federal government used its power under section 74 (1) of the *Indian Act* to replace the traditional Haudenosaunee Council on the Six Nations reserve in Ontario with a Chief and Council elected under the *Indian Act*.⁵⁰ This action was opposed by a large number of Six Nations members. Consequently, even today, the vast majority of Six Nations members do not participate in *Indian Act* elections. Professor Shin Imai told the Committee that the imposition the *Indian Act* electoral system in Six Nations did not solve their governance problems, but rather may have exacerbated them. He states:

What happens on Six Nations is that of the 10,000 or 12,000 people who can vote, only a few hundred vote because the majority refuse to participate in *Indian Act* elections. They refuse to participate in anything related to the *Indian Act*. In situations like that, although the government has said the *Indian Act* actually applies, changing these governance provisions will not actually solve the core problem.⁵¹

⁴⁸ *Proceedings*, 27 May 2009, Derek Nepinak, Chief, Pine Creek First Nation.

⁴⁹ *Proceedings*, 7 October 2009, Ellen Gabriel, President, Native Women’s Association Inc.

⁵⁰ Under subsection 74(1) of the *Indian Act*, the Minister has the statutory authority to declare that the “council of the band” shall be selected according to the provisions set out in the *Indian Act*.

⁵¹ *Proceedings*, 6 May 2009, Shim Imai, Professor, Osgoode Hall Law School, York University.

As a result of the events in the 1920s, today Six Nations has both a traditional government with long historic ties to the British Crown, and an elected council recognized pursuant to the *Indian Act*. The Haudenosaunee Council is not recognized by the federal government, nor does it exercise any powers under the *Indian Act*.

Many First Nations witnesses testifying before this Committee spoke of how the deliberate efforts to undermine and replace First Nations governance systems with the Euro-Canadian model of elected local government has resulted in the destabilization of their communities and a distortion of their political cultures and values. For this reason, many believe that changes to improve the *Indian Act* electoral system are really about accommodating the dominant society's most fundamental assumptions and values about governance, rather than implementing change that recognizes and respects First Nations autonomy over this matter.

B. The Two-Year Electoral Cycle

Overwhelmingly, the Committee heard that the *Indian Act*, in requiring elections every two years, has created conditions of instability and has fostered divisions in First Nations communities. Most often (with some notable exceptions), we were advised that the two-year term of office is too short to provide political stability, to plan for and implement long-term initiatives, and to build a proper foundation for community development. Across the country we heard that the frequency of elections, and the resulting potential for abrupt changes in the composition of Chief and Council, has had deleterious effects on the ability of First Nations leaders to establish sustainable processes before they must face re-election.

Commenting on the negative impacts of the two-year electoral cycle, Chief Lawrence Paul, Co-Chair of the Atlantic Policy Congress of First Nations Chiefs Secretariat, had this to share with the Committee:

It is common opinion that the two-year term of office for First Nation councils that hold their elections under the *Indian Act* system limits their ability to govern and act in the best interests of all of our citizens over the long term. The short time frame hinders the establishment of solid business investments and relationships, long-term planning and

implementation, ongoing strong accountability and an acceptable governance regime that works for the long term interests of all First Nation citizens.⁵²

This sentiment was echoed by the vast majority of witnesses appearing before this Committee. Chief Angus Toulouse, Ontario Regional Chief, Chiefs of Ontario, stated:

I think we all recognize that two years is insufficient time to develop, plan and be accountable for results. The frequency of elections can also create instability and uncertainty for community members, business ventures and overall community development. Clearly, there are better ways, and First Nations must drive the solutions.⁵³

The two year term of office is especially challenging when those elected to the position of Chief and Council may have not previously held office. This situation is further exacerbated by the fact that First Nations governments, irrespective of size, are responsible for delivering a range of provincial-type services (e.g., housing, education, health, economic development, etc.) to their citizens and must frequently do so without sufficient public administrative capacity. Naturally, there is a learning curve for newly-elected officials. However, the two-year electoral cycle permits Chief and Council only a short time-frame in which to learn the complexities of the various portfolios they hold, let alone plan for and implement related initiatives before they are into another election.

During testimony to the Committee, Theresa Hood described the disruptive effects of the frequent turn-over of Chief and Council with respect to effective community governance:

With the elections within our community, we find that two-year election is not a long enough term for our council. They feel they are just learning our organization and the term ends. Once they have learned what happens internally, then we have another election, and it has such a high turnover within our council, then the process has to start all over again. We go backwards every time a new election happens. We also lose key members of our council every election, council who hold key portfolios.⁵⁴

⁵² *Proceedings*, 27 October 2009, Lawrence Paul, Co-Chair, Atlantic Policy Congress of First Nations Chiefs Secretariat.

⁵³ *Proceedings*, 16 June 2009, Angus Toulouse, Ontario Regional Chief, Chiefs of Ontario.

⁵⁴ *Proceedings*, 30 September 2009, Theresa Hood, Interim Band Manager of the Nuxalk First Nation

The constant churn of elected officials also makes it challenging for First Nations to work together and to move forward collaboratively on larger regional and tribal initiatives. Councillor Paul Chief of Brokenhead Ojibway Nation explains:

[B]ecause the council keeps changing year after year, the continuity of working with each other in partnerships is almost impossible because we are spending a majority of our time updating, educating new and outgoing council members.⁵⁵

In Williams Lake, British Columbia, Cary Morin of the Alexandria First Nation reinforced this point:

[The] problem with the two years is having different chief and council elections, specifically for tribal initiatives, for larger initiatives for large tribal groups that want to work together. They will have different elections at different times and they will have different chiefs for different terms. What ends up happening is if you want to move forward on some strategic visioning that you have undergone for how much length of time, then basically a new chief and council can come in at any point and they will not share that same vision and that will move everything off-track.⁵⁶

The link between political stability and economic development was also highlighted by several witnesses testifying before the Committee. The uncertainty created by a short electoral cycle, including the possibility that the “rules and players of the game” may change can discourage investment in First Nations communities. Electoral reform, in which the term of office is extended, explains Grand Chief Ron Evans, would have the advantage of establishing “the continuity of leadership required to sustain and build common purpose of action to develop economic power”.⁵⁷

Of significant concern to the members of this Committee is the divisiveness experienced in many First Nations communities as a result of the elective system and the strategic competition for the positions of elected office. Witnesses indicated that under the existing *Indian Act* electoral system (where the candidate with a simple majority of votes wins), candidates from the larger kinship groups or families are favoured. Smaller families, explains Menno Boldt, “often feel

⁵⁵ *Proceedings*, 25 May 2009, Paul Chief, Councillor, Brokenhead Ojibway Nation.

⁵⁶ *Proceedings*, 30 September 2009, Cary Morin, Band Manager, Alexandria First Nation.

⁵⁷ *Proceedings*, 25 May 2009, Ron Evans, Grand Chief, Assembly of Manitoba Chiefs.

disenfranchised by this process, which tends to divide the community into rulers and ruled.”⁵⁸ The situation is aggravated by the fact that the system is designed in such a way that those in office have considerable authority over the distribution of government grants and services. Chief Terrance Nelson of the Roseau River First Nation in Manitoba explains that First Nations elections are hotly contested because the office of chief and council are often the primary, if not sole, source of gainful employment in the community:

To understand why elections are so divisive in many First Nation communities, you have to look at the economy of First Nations people and communities. First Nations in Canada are at the 63rd level of the United Nations living index. Many First Nation communities are extremely impoverished, with some having up to 95 per cent unemployment...So becoming a member of chief and council not only means a guaranteed income, but if you want it, it also means the control of most of the wealth in the community. It is, therefore, easy to understand why elections in our community are so intense.⁵⁹

Similarly, in his presentation to the Committee, Jerome Slavik told us that many First Nations administer budgets in the millions and control corporate enterprises generating millions of dollars annually. They are also in charge of hiring practices, housing allocations and land use policies, all of which have a direct impact on the well-being of individual members. Consequently, he suggests, there is intense competition for leadership positions “as new persons are attracted to the possibilities and potential of leading First Nations which now have significant resources”, a situation that is often “reflected in bitterly contested elections followed by long and costly appeals.”⁶⁰

The competition for elected office often breaks down along family lines, and is particularly disruptive in smaller communities. Chief Noah Augustine of the Metepenagiag First Nation in New Brunswick spoke passionately about the political strife in his own community, where he has seen the struggle to obtain power, tear families apart:

⁵⁸ *Pathways to Self Determination*, p.122

⁵⁹ *Proceedings*, 25 May 2009, Terrance Nelson, Chief, Roseau River Anishinabe First Nation.

