



The Federal Governance Initiative

Summary of Key Findings from CAP's Governance Consultation Report to Canada:

Strengthen Canada, Respect Fundamental Rights

Recognizing that any changes to the Indian Act will affect a significant part of our off-reserve Aboriginal constituency, the Congress is participating in federal consultations on the First Nations Governance Initiative (FNGI) to reform the Indian Act. Our core philosophy is that if we want Aboriginal peoples to benefit, we must participate, and contribute to the affairs of the country in which we live.

Announced in the spring 2001 by Minister of Indian Affairs, Robert Nault, the stated aim of FNGI is to give Indian Act bands the tools necessary for good 'governance' and economic development.

The government identified three priorities for legal reform:

- 1) Leadership selection and voting rights for Indian Act bands,
- 2) Political and fiscal accountability of band councils

- 3) Legal status and capacity of Indian Act bands.

Timeframe for Change

FNGI consists of three phases: the pre-legislative consultation phase, the drafting and parliamentary phase, and the regulatory phase.

A bill is likely to be introduced by the summer of 2002.

The Minister has indicated that he intends to have new legislation in place by 2003.

Listening to the Aboriginal People

The federal government launched a consultation process with Aboriginal peoples to discuss what changes should be made in the three areas.

This first phase of the consultations began in April 2001 and ended in November 2001.

The federal government has said it will listen to comments from Aboriginal people about other matters beyond the scope of the FNGI.

This is a good thing since several key concerns of CAP, such as Indian status and band membership, fall outside the FNGI mandate for change.

In total, 1,775 Aboriginal people participated in 76 community consultation sessions conducted by CAP through our provincial organizations (PTOs).

These consultation sessions were held at the regional and community level where many off-reserve Aboriginal people came forward to express their views about the Indian Act and this initiative.

Although these consultation sessions were aimed at status Indians living off-reserve, our sessions were open to non-status Indians, status Indians from reserves, and other interested persons.

CAP Working for Change

A national report on this first phase of consultations based on the reports of the CAP PTOs has been made to the Minister of Indian Affairs.

CAP has participated in a Joint Ministerial Advisory Committee (JMAC) established by the Minister to provide technical advice on what a Governance Bill should look like. The Minister will review this advice and then give instruction to the legislative drafters.

Once a Governance Bill is tabled in the House of Commons there will be another consultation process involving CAP and our member organizations as indicated by Canada during phase 1 of FNIGI.

Our Vision for the Future

Within the limitation of the FNIGI, CAP is working to ensure the opinions and views of our constituents are heard by government.

Looking beyond the FNIGI, CAP is working towards more fundamental change such as an Aboriginal Peoples Act that would replace the Indian Act and be a means of recognizing Aboriginal peoples for self-government purposes regardless residence or Indian status.

The CAP constituency expressed a vision of new legislation that recognizes Aboriginal peoples outside the constraints of the paternalistic Indian Act.

The Off-Reserve Response to FNIGI

What we heard from our grassroots constituents during our phase 1 consultations forms the basis of CAP's position at the national level. These are the messages our constituents gave us about the scope and proposals of FNIGI.



A Call to Respect Fundamental Rights

- The Indian Act is inherently flawed. It should be replaced by an Aboriginal Peoples Act that recognizes Aboriginal Nations and peoples.
- The Indian Act violates fundamental human rights and Aboriginal and Treaty rights. It cannot withstand sustained challenges under the Canadian Charter of Rights and Freedoms and section 35 of the Constitution Act, 1982.
- The Indian Act infringes on our right to self-determination by imposing an assimilative and rudimentary governing structure not in line with our traditions or basic democratic principles.
- Canada should take the advice of its Royal Commission on Aboriginal Peoples (RCAP) and return to the first principle upon which this country was built—dealing with Aboriginal peoples on a nation-to-nation basis through a treaty process.
- Prior to the Indian Act, Aboriginal peoples and Nations controlled their own identities and citizenship.

The federal government must stop using the Indian Act definition of 'Indian' to determine who is Aboriginal and who qualifies for Aboriginal rights.

Aboriginal peoples and Nations and not just 'Indian Act bands' should be the focus of self-government and governance reforms.

- Regardless of status or residency, Aboriginal peoples should be able to exercise Aboriginal and Treaty rights and should have access to federal programs and services on an equal basis.



The Scope of FNIGI

- The FNIGI is an interim measure. It avoids the key issue at the heart of the Aboriginal situation in Canada—federal control over Aboriginal identities through band membership and Indian status provisions.