⁶⁰ Jerome Slavik, *Submission to the Standing Senate Committee on Aboriginal Peoples* tabled 16 September 2009.

I have seen my community divided three times. I have seen families torn apart. I have seen brother fight brother, fathers disown sons, and families devastated by suicide...With the band office being the main and sometimes only source of employment, there is a constant struggle for power among people who are closely connected. With elections every two years, there is a constant division of families, and emotions tend to run deep. When you are talking about people's livelihoods, matters of the election are of the highest importance. This is why we have such high voter turnouts on the reserve at about 95 per cent. There is a tendency for people to strike out at each other and do things to hurt one another for the most celebrated positions of power -- chief and council. After an election, a community might begin to heal, but that healing is never complete because before you know it, there is another election.⁶¹

The frequency of elections serves to exacerbate these tensions and struggles, and can place communities under constant strain and division. These tensions are perhaps most characteristic of, and acute in, small First Nations communities, which are numerous across the country. The result, as John Graham, Senior Associate of the Institute on Governance suggests, is a governance system that is relatively unstable.⁶²

A troubling consideration is that this system of “electoral democracy”, imposed on First Nations in the late nineteenth and early twentieth century, may itself have contributed to this state of affairs. Having displaced traditional leadership systems, which grew out of complex social relationships and duties, today’s highly charged elections often do not appear to yield a shared judgement, confer legitimacy and build trust. Rather, as we heard, they often produce the victors and the vanquished of the moment.

C. Political Accountability

Accountability is a fundamental principle of democratic governance, whereby those who govern are politically accountable to those they govern. The structure of the *Indian Act*, however, inverts this essential relationship. “All elections under section 74 of the *Indian Act*” as indicated

⁶¹ *Proceedings*, 27 October, Chief Noah Augustine, Co-Chair, Atlantic Policy Congress of First Nation Chiefs Secretariat.

⁶² *Proceedings*, 6 May 2009, John Graham, Senior Associate, Institute on Governance.

by professor Shin Imai “place accountability on the Minister”.⁶³ The election provisions of the *Indian Act* and the accompanying regulations include a large degree of supervision and intervention by the Minister, the Governor-in-Council, and the Department of Indian Affairs and Northern Development. For example, the Minister and/or Governor-in-Council determines whether a chief is elected at large or by councillors and also how large the Council will be. The Minister and/or Governor-in-Council also conducts the investigation of appeals and the setting aside of elections. In addition to these powers, under section 74 of the *Indian Act*, the Minister may order that a First Nation be brought under the *Indian Act* election regime.

Remarkably, however, the *Indian Act* is virtually silent when it comes to the responsibility of Chief and Council to the community and community participation in decision-making.⁶⁴ While a great deal of authority rests with the Minister, the *Indian Act* provides restricted opportunities for community participation and decision-making. In her analysis of the *Indian Act*, Frances Abele describes how the emphasis on the authority of the Minister has had a profound impact on the quality of democracy in First Nations governments, as well as on their ability to be responsive to their citizens:

Ultimate power and responsibility is lodged in the Minister, not in the members of the Band or the officials they elect. Nowhere in the Act is room created for different lines of responsibility (from Chief and Council to the Band members, for example) even though there are several references to majority rule. Indeed, even the sections of the Act that establish the decision-making framework for Band Councils also, at the same time, maintain overriding Ministerial authority. The insertion of Ministerial power and authority into both elections and decision-making of the elected seems likely to undermine a sense of political responsibility and autonomy among Band electors.⁶⁵

Political accountability of Chief and Council is therefore directed primarily toward the federal government rather than toward community electors. The result, as Professor Shin Imai explains, is an electoral system whose legitimacy among community members is suspect.⁶⁶

⁶³ *Proceedings*, 6 May 2009, Shin Imai, Professor, Osgoode Hall Law School, York University.

⁶⁴ For more a detailed discussion of this point see Shin Imai, *The Structure of the Indian Act: Accountability in Governance*, research paper for the National Centre for First Nations Governance, July 2007.

⁶⁵ Frances Abele, *Like an Ill-Fitting Boot*, p.10.

⁶⁶ *Proceedings*, 6 May 2009, Shin Imai, Professor, Osgoode Hall Law School, York University.

Repeatedly, we heard from First Nations elected officials, such as Chiefs Andrew Colomb and Frank Brown from Manitoba, that leadership under the *Indian Act* is limited largely to administering “Indian Affairs money”.⁶⁷ Many First Nations witnesses told us that, as Chief and Council, they are primarily responsible to the Department of Indian Affairs and Northern Development for the funds they receive, rather than to their community members for how those funds are directed. Chief George Kemp of Berens River First Nation described himself not as a chief or a political leader, but as “just another bureaucrat for the system.”⁶⁸ In his book, *Surviving as Indians*, Menno Boldt captures both the frustration expressed by these witnesses and also their political subordination to the Department. He writes:

Any analysis of power in Indian communities must take into account the important fact that virtually all authority and funds of band/tribal councils come through DIAND. Thus, although band/tribal chiefs and councillors must seek the vote of their people, their mandate to govern comes from DIAND. This puts elected Indian officials (chiefs and councillors) and the appointed bureaucrats in an inevitable position of political subordination to DIAND officials, rather than to the people who elect and appoint them. As a consequence of this historical status, Indian leaders’ responsiveness and accountability to their people has not been institutionalized.⁶⁹

Increasingly, however, First Nations are trying to balance the powers of Chief and Council, increase the level of community participation in decision-making, and diminish the role of the Minister in election processes. A majority of First Nations are designing their electoral regimes to address some of the deficiencies of the *Indian Act* electoral system. For example, many community-designed electoral codes have established election appeals tribunals to settle disputes about elections within the community, rather than by the Department of Indian Affairs and Northern Development.

⁶⁷ *Proceedings*, 26 May 2009, Andrew Colomb, Chief, Marcel Colomb First Nation and Frank Brown, Chief, Canupawakpa Dakota First Nation.

⁶⁸ *Proceedings*, 26 May 2009, George Kemp, Chief, Berens River First Nation.

⁶⁹ Menno Boldt, *Surviving as Indians: The Challenge of Self Government*, University of Toronto Press, 1993, p.127.

D. The Elections Appeals Process

A key criticism of the *Indian Act* and its accompanying regulations relates to the election appeals process. Section 79 of the *Indian Act* gives the Governor-in-Council authority to set aside the election of a Chief or councillor upon receiving a report from the Minister. The circumstances under which an election may be set aside include: a corrupt practice in connection with the election; a contravention of the Act (or the *Indian Band Elections Regulations*) that might have affected the result of the election; or the ineligibility of a person who was nominated to be a candidate in the election.

The *Indian Band Election Regulations* (sections 12-15) specify the procedures to be followed to appeal an election conducted pursuant to the *Indian Act*. Under the regulations, an appeal is launched by sending an affidavit to the Assistant Deputy Minister of the Department of Indian Affairs and Northern Development, by registered mail, within 45 days of the election. That affidavit must specify the grounds for the appeal. The Assistant Deputy Minister then forwards a copy of the appeal and all supporting documents to the electoral officer and to each candidate affected by the appeal. Upon receipt, each candidate has 14 days to respond and may forward any supporting documentation to the Assistant Deputy Minister. If the Minister is of the view that the material provided is not sufficient to make a determination as to the validity of the election, the Minister or his designate may conduct an investigation.