This external control violates our inherent right to self-government.

- The band membership and Indian status provisions should be top priorities for future reform. These provisions create many arbitrary categories of Aboriginal people that lead to discrimination.

As just one example, Bill C-31 has become a label used to discriminate against those who have been reinstated under the Indian Act. People labeled as Bill C-31 are often denied access to housing, education programs, other services and even band membership.

- The exemption of the Indian Act from the Canadian Human Rights Act (CHRA) should be examined on an urgent basis.

Necessary reforms should be made to the CHRA that take into account Aboriginal and Treaty rights.

- The Indian Act violates the Charter in areas beyond the election provisions.

The way in which the Indian Act controls who is entitled to Indian status and arbitrarily denies 'Indian' status to 'multiracial' children, children of 'mixed' status or 'non-status' parentage may also be deemed a Charter violation.

- Federal policy regarding the creation of new bands needs to be reviewed and liberalized.
- Federal departments should be restructured to reflect today's social reality, which finds the majority of Aboriginal people living off-reserve.

As RCAP recommended, the Department of Indian Affairs should be abolished and replaced by a Department of Aboriginal Relations and a Department of Indian and Inuit Services.

An Aboriginal Peoples Secretariat within the Privy Council Office should also be established to coordinate joint policy development processes between Canada and Aboriginal peoples.



Defining the Legal Status of "First Nations"

- The term 'First Nations' should not be used as a substitute for Indian Act 'Bands' in new federal governance legislation. It would be an inaccurate and limiting use of the term 'nations' and would entrench existing exclusionary aspects of Indian Act recognition.
- Aboriginal governments should be expressions of who we are as peoples and should be reflections of our distinct societies and cultures. Aboriginal governments are not corporations or municipalities. Indian Act bands have a unique legal status. Aboriginal people are concerned that changing that status may negatively impact our Aboriginal and Treaty rights, our status as Nations, and our fiduciary relationship with the Crown.
- Each Indian Act band should be able to opt into the proposed provisions clarifying their legal status and capacity based on their own assessment of the effect on Aboriginal and Treaty Rights.



Voting Rights & Leadership Selection

- Regardless of residency, all band members should have the right to vote, nominate and run in band elections and referenda without restrictions.

- Distinct voting rights should not be created for off-reserve and on-reserve band members. The democratic principle of one-person-one vote and the equality of each vote must be maintained.
- To create distinct voting rights for on or off-reserve members, 'off-reserve' and 'on-reserve' band members as categories would have to be legally defined.

This would lead to the creation of yet another legal category of 'Indians' and 'band members.' This practice is known to have a stigmatizing effect as demonstrated by the introduction of Bill C-31 which lead to discrimination and more court cases.

- The equality rights of women and off-reserve band members should be recognized and guaranteed in the new legislation and must apply to all Indian Act bands, including custom bands.



Political and Financial Accountability

- The political accountability of band councils to all band members should be ensured by the following election reforms:
 - a) adequate notice of elections and formalized procedures for calling elections;
 - b) the provision of information about candidates for election;
 - c) access to information such as membership lists, codes, laws and other decisions made by band councils;
 - d) a duty to provide information about community issues;
 - e) long-distance voting procedures such as mail-in ballots, electronic voting etc;
 - f) secret ballots;
 - g) independent electoral officers and independent administration of elections;
 - h) oversight of band elections and other forms of leadership selection by an independent agency designed and established by Aboriginal peoples;
 - i) a provision for candidates to scrutinize the elections process;
 - j) use of referendums for matters affecting the rights and interests of the Band as a whole,

e.g. election methods, membership codes, land surrenders;

- k) establishment of an Indian Act ombudsperson, review mechanisms and an independent appeal body to ensure enforcement of rights of off-reserve members and the equality rights of Aboriginal women.
- Financial accountability of Indian Act band councils requires:
 - a) access to audited financial statements of the band and information about leadership salaries, background and qualifications;
 - b) band members be given the right to approve budgets and determine the level of salaries and other benefits for their political and administrative officers;
 - c) separation of political and administrative functions of Aboriginal government;
 - d) conflict-of-interest and disclosure provisions for candidates and office holders.
 - Political and financial accountability requirements should apply to all Indian Act bands, including custom bands.



Advice for Future Initiatives

FNGI reflects the government's top priorities respecting Indian Act reform.

Although there may be some overlap with issues of importance to Aboriginal peoples, it is important that future Indian Act reforms be determined by Aboriginal people, as we will be the most affected.



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