There was broad consensus among witnesses appearing before the Committee that current *Indian Act* provisions do not provide for suitable appeal mechanisms. Several witnesses described the current *Indian Act* appeals process as lacking rigour, transparency and procedural fairness. Commenting on both the lack of transparency and departmental accountability with regard to the appeals process, Professor Bradford Morse had this to tell the Committee :

In practical terms, the regional offices of INAC will make the determinations on the ground as to whom to question, what facts to gather, what to include in the report and what to recommend up the long chain of command to a minister's office. Throughout the process, there is no transparency or accountability. The issue of accountability is raised frequently in relation to First Nations governments. This is an example where we have no accountability mechanisms in place in relation to either the department or the minister. There simply are no rules under the *Indian Act* that regard the nature of the investigation, who must be interviewed, whether there is an opportunity to be heard, who will receive notice, whether the investigations will be conducted in public or whether there will be any element of public

hearings — the kinds of things that one would normally anticipate might be applicable in circumstances of this nature.⁷⁰

In addition to complaints that the appeals process lacks openness, the process was also described as cumbersome and lengthy, with investigations taking anywhere between 6 to 18 months or longer to complete.⁷¹ Chief Lawrence Paul of Millbrook First Nation told the Committee that “the unfair and lengthy appeal process involving DIAND can often take 12 to 18 months of a 24-month term to resolve; and it does not meet with principles of natural justice regarding fairness and impartiality.”⁷² Describing the long and complicated appeals process, officials from the Department of Indian Affairs and Northern Development indicated:

[T]he appeal process in the *Indian Act* elections is long and complicated. As a result of recent judicial reviews, the department has made changes in terms of the way we handle the circulation of election appeals to appellants and interested parties. This provides everyone with an opportunity to review and provide comments on investigation studies that are taking place with respect to election appeals. However, it substantially elongates the process of making final decisions with respect to dispute resolution.⁷³

The frequency of appeals, and its destabilizing effects on First Nations governance, was another commonly cited concern. This situation creates excessive instability and uncertainty in communities, since First Nations whose elections are being contested may be placed under the administration of a third party manager until a decision is rendered. In his testimony to the committee, Jerome Slavik described the difficulty that a First Nation is placed under when subjected to a lengthy appeals process:

At present, there is no suitable appeal mechanism for First Nations under the *Indian Act* election regulations...These proceedings are not open to public scrutiny, not transparent...This process can take up to six to eighteen months or longer. This creates

⁷⁰ *Proceedings*, 6 May 2009, Brad Morse, Professor, Faculty of Law, University of Ottawa.

⁷¹ *Proceedings*, 13 May 2009, Brenda Kustra, Director General, Governance Branch, Department of Indian Affairs and Northern Development.

⁷² *Proceedings*, 27 October 2009, Lawrence Paul, Co-Chair, Atlantic Policy Congress of First Nations Chiefs Secretariat.

⁷³ *Proceedings*, 13 May 2009, Brenda Kustra, director general, Governance Branch, Lands and Trust Services, Indians and Northern Affairs Canada.

uncertainty and instability, not only among the leadership, members and staff, but also for third parties [such as] banks, joint venture partners, government agencies, etc.⁷⁴

From the perspective of First Nations, the role of the Minister in setting aside elections is viewed as equally problematic and an inappropriate intervention in the internal affairs of a First Nation. Witnesses also expressed concern that the appeals process, currently managed by the Department of Indian Affairs and Northern Development, lacks credibility and the appearance of neutrality. Accordingly, many witnesses recommended that the Minister should have minimal or no involvement in the setting aside of elections, favouring instead an election appeals process administered by an independent institution. Commenting on the need for an independent body to oversee appeals, Professor Morse remarks:

Clearly, it would be preferable for this to move outside the secrecy or invisibility of the Department of Indian Affairs and the minister's office. This should be at arm's length not only from the department but also from the federal government as a whole and to do so in terms of looking at ...a First Nations elections commission that could build up the necessary expertise.⁷⁵

According to our witnesses, a potential significant benefit of an independent body empowered to hear appeals, both under the *Indian Act* electoral and custom election systems,⁷⁶ would be the substantial reduction in the time it takes to investigate and render decisions. In describing the proposal for electoral reform being advanced by the Assembly of Manitoba Chiefs, Grand Chief Ron Evans talked about the possibility of establishing a coordinated, independent appeals process for Manitoba First Nations. He stated:

Right now, the appeal process is taking much too long with INAC being responsible overseeing the appeals. What we will attempt to do through our provincial First Nation electoral officer is to ensure that the appeal process is much more expedient. Perhaps the communities should not have to wait too long to have their appeals dealt with. They need to be dealt with in a timely matter.⁷⁷

⁷⁴ Jerome Slavik, *Submission*, p.8

⁷⁵ *Proceedings*, 6 May 2009, Brad Morse, Professor, Faculty of Law, University of Ottawa.

⁷⁶ While custom codes are required to include appeal mechanisms, once the process set out in the code has been exhausted, disputes may be referred to the Federal Court.

⁷⁷ *Proceedings*, 25 May 2009, Ron Evans, Grand Chief, Assembly of Manitoba Chiefs.

Other witnesses, such as Lynne Groulx, President of the Indigenous Law Resource Centre, talked about the complexity of First Nations leadership selection processes and how an independent dispute resolution body with expertise both in Canadian law and indigenous legal traditions would be better suited to dealing with issues of such great consequence to First Nations.⁷⁸ Similarly, Jerome Slavik told us:

First, the whole matter, to the extent possible, should be taken out of the hands of the Department of Indian Affairs and placed in what I refer to as a First Nations electoral commission. This commission should be responsible for replacing all of the department's functions in relation to First Nations elections.⁷⁹

The need for a better dispute resolution process, such as an independent appeals tribunal or commission, operating at arm's length from the Department, which would provide First Nations with a reliable, credible, cost-effective and expeditious process is not a new idea. Indeed, it was a key recommendation of the Joint Ministerial Advisory Committee. In their proposals to then Minister of Indian Affairs and Northern Development, Robert Nault, the JMAC co-chairs recommended "an independent, accessible and efficient electoral appeals process to be administered by an independent institution."⁸⁰

E. Reversion to Custom or Community Elections

It is currently possible for First Nations to revert to "custom" (i.e. community-based) elections from the *Indian Act* electoral regime. Section 74 of the *Indian Act* indicates that the "default" leadership selection process is the "custom" method which remains in place until the Minister determines that the election provisions of the *Indian Act* should apply. A number of First Nations have exercised this option, for example, to lengthen their terms of office, create appeal bodies, establish recall mechanisms, tighten up nomination procedures and determine the composition and size of council.

⁷⁸ *Proceedings*, 28 October 2009, Lynne Groulx, President, Indigenous Law Resource Centre Inc.

⁷⁹ *Proceedings*, 16 September 2009, Jerome Slavik, Barrister and Solicitor, Ackroyd LLP.

⁸⁰ Report of the Joint Ministerial Advisory Committee, p. 83.

Several witnesses, such as the Assembly of Manitoba Chiefs and Treaty 1, have indicated that supporting this process, either on a regional or an individual basis, is the optimal way of opting out of the *Indian Act* electoral regime. In his appearance before the Committee, William B. Henderson suggested that if First Nations who currently hold elections under the *Indian Act* desire to change their electoral processes, they may revert to the customary option and put in place longer terms for Chief and Council. Since this approach would not require any legislative change to the *Indian Act*, Mr Henderson suggested it would be the “easiest and most satisfying way to change ... and [for First Nations to] set the terms they choose.”⁸¹ Similarly, Bruce Mack indicated that while “there are serious problems with the *Indian Act* regulations...there is a process in place to deal with that”⁸² which allows First Nations some latitude in developing electoral processes that are more responsive to community needs.

This view was echoed by several witnesses, such as Chief Sid Douglas of the Cheam First Nation, who told us that many First Nations are looking to develop their own community election codes in order to address the deficiencies of the *Indian Act* election processes which they believe “are not working”.⁸³

Custom codes, though not without their problems⁸⁴, are generally seen as improvements to the electoral framework provided for by the *Indian Act*. When properly drafted, they are far more likely to provide a system of governance that is culturally appropriate, politically responsible, transparent and accountable. Jerome Slavik explains that, in many instances, community designed election codes are often “far superior to what is offered under the *Indian Act*” since they address many of the gaps under the *Act*. He adds that community-designed codes:

Offer more appropriate terms of office that are established by the community. They allow the community to determine the size of their leadership based on the needs of the community, their economic and fiscal circumstances, their geographic location and other factors. They ensure a much more wide-ranging and mandated voting procedure. They

⁸¹ *Proceedings*, 31 March 2009, William B. Henderson, appearing as an individual.

⁸² *Proceedings*, 30 September 2009, Bruce Mack, appearing as an individual.

⁸³ *Proceedings*, 2 October 2009, Sid Douglas, Chief, Cheam First Nation.

⁸⁴ With respect to outstanding issues concerning custom codes, and in particular older codes, please refer to the evidence provided by Lynne Groulx and Bruce Mack, as well as the testimony of the Department of Indian Affairs and Northern Development.

establish clear grounds of eligibility for office. They ensure independent and qualified electoral officers. They have voting procedures designed to facilitate participation, not avoid it. They establish clear grounds of appeal and appeal procedures. They clarify the roles and responsibilities of chief and council, and they have grounds for suspension and removal of council who, for a variety of reasons, either are not meeting their roles or responsibilities or, in some cases, have other reasons set out in their regulations for removal from office.⁸⁵

Although reverting to a community election system (custom) does not require legislative amendment of the *Indian Act*, a First Nation operating under the *Act's* electoral regime and wishing to be removed from its application must adhere to the Department's *Conversion to Community Election System Policy*. The policy, as discussed in an earlier section of the report, requires community election codes to be written;⁸⁶ to provide for the settlement of election appeals; to be consistent with the *Charter*; and to observe the principles of natural justice. Some witnesses have described this process as a continuing effort by the federal Department of Indian Affairs and Northern Development to "regulate leadership selection for First Nations who have not yet negotiated a self-government agreement."⁸⁷ Others have indicated that the requirements set out in the departmental policy amount to the continuation of paternalism. For example, Shawn Atleo told the Committee that while a First Nation must satisfy the requirements set out by the policy and ultimately have its code approved by the Department, at "no time were community members or leaders asked to endorse a requirement to follow the elections provisions in the *Indian Act*."⁸⁸

A common complaint is that, under the policy, First Nations are once again forced into a governance model that, at its core, resembles the *Indian Act* electoral framework, rather than traditional political processes. In their submission to the Committee, the Assembly of First Nations notes the failure of the policy to reference any First Nations customs or traditions regarding customary leadership selection processes:

⁸⁵ *Proceedings*, 16 September 2009, Jerome Slavik, Barrister and Solicitor, Ackroyd LLP.

⁸⁶ The Courts have held, however, that custom election codes need not be in writing. See for example, *Salt River First Nation 195 v. Marie*, [2004] 1 C.N.L.R. 319 (F.C.A); *Francis v. Mohawk Council of Kanesatake*, [2003] 3 C.N.L.R. 86 (Federal Court).

⁸⁷ *Proceedings*, 2 June 2009, Wendy Cornet, appearing as an individual.

⁸⁸ *Proceedings*, 12 May 2009, Shawn Atleo, BC Regional Chief, Assembly of First Nations.

The most significant observation of the INAC policies in regard to reversion to “custom” is that not one has mentioned a requirement that the traditions or customs of the First Nations are a requirement or even relevant to the INAC accepted process. It is this reality which has fostered the outcome observed by First Nations that existing policies to revert to “custom” promote a mere modification of the Indian Act election provisions.⁸⁹

Witnesses have also suggested that the Department’s policy is “too restrictive and inflexible”, resulting in a narrow range of leadership selection models. Currently, there has not been a single instance in which the Department has approved a reversion to custom that is based on a non-electoral model. John Graham from the Institute on Governance, noted that the failure to conceive of a political system that is not based on some form of election, but on other legitimate forms of political representation can be quite limiting and disruptive, especially for smaller communities. On this point, Professor Bradford Morse adds:

My experience and understanding is that, prior to the *Indian Act*, or where the *Indian Act* regime is not applied, First Nations were global leaders in democracy. Democracy in my mind does not mean elections with ballots; it means the voice of the people in the selection of their leaders and in the decision-making of governments. First Nations were extraordinarily democratic. I would agree...that there are many options around how one envisions democracy beyond elections in particular periods.⁹⁰

Beyond the concerns with the Department’s policy, witnesses testifying before the Committee have suggested that reverting to community elections requires support, adequate resources and time. Witnesses, such as Chief Wayne Christian of the Spallumcheen First Nation, described the process of reverting to custom as “onerous”. Grand Chief Norman Glen Ross of the Opaskwayak Cree Nation, expressed a similar view:

Those with custom elections also do not have that support. They are off on their own. A lot of the First Nations need to learn how to bring all the policies in and all the election codes and stuff like that, that really make for a credible election and to have that strong backing. Because when we are operating here, the federal government and the province both need to be comfortable and they both need to have faith in the processes and in the systems and the outcomes that are coming out of there. A lot of that cannot happen because of our [lack of] coordination and our communication.⁹¹

⁸⁹ Assembly of First Nations, *First Nations Elections: charting a path forward from a First Nation perspective*, March 2009, p.16.

⁹⁰ *Proceedings*, 6 May 2009. Bradford Morse, Professor, Faculty of Law, University of Ottawa.

⁹¹ *Proceedings*, 26 May 2009, Grand Chief Norman Glen Ross, Opaskwayak Cree Nation.

Repeatedly, the Committee heard that a significant challenge for First Nations communities wishing to adopt their own custom codes is a lack of resources, not only to draft legally sound and administratively coherent codes, but also to ensure their effective implementation. Shawn Atleo told the Committee that while “over half of First Nations carry out custom elections whereby they establish their own systems...these communities are also not specifically funded to conduct elections.”⁹² Louis Harper of the Manitoba Keewatinook Ininew Okimowin (MKO) explains that, under the *Indian Act*, funding for election processes is provided, but once communities opt out of this system they are essentially “on their own”. For this reason MKO recommended that “equal funding for community elections be made available to ensure accountability on the custom election process.”⁹³ Chief Angus Toulouse told us that when he was Chief of the Sagamok Anishnawbek, his community sought to move to custom elections, but was restricted by a lack of resources. He remarked that: “We were looking at the *Indian Act* and debating to change the code as a council. Initially, we looked at our financial situation and said, if we stay within the *Indian Act*, at least somebody is paying for the election.”⁹⁴

In some instances, we were told that communities finance the process of reverting to a custom code, and implement its provisions, using revenue from other areas. Chief Tim Manuel of the Upper Nicola First Nation in British Columbia told us that this is particularly challenging for many smaller communities who may lack the resource capacity to review, develop and manage customary elections:

It does cost money, I mean the time, effort and money and expertise, to go from the section 74 to custom elections. It is very time-consuming. Again the band incorporated its own revenue from forestry to offset that cost, but I think looking at other bands or smaller bands that want to do this certainly do not have that capacity to do it.⁹⁵

Witnesses have suggested that policy reform in this area could address the current restrictions of departmental policy and focus on what changes may be needed to enhance accessibility, capacity, flexibility in the range of electoral models available and the role of the Department in facilitating the reversion to custom election system. On the latter point, members of the

⁹² *Proceedings*, 12 May 2009, Shawn Atleo, BC Regional Chief, Assembly of First Nations.

⁹³ *Proceedings*, 10 June 2009, Louis Harper, Legal Counsel, Manitoba Keewatinook Ininew Okimowin.

⁹⁴ *Proceedings*, 16 June 2009, Angus Toulouse, Ontario Regional Chief, Chiefs of Ontario.

⁹⁵ *Proceedings*, 29 September 2009, Tim Manuel, Chief, Upper Nicola First Nation.

Committee are impressed by the considerable work being done in several First Nations communities to revitalize their traditional governance systems, and blend them with contemporary political realities. The Nisga'a Nation for example, blends a variety of cultural and administrative concepts, including a Council of Elders.⁹⁶

F. Testimony of Community Members

The Committee set aside time during its hearings in Manitoba and British Columbia to listen to the views of individual community members concerning issues relating to First Nations elections. The committee heard from 14 individuals in Manitoba and 5 individuals in British Columbia. We also received two submissions from New Brunswick and one from Quebec.

Individuals testifying before the committee raised accountability and transparency as key issues of concern. They expressed the need for more stringent rules governing elected office, including improved conflict of interest guidelines and removal mechanisms to address instances of corruption or fraud. Consistently, we heard of several problems relating to the mail-in ballot system, commonly employed to allow off-reserve members to vote in band elections. Witnesses such as Phyllis Sutherland and Leah Stevenson, for example, told the committee that mail-in ballots were being “misused to gain leadership.”⁹⁷ Others, such as Norman Traverse, talked about fraudulent uses of the ballots. Kelvin Chicago, on behalf of the Treaty 3 Grassroots Citizen Coalition, told us about the Coalition’s recommendations to address financial and political accountability issues on reserve and to improve governance practices, including the following:⁹⁸

- The Auditor General of Canada appoint auditors for First Nations bands beyond the influence of regional officials;
- Electoral officers be appointed by an arms-length body such as Elections Canada;
- A transparent system to track wages and salaries of First Nations leaders, be implemented and ending the system of honoraria.

⁹⁶Additional information on the Nisga'a Lisims Government can be found on their website at: <http://www.nisgaalisims.ca/?q=about-nisgaa-lisims-government>.

⁹⁷ *Proceedings*, 26 May 2009, Phyllis Sutherland and Leah Stevenson, as individuals.

⁹⁸ Kelvin Chicago, Treaty 3 Grassroots Coalition, Submission to the Committee, tabled 26 May 2009.

Off-reserve community members appearing before the committee spoke to us of wanting acknowledgement of their concerns and a higher degree of responsiveness from Chief and Council, whom they helped to elect. They told us about feeling marginalized and having limited access to band services. Understandably, many of these individuals, such as Kevin Christmas of the Membertou First Nation, expressed reluctance to see the terms of office for Chief and Council extended without both clear rules of appeal and recall and a separation of politics and band administration. Similarly, Gerald McIvor told us: “You go to any community, and the majority of band members there will tell you, look at the mess they create in two years, look at the mess they will leave us in four.”⁹⁹

The Committee also heard from individuals that the *Indian Act* election system should be replaced with traditional systems and with a return to the nation-nation relationship. On this point, Cathy Ginnish from Natuaqanek (Eel Ground) First Nation, offered this comment:

I want to make it clear, from the onset, that I prefer enforcement of our one true law-treaty law as guaranteed in our Peace and Friendship Treaty (1725-renewed 1752) along with Aboriginal title and rights enforcement.¹⁰⁰

Similarly, Gerald McIvor told us that:

When you look at the uniform elections act, to me it is just another little step on pushing the First Nations of treaties into the municipal level of government. When you are asking questions about, what do you think will work for *Indian Act* elections, my solution is no *Indian Act* elections...Prior to the first contact, we had the best government structure in the world, the participatory democratic structure. Europeans came, they imposed a representative democratic structure. I am sure you will all agree with me, like it is a dismal failure...RCAP has recommended, give them their self-government, let them exercise their self-determination, their inherent rights to self-government, let them exercise that. You give us a share of the resources, we will create our own institutions, our own service delivery systems, and you will have something that will be the envy of the world.¹⁰¹

⁹⁹ *Proceedings*, 25 May 2009, Gerald McIvor and Norman Traverse, appearing as individuals.

¹⁰⁰ Cathy Ginnish, Natuaqanek (Eel Ground) First Nation, *Submission to the Committee* tabled 6 November 2009.

¹⁰¹ *Proceedings*, 25 May 2009, Gerald McIvor, appearing as an individual.

While several individuals talked about their particular grievances, underlying many of these complaints appears to be a need to address, in a meaningful way, the accountability of Chief and Council, the fostering greater transparency in the way funds are managed, the establishment of mechanisms for greater community participation in the decision-making process, and the creation of a neutral civil service on reserve. With regard to elections specifically, concerns were commonly raised regarding the impartiality of elections and electoral officers, the use and/or misuse of mail-in ballots, the need for a transparent appeals process, and clear procedures for the removal and suspension of elected officials for wrongdoing and unethical practices.

Having considered these concerns, the Committee notes that meaningful consultations between First Nations leadership and community members, both on and off-reserve, are essential to addressing the significant frustrations of the two groups, both with respect to the insufficiency of knowledge of band affairs and the lack of engagement in the political process.

G. Other Key Issues

The Committee heard several concerns with respect to the administrative weaknesses inherent in the regulations governing *Indian Act* elections. Key among them were these:

- The number of councillors who can be elected should be based on community needs and capacities, rather than on the restrictive formula found in the *Indian Act* (one councillor per hundred members but no less than 2 and not exceeding 12);
- Procedures for nominating candidates and the grounds of eligibility to run for office (i.e., residency, criminal records, educational qualifications, etc.) need to be tightened in order to avoid anomalies such as nomination of persons who are ineligible to run for office;
- Procedures governing the mail-in ballot system are too easily open to abuse.

The committee also notes that there was a range of views on whether recall mechanisms - including the removal of a Chief or councillor by referendum, vote, or petition - are appropriate. We heard consistently that the *Indian Act* criteria for removal from office of Chief or councillors do not provide an adequate means for the membership of First Nations to remove “dysfunctional,

corrupt or incompetent leadership from office”. However, we were also told that, given the political sensitivity surrounding this issue as well as the need to guard against spurious allegations, this deficiency should be addressed by rules developed in the community rather than having a “one size fits all” recall mechanism widely imposed.

In addition, we note that evidence concerning same-day elections was mixed. While it is generally supported by the Assembly of Manitoba Chiefs, the Assembly of First Nations, and the Atlantic Policy Congress of First Nations Chiefs Secretariat, it did not otherwise figure prominently as a priority issue among individual First Nations in the testimony.

FINDINGS AND CONCLUSIONS

Throughout the committee's hearings, we sought to examine ways in which First Nations elections held pursuant to the *Indian Act* could be strengthened and whether, and what, changes in this area could be made to enhance the political accountability of the elected leadership to its citizens. We solicited the views of First Nations who might be directly affected by our proposals and by any advice we might provide to the federal government. Our findings are informed by their testimony to the Committee as well as by the need to give meaningful expression to the inherent right of self-government.

The Recognition of the Inherent Right of Self-Government

The recognition and affirmation of Aboriginal and treaty rights in Canada by section 35(1) of the *Constitution Act, 1982*, represents a fundamental shift in how Aboriginal rights are conceived. Section 35 acknowledges that Aboriginal rights are pre-existing rights, not dependent on Canadian laws or the Constitution for their existence. First Nations and other expert witnesses heard by the Committee maintain that leadership selection is an inherent right of self-government and therefore a constitutionally-protected section 35 Aboriginal right. Although the Supreme Court of Canada has not yet explicitly ruled on this matter, the Committee notes that the jurisprudence on this issue suggests that the "power to determine leadership selection rules is almost certainly an Aboriginal right protected by section 35" and that the "interference with its power under section 74 of the [*Indian Act*] has not extinguished the power."¹⁰²

Since 1995, federal policy has formally extended political recognition to the inherent right of Aboriginal self-government as an existing section 35 right. The *Inherent Right of Self Government Policy* states that federal recognition of that right is "based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources."

¹⁰² *Proceedings*, 2 June 2009, Jim Aldridge.

The policy also affirms the “establishment of governing structures, internal constitutions, elections, leadership selection processes” as integral to that right.¹⁰³

The federal position in respect of the inherent right of self-government aligns with other domestic and international policy statements in this regard. In 1983, for example, the report of the Penner Committee on Indian Self-Government recommended that the Aboriginal right of self-government be explicitly included in the Canadian Constitution, and recognized as a distinct order of government. Similarly, the Charlottetown Accord of the early 1990s proposed a constitutional amendment recognizing Aboriginal peoples’ “inherent right of self-government in Canada.” In 1996, the report of the Royal Commission on Aboriginal Peoples recognized two separate and distinct bases for Aboriginal self-government as an “existing” Aboriginal and treaty right recognized by section 35. They are:

- Aboriginal peoples have a right of self-determination, based upon principles of international law; and,
- Aboriginal peoples possess an inherent right of self-government based upon common law doctrines.

Internationally, the *United Nations Declaration on the Rights of Indigenous Peoples*,¹⁰⁴ adopted by the General Assembly on 13 September 2007, recognizes that indigenous peoples have the right to self-determination. Relevant articles of the *Declaration* provide as follows:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

¹⁰³ The Government of Canada’s 1995 *Inherent Right of Self Government Policy* can be consulted on line at: <http://www.ainc-inac.gc.ca/al/lcd/ccl/pubs/sg/sg-eng.asp>

¹⁰⁴ Canada, Australia, New Zealand and the United States voted against the *UN Declaration on the Rights of Indigenous Peoples*. Australia has since reversed its decision and New Zealand is considering similar action. A majority of 144 states voted in favour of the Declaration and 11 abstained (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine). The Declaration can be consulted on line at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions.

Underlying these statements is the recognition that Aboriginal peoples have the right to determine the processes by which they select their leaders and govern their internal affairs. While that right might have been infringed by Euro-Canadian settlement, it has not been extinguished.

Legislative Approaches to Reform

A central question the Committee grappled with was whether broad legislative changes to the *Indian Act*'s electoral regime is the most effective way to achieve reform and to address the deficiencies of the electoral provisions of the *Indian Act*. While the federal government recognizes the failings of the current *Indian Act* electoral system, broad legislative reform of the *Indian Act* has proven to be highly problematic, and ultimately unsuccessful. From a First Nations perspective, the underlying assumptions and philosophies of the *Indian Act* are deeply flawed, and these are always at issue when the matter of reform is raised; a sentiment eloquently expressed by Regional Chief Angus Toulouse:

We want nothing less than capable governments with true decision-making power over the matters that affect our lives. Continued tinkering with sections of the *Indian Act* will not get us there. It is like painting a house when the foundation is crumbling. We need to build a new structure from the foundation up and to move away from trying to implement a policy direction set in the late 1800s.¹⁰⁵

¹⁰⁵ *Proceedings*, 16 June 2009, Angus Toulouse, Ontario Regional Chief, Chiefs of Ontario.

The majority of First Nations testifying before this committee spoke of their desire to begin the real work of reconciliation and implementation of their governments, rejecting piecemeal efforts to reform the *Indian Act* in the absence of this larger agenda.¹⁰⁶ Several witnesses asked this committee to recommend a process of genuine engagement to reconstitute Aboriginal governments, including their customary laws, rather than recommending federal legislative interventions as a temporary “fix” pending meaningful self-government.

Consistently, we heard that tinkering with the *Indian Act* will not achieve the meaningful reform that First Nations desire or the fundamental purpose of section 35 – reconciliation. Moreover, there is little appetite both in government and among First Nations to have another set of rules imposed upon them. The Committee believes that if the inherent right to self-government is to have any real meaning, it must certainly begin with First Nations communities designing and implementing their own processes for selecting and removing its leadership. First Nations and members of this Committee are weary of any unjust interference with the section 35 rights of Aboriginal peoples, and are equally concerned that previous federal legislative attempts to reform the *Indian Act* have not, from the perspective of First Nations, accommodated their most fundamental values of governance, including consensual and non-hierarchical decision-making structures.

The committee is mindful of the view that a narrow legislative amendment lengthening the term of office could have some immediate, beneficial effects, such as providing for greater political stability. However, merely amending this provision does little to address the main problem of legitimacy of the system and accountability to the community. Such an amendment would not address the accountability relationship of leadership to community members - a relationship fundamental to democratic governance - and may in fact worsen the divide between First Nations citizens and their elected leaders, in some communities. As we saw in the previous section, many community members refer to elected First Nations leadership as “*Indian Act* Chiefs” suggesting that their role is primarily one of administering an illegitimate colonial regime. This can result, as witnesses mentioned, in situations where only a fraction of community members participate in elections, or where a substantial number of community members feel shut out of the political

¹⁰⁶ *Proceedings*, 2 June 2009, Wendy Cornet.

process. It is difficult to conceive how a simple extension to the term of office would resolve this essential aspect of good governance. Such an amendment also does little to address the many other weaknesses of the *Indian Act* electoral regime and its regulations, including the degree of ministerial authority, the flawed appeals process, the formulaic composition of council, the need for suitable mechanisms for the meaningful participation of off-reserve members, removal criteria for councillors, and other administrative issues.

In contrast, pursuing legislative reform of the *Indian Act* to address the weaknesses of the *Act's* electoral provisions appears to contradict the strategies put forward by the vast majority of First Nations witnesses. As evidenced by past attempts, the committee believes this approach could prove unsatisfactory, time-consuming, costly and unsuccessful, especially if not directed by First Nations. Witnesses told us that efforts to retain the *Indian Act* electoral regime, even if improved, miss the mark entirely. Modifying a system whose legitimacy is so fundamentally in question does little to begin the real work of reconciliation. We find that implementing lasting change, necessary to support the establishment of effective and responsive First Nations governments - where all members feel they have a stake and ownership in that system - must begin and end with First Nations themselves.

Finally, we recognize that the legislative route tends to be one that is favored by governments, as the legislative process is something that is readily understood, managed and implemented. For the Department, it can provide a straightforward solution to a complex problem that can be presented to Cabinet in a clear and concise manner. Nevertheless, based on the weight of the evidence before the committee, it does not appear to us to be the most appropriate or effective path forward. Legislative amendments, whether modest or sweeping, fail to address the complexity of the issues at play. There is significant risk that a legislative response, inherently restrictive, could result in a “one-size fits all” approach. More importantly, however, it keeps First Nations electoral systems under the ultimate control of the federal government. This is fundamentally at odds with the section 35 rights of Aboriginal people, including the meaningful recognition and implementation of the right to self-government.

THE COMMITTEE'S RECOMMENDATIONS

A. Facilitating the Transition to Community-Designed Codes

This Committee has consistently stated that the *Indian Act*, which is rooted in a colonial framework, must be replaced by a new relationship based on principles of mutual respect and recognition. Insofar as First Nations elections are concerned, we are afforded a rare opportunity to set aside the *Indian Act* electoral regime and to provide First Nations with the tools necessary to address their own particular governance needs. As referenced earlier in our report, the *Indian Act* provides a mechanism which allows First Nations to opt out of the *Indian Act*'s electoral scheme by reverting to "customary" or community-designed elections.

The Committee believes that committing to and enhancing this process - where each First Nation is directly involved in designing and affirming the details of their self-government regime - is the best way to achieve lasting solutions. We agree with witnesses that legislative amendments to the electoral provisions of the *Indian Act* might amount to trying to paint the walls of a house whose foundation is crumbling. Thus, facilitating the transition to community-designed election codes, offers a satisfying way to address the weaknesses of the *Indian Act* electoral system, while respecting the great diversity of circumstances, priorities and aspirations of First Nations. This process does not preclude other policy and/or legislative options from being pursued, if so desired, by First Nations.

The weight of the evidence before this Committee suggests that First Nations are increasingly interested in re-establishing and reconstituting their traditional systems of governance alongside contemporary governance practices. Echoing this sentiment, Chief Norman Bone remarked: "What we would like to promote this time...is that we re-build First Nations governments...ourselves, rather than it being handed down or instructed by another authority."

¹⁰⁷At the same time, the Minister as well as the Department of Indian Affairs and Northern Development appear to recognize the need to diminish their role in First Nations election systems.

¹⁰⁷ *Proceedings*, 27 May 2009, Norman Bone, Chief, West Region Tribal Council and Chief, Keeseekoowenin Ojibway First Nation.

Electoral reform must respect the regional differences and diversity among First Nations across the country. A one-size fits all solution will not work. The Committee believes that the reversion to community-designed electoral systems, either on a regional or individual community basis, allows for greater flexibility in electoral models, including, for example, elders' councils, as well as more appropriate appeal procedures, removal and accountability criteria, strengthened political accountability to community members, longer terms of office, better nomination procedures, and so on.

However, the Committee wants to be certain that the status quo will not prevail and that real, measurable progress is achieved toward the adoption of community-based codes. We therefore feel it is necessary that all parties commit to reasonable timelines to accomplish a comprehensive reversion to community election codes with a view to ultimately repealing the electoral provisions of the *Indian Act* and its regulations within 10 to 15 years. In practice, this means that, from a total of 252 *Indian Act* First Nations, 16-25 First Nations would revert from the *Indian Act* electoral system to custom elections on an annual basis.

The Committee cautions that all parties must be realistic as to what may be achieved within this time frame, and we encourage parties not to let "perfection become the enemy of the good." Community election codes may evolve and change, with new and better practices incorporated in the fullness of time. Communities wishing to do extensive historical research into ancestral practices may do so at their own pace, as this will not be restricted once initial community election codes are in place. The primary objective is to remove the application of the *Indian Act*, limit the inappropriate federal role in First Nations leadership selection processes and to replace the *Act's* electoral provisions with codes that are more reflective of a community's governance aspirations and responsive to community participation.

The Committee also finds that there is a need to support First Nations communities in the development of their community election codes, in order to ensure that such codes are legally sound and that they provide for effective governance practices in a contemporary context. We believe the Department of Indian Affairs and Northern Development has an important role to play in supporting the development of strong First Nations community-based codes. This not

only includes providing the required support for developing community codes, but that appropriate communication and education materials (e.g., community information sessions) be made available to First Nations governments and their members to enable a smooth transition from the *Indian Act* electoral regime to community-based codes.

This need not be an inordinately expensive process. Evidence before the Committee suggests that the cost of drafting and ratifying a custom code, with legal counsel, is likely to range from \$20,000 to \$50,000.¹⁰⁸ The costs will vary depending on the degree of consultation, the size of the community and the complexity of the code. Additional resources will also be required for First Nations wishing to improve codes that are already in place and to ensure consistency with Canadian law.

First Nations will also require adequate resources to ensure that they are able to implement the provisions of their code, including the appeals process. Currently, the Department's Band Support Funding Program is intended to "provide a stable funding base to facilitate effective community governance".¹⁰⁹ With regard to the costs of running elections, the Department estimates that, under the *Indian Act*, "a large First Nation could expect to spend between \$7,500 and \$15,000 on an election every two years."¹¹⁰

However, we believe these costs will be substantially mitigated by a reduction of the hidden costs inherent in the current system. As we have seen, there are substantial costs associated with the *Indian Act* electoral system, both for First Nations and for the federal government. The fractiousness of elections, the instability resulting from the two-year term, and frequent appeals which destabilize communities, have immense costs to the social well-being and economic potential of First Nations. In addition, there are costs to the Department when investigating appeals, and many election disputes wind up in the Federal Court at a cost to First Nations and

¹⁰⁸ See for example, *Proceedings*, 16 September 2009, Jerome Slavik, Barrister and Solicitor, Ackroyd LLP; Assembly of First Nations/Indian and Northern Affairs Canada, *First Nations Leadership Selection and Elections*, Discussion Paper, March 2008, p.16.

¹⁰⁹ Information on the Department of Indian Affairs and Northern Development's Band Support Funding Program is available on line at: <http://www.ainc-inac.gc.ca/ap/gov/igsp/bsf/index-eng.asp>.

¹¹⁰ Assembly of First Nations/Indian and Northern Affairs Canada, *First Nations Leadership Selection and Elections*, Discussion Paper, March 2008, p.15.

government in the millions of dollars.¹¹¹ We expect that, as the Department's role in the appeals process is gradually phased out, there will be a reduction in the Department's expenditures in this regard. Moreover, as strong community codes are developed and older codes updated to provide for effective dispute resolution mechanisms, we anticipate there will be a substantial reduction in these ancillary social and legal costs.

Finally, the Committee believes that the Department's role should be recast as that of a partner in this important exercise in democratic governance; enabling, rather than restricting, the development of strong First Nation governments that are "consistent with their customs and acceptable to their citizens."¹¹² This role does not end because a First Nation has reverted to custom. Accordingly, we reject the view that the Department of Indian Affairs and Northern Development has no role to play in supporting First Nations leadership selection and election processes unless they are under the *Indian Act* legislative regime. The fiduciary responsibilities of the federal government to Aboriginal peoples, including First Nations, are always animated irrespective of what electoral regime they happen to fall under. This, and not the *Indian Act*, should guide federal actions. For these reasons, we find that the Band Support Funding Program which is intended to support effective community governance should be reviewed to ensure that all First Nations elections are adequately resourced.

Based on these considerations, we therefore recommend as follows:

¹¹¹ In his testimony to the Committee on 16 September 2009, Jerome Slavik indicated that First Nations appeals before the Federal Court exceeded \$10 million in the past six years.

¹¹² Assembly of First Nations, *First Nations Elections: choosing a path forward from a First Nation perspective*, March 2009.

RECOMMENDATION 1

That the Department of Indian Affairs and Northern Development firmly commit to assisting all First Nations who currently hold elections pursuant to the *Indian Act* in moving to community-based codes;

That the Department of Indian Affairs and Northern Development, in consultation with the Assembly of First Nations and other affected First Nations organizations, establish clear targets and timelines for the reversion to community-based codes for all First Nations who currently hold elections pursuant to the *Indian Act*;

That the Department of Indian Affairs and Northern Development dedicate sufficient funds to assist First Nations in developing and ratifying community-based codes for those First Nations which currently hold elections pursuant to the *Indian Act*; and that such funding be adequate to meet the agreed upon targets and timelines for the reversion to community-designed codes;

That the Department of Indian Affairs and Northern Development ensure that sufficient funding also be made available for First Nations currently under the customary method of leadership selection to update their codes in accordance with standards of procedural fairness, consistency with Canadian law and with effective governance practices;

That Department of Indian Affairs and Northern Development undertake a review of the Band Support Funding Program to ensure that First Nations elections, whether conducted by custom or pursuant to the *Indian Act*, are appropriately resourced; and that adequate funding for elections continue to be made available to First Nations once they revert to a community-designed leadership selection process; and

That the Department of Indian Affairs and Northern Development provide an annual progress report to the Standing Senate Committee on Aboriginal Peoples at the end of each fiscal year on the number of First Nations that have reverted to community-based codes in that year and the amount of money the Department has transferred to First Nations to assist them in moving to community-based codes.

The Committee also believes that First Nations community members must be able to actively participate, as appropriate, in the decision-making processes of their governments and that political accountability of Chief and Council to community members be strengthened. As we have indicated, community codes can provide an important opportunity to establish mechanisms for meaningful community engagement in both the political and decision-making process. First Nations leaders recognize the importance of consultations when decisions affecting them are being contemplated by the federal government. This is equally true for decisions taken by First Nations governments that could significantly affect their citizens. Accordingly, we strongly encourage the following:

RECOMMENDATION 2

That First Nations Leadership establish appropriate consultation mechanisms to ensure the meaningful participation of all community members in the development, implementation, and future amendment(s) of community-based codes.

B. Establishing a First Nations Electoral Commission and Appeals Tribunal

The lack of effective appeal and other dispute resolution mechanisms, both under custom and *Indian Act* elections, has been a prominent concern among witnesses. In the previous section, we identified several problems with the appeals process under the *Indian Act*, and noted that the process lacks rigour, transparency and procedural fairness. We also found that the Department's role in administering appeals ran up against issues of credibility and perceived conflict of interest. With regard to custom codes, serious concerns were raised that some of these codes did

not respect principles of natural justice and procedural fairness, leading to numerous appeals.¹¹³ We heard that under custom codes, appeals are often referred to the federal court, resulting in a lengthy and costly process. First Nations witnesses also expressed concerns regarding the neutrality of electoral officers and other irregularities in the election process.

Given the importance to First Nations elections, we find that there is a need for a clear, transparent, efficient and low-cost appeals process which would offer appropriate expertise in Canadian and indigenous legal traditions, as an alternative to the Courts and to the Department. We also find that there is a need to establish appropriate institutional supports to help build First Nations electoral capacity and to develop effective, more democratic, and transparent election practices. Strengthening governance processes, as the authors of the Harvard research project on American Indian Economic Development have suggested, is a fundamental building block for improved economic and social outcomes. Accordingly, the costs of *not* establishing effective institutional supports to promote strong, democratic, accountable First Nations governments, in our opinion, far outweigh the costs of doing so.

In light of the ongoing challenges with respect to appeals and given the need for better institutional supports to assist First Nations in developing electoral capacity, we find that an independent First Nations Electoral and Appeals Commission should be established, on a national and/or regional basis, with a statutory base to: monitor and oversee First Nations elections when requested; assist in developing electoral codes that meet standards of good governance; and hear election appeals. We therefore recommend as follows:

RECOMMENDATION 3

That the Department of Indian Affairs and Northern Development, in collaboration and consultation with the appropriate First Nations and/or Treaty Organizations, take immediate steps to establish a First Nations Electoral and Appeals

¹¹³ On issues concerning custom codes, please see, Congress of Aboriginal Peoples, *Justice is Equality: Post-Corbiere Report*, April 2008. The report is available on line at: http://www.abo-peoples.org/policy/Justice_Is_Equality_PostCorbiereJuly08.pdf.

Commission, operating on a national and/or regional basis, empowered to hear appeals arising from First Nations elections and to promote and strengthen First Nations electoral capacity.

In addition, the Committee acknowledges that governing is increasingly a complex and challenging task. We heard several witnesses highlight the fact that many First Nations governments administer budgets in the millions of dollars and must deliver a range of services (e.g., education, health, infrastructure, water treatment and delivery) that are normally delivered by municipal and provincial governments in the non-Aboriginal context. We believe that greater support must be made available to First Nations to assist in the development of effective management and administration practices. We believe that the proposed First Nations Electoral and Appeals Commission may be a suitable body to provide governance and professional development services to help build this capacity, and note that such “hands-on” training is not currently provided by the National Centre for First Nations Governance.¹¹⁴

C. Supporting Regional Initiatives

A number of regional initiatives are currently underway to reform First Nations’ electoral processes and to develop coordinated, institutional capacity for First Nations elections. Treaty 1 First Nations, the Assembly of Manitoba Chiefs and the Atlantic Policy Congress of First Nations Chiefs Secretariat have each launched regional initiatives to address a range of electoral and governance issues through policy and/or legislative measures. Common to these proposals is a consultative process with individual First Nations communities aimed at working through possible elements of reform, such as common day elections; common custom election codes; removal mechanisms; coordinated appeals processes; an electoral ombudsman or independent appeals body; extension of the terms of office; and other key issues. Underlying each of these initiatives is an interest in developing regional institutional electoral capacity through the implementation of a coordinated approach. Considerable work with respect to First Nations electoral reform has already been undertaken by these groups, and the Committee believes that

¹¹⁴ Information on the role of the National Centre for First Nations Governance can be found on their website at: <http://www.fngovernance.org/>. See, in particular, Frequently Asked Questions.

these First Nations-led efforts should be supported. This could also include the federal government working closely with select First Nations on legislative approaches that may be suitable to them and to their citizens.

We find there is considerable merit in working in partnership with First Nations regional organizations that have advanced proposals for electoral reform. These efforts, we believe, can assist in determining what works best and, what does not, and can help to guide policy and/or legislative change in this area. We therefore recommend:

RECOMMENDATION 4

That the Department of Indian Affairs and Northern Development, in collaboration with interested regional First Nations organizations, establish pilot projects to develop and implement First Nations-led electoral initiatives and to guide policy and/or legislative development in this area.

CONCLUSION

If the right of self-government is to be given meaningful expression, it must be firmly rooted in First Nations determining, designing and implementing leadership selection processes that are most suitable to them. The imposition, sometimes violently, of the *Indian Act* election system has been predicated on a belief that First Nations traditions and values were of inferior quality, and a stubborn hindrance to their assimilation into the dominant society. The forced assimilation of Aboriginal peoples, including the subversion of their traditional political systems, has been a dismal moral and political failure. Today, First Nations struggle to govern under a system disconnected from their cultures that has produced, in too many instances, an untenable degree of factionalism. The Committee strongly believes that this page of our history must definitively and unequivocally be turned, if for no other reason than it has failed to result in effective governance structures.

The proposals we have set out in this report are based on our shared conviction that a community's process for selecting or electing its leadership is at the heart of self-government. In order for these processes to truly reflect the cultures, values and aspirations of First Nations, they must rest on First Nations designing and adopting their own leadership selection processes that respect the principles of natural justice. Our task, in turn, must be to resist the temptation to continue in the misguided view, however well-intentioned, that our political systems and institutions are desirable or even appropriate to others.

Meeting Date	Agency and Spokesperson	Brief
May 6, 2009	<p>As individuals:</p> <p>Bradford W. Morse, Professor, Ottawa University Law School;</p> <p>John Graham, Senior Associate, Institute on Governance;</p> <p>Shin Imai, Professor, Osgoode Hall Law School, York University.</p>	X
May 12, 2009	<p>Assembly of First Nations:</p> <p>Shawn Atleo, Regional Chief, British Columbia;</p> <p>Karen Campbell, Senior Policy Analyst.</p>	
May 13, 2009	<p>Indian and Northern Affairs Canada:</p> <p>Brenda Kustra, Director General, Governance Branch, Lands and Trust Services;</p> <p>Marc Boivin, Manager, Governance Branch;</p> <p>Nathalie Nepton, Director, Band Governance Directorate.</p>	X
May 25, 2009	<p>Assembly of Manitoba Chiefs:</p> <p>Ron Evans, Grand Chief.</p> <p>Sagkeeng First Nation:</p> <p>Donovan Fontaine, Chief.</p> <p>Southern Chiefs Organization:</p> <p>Morris J. Swan Shannacappo, Grand Chief.</p> <p>Treaty One First Nations:</p>	X X

Paul Chief, Councillor, Brokenhead Ojibway Nation;

Chief Glenn Hudson, Peguis First Nation;

Chief Terrance Nelson, Roseau River First Nation.

Long Plain First Nation:

David Meeches, Chief.

Dakota Ojibway Tribal Council:

X

Robert Daniels, Acting Chief Executive Officer.

As individuals:

Clifton Starr;

X

Gerald McIvor;

Norman Traverse;

Cyril Keeper.

May 26, 2009

Canupawakpa Dakota First Nation:

Frank Brown, Chief.

Swampy Cree Tribal Council:

Grand Chief Norman Glen Ross, Chair;

Andrew Colomb, Chief, Marvel Colomb First Nation.

Interlake Reserves Tribal Council:

Chief Emery Stagg, Chair.

Roseau River Anishinabe First Nation:

Terrance Nelson, Chief.

Peguis First Nation:

Glenn Hudson, Chief.

Norway House Cree Nation:

Marcel Balfour, Chief.

Berens River First Nation:

George Kemp, Chief.

As individuals:

Phyllis Sutherland;

Leah Sutherland;

Kevin Chicago;

X

Tommy Keesick;

Lou Ella Shannacappo;

Jean Courchene;

Roderick Ross;

Elmer Courchene;

Renata Mecorise;

Mary A. Starr.

May 27, 2009

West Region Tribal Council:

Chief Norman Bone, Chair.

Keeseekoowenin Ojibway First Nation:

Norman Bone, Chief.

Waywayseecappo First Nation:

Murray Clearsky, Chief.

Pine Creek First Nation:

Derek Nepinak, Chief.

	West Region Tribal Council:	
	Chief Norman Bone, Chair.	
	As individuals:	
	Dwayne Blackbird;	
	Mike D. Ahmo;	
	Murray Clearsky.	
	Skownan First Nation:	
	Joseph Maud, Councillor.	
June 2, 2009	As individuals:	
	Jim Aldridge;	
	Wendy Cornet.	X
June 3, 2009	Congress of Aboriginal Peoples:	X
	Kevin Daniels, Interim National Chief.	
June 10, 2009	Manitoba Keewatinook Ininew Okimowin:	
	Louis Harper, Legal Advisor.	
	Dakota Ojibway Tribal Council:	X
	Chief Ken Chalmers, Chair;	
	David Meeches, Chief;	
	Robert Daniels, Chief Executive Officer.	
June 16, 2009	Chiefs of Ontario:	X
	Angus Toulouse, Ontario Regional Chief;	
	Johanna Lazore, Senior Policy Analyst.	
September 16, 2009	As an individual:	
	Jerome Slavik, Barrister & Solicitor, Ackroyd LLP.	X

September 29, 2009 **Upper Nicola Indian Band:**

Tim Manuel, Chief.

Spallumcheen First Nation:

Wayne Christian, Chief.

Saik'uz First Nation:

Joanne Teegee, Director.

Westbank First Nation:

Larry Derrickson, Councillor.

As an individual:

Virginia George.

September 30, 2009 **Bella Coola First Nation:**

X

Theresa Hood, Interim Band Manager.

Alexis Creek First Nation:

Ervin Charleyboy, Chief.

As an individual:

Bruce Mack;

Eleanor Lowe;

Leonie Spurr;

Dennis Patrick.

Alexandria First Nation:

Cary Morin, Band Manager.

October 2, 2009

Musqueam First Nation:

Ernest Clark Campbell, Chief.

Cheam First Nation:

Sid Douglas, Chief.

Nicomien First Nation:

Donna Gallinger, Chief.

Ucluelet First Nation:

Violet Mundy, Chief.

Nanoose First Nation:

David Bob, Chief.

Malahat First Nation:

Randy Daniels, Chief.

Lytton First Nation:

Janet Webster, Chief.

Laxkw'alaams Band:

Eugene Bryant, Councillor.

Boothroyd First Nation:

Phillip Campbell, Chief.

October 7, 2009

Quebec Native Women Inc.:

X

Ellen Gabriel, President.

Kitigan Zibi Band Council:

X

Gilbert Whiteduck, Chief.

October 27, 2009	Atlantic Policy Congress of First Nation Chiefs Secretariat: Chief Lawrence Paul, Co-chair; Chief Noah Augustine, Co-chair. Union of New Brunswick Indians:	X X
October 28, 2009	As an individual: Lynne Groulx, President, Indigenous Law Resource Center Inc.	X
No specific date	As an individual: Cathy Ginnish.	X
No specific date	Membertou First Nation: Kevin Christmas.	X
No specific date	As an individual: Donna Isaac.	X