

CHAPTER 10

THE TRUST RELATIONSHIP

First Nations have always enjoyed a special relationship with the Crown. The Committee prompted a study to explore this relationship, The Crown and the First Nations: Trust Relationship. In colonial times, First Nations and Europeans were equals in political dealings. The Royal Proclamation introduced the trusteeship, promising to protect Indian Nations, their rights and property.

Trust and the Crown

In the following centuries, Canada's several governments began appropriating First Nations land despite the trust responsibility of the crown. Hunting, fishing, and trapping rights have been eroded through provincial legislation.

In our modern era, both sides view with disdain the former treatment of First Nations. Even so, courts do not yet recognize the extent of the Crown's trust responsibility. A new trust relationship should be formed, one clear and explicit. This would involve:

1. Recognition of Indian First Nations governments as a distinct order of government.
2. Fiscal arrangements appropriate for governments, based on First Nations' contribution of resources and land.
3. A secure economic and societal base.
4. Fair claim settlements.
5. Legally enforceable agreements between First Nations and the federal government to implement the new arrangements.

What else would you like to see specified as a trust responsibility?

The federal government must do more than recognize the new First Nations governments. It is their trust responsibility to provide the resources needed to bring them in being.

The trust relationship would not end with First Nations self-government. The Constitution Act, 1967, states that the interests of Canadian bands be upheld even when it is contrary to Canada's other interests to do so. The Minister of State for Indian First Nation Relations would be the ideal choice for the official assigned the duty to protect First Nations' interests. He should have the authority to do so without regard to other governmental interests.

To monitor the operation of this trust responsibility, a separate commission, a First Nations "Ombudsman" office, should be created. Separate from all government departments, the commissioner should report directly to Parliament. The powers of this commissioner could be arrived at through negotiation. Funds should be made available for some sort of advocacy office for First Nations Interests.

DIAND controls money held in trust for Indian First Nations. Money from land sales and, recently, oil resource sales have provided the balances of these accounts. DIAND acts as a trust company, holding the funds for the bands and paying interest.

The amount now held in trust for First Nations is approximately \$366 million. Alberta has \$326 million, British Columbia \$22 million and all others \$18 million. Distribution within the provinces is even more lop-sided. Four Alberta bands hold \$260 million -- \$72,000 per capita. 121 bands have less than \$8 for each member.

Trust funds were intended to provide an economic base for the bands. Clearly, most bands cannot finance their programs based solely on their trust funds. A possible reason for this is the long history of DIAND

Advocacy of Interest and Protection of Rights

What power would you suggest?

Trust Accounts

mismanagement and poor record-keeping of the trust funds. This makes it even more necessary to get just and speedy settlements of land claims. Strong self-governments require sound financial backing.

DIAND must render up its control over trust funds to the First Nations. DIAND was assigned to administer programs, not trust funds. Many mistakes have been made in distributing these funds -- some leaving the department open to suit for breach of its trust responsibility.

First Nations Control

DIAND's mandate is to hold the money in trust for the bands. A simple distribution would not work. Money intended for a band would be expended in one generation when intended for all band members, even future ones. By transferring control over the funds to the bands the Minister will have done his duty. He will have held it for the bands up to the point at which the transfer occurs. This would also be consistent with Indians First Nations government control of its own resources. The First Nation could then lodge its accounts with a selected new trustee.

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CONCLUSION

The Committee decided that the federal government must change the way they deal with First Nations. The Indian Act and the Department of Indian Affairs will wither away and be replaced with:

Indian Affairs

1. A new ministry, the Ministry of State for Indian First Nations Relations, would be the federal interface with First Nations.
2. The new ministry would provide funding to First Nations governments.
3. A new agency would settle land claims.
4. First Nations would be reorganized through a panel made of both Indians and federal government people.
5. Trust funds would be run by First Nations.
6. There would be a body to aid negotiations between the federal government and First Nations.
7. A commission reporting to Parliament would hear complaints and report on federal/First Nations dealings.
8. There would be a non-federal office to protect Indian rights and further Indian interests.
9. A special court would hear First Nations disputes with federal or provincial governments.

: was not thought useful to have a special
set in Parliament, since a single vote would
give little power. At this time,
self-government was seen as a greater force
for Indian people. But since matters can
change, the idea should be set aside for a
later time.

Parliament and Indian Peoples

Canada has signed the United Nations Covenant
on Economic, Social and Cultural Rights, the
Covenant on Civil and Political Rights and
the Helsinki Final Act of 1975, which state
that self-government is a basic human right.
The committee agreed that putting this report
into action is the best way to meet these
standards where First Nations are concerned.
Canada then would be a prime example for the
world to follow.

International Ramifications

1. The federal government must begin dealing with Indians by recognizing First Nation governments.

Self-Government

2. The right of self-government must be stated and written in the constitution by an amendment.

3. The federal government and First Nations must move toward self-government by all avenues.

4. First Nations must be funded through claim settlements, economic development, and other long-term ways.

5. Any possible new laws to move toward self-government should be made if First Nations agree to them.

Legislation

6. The Indian Act needs to be changed too much to make it fit the new self-government policy. It is better to make a new law.

7. The DIAND plan for band government was never agreed upon by Indian people. It must not be used.

8. The federal government must put First Nations self-government into the constitution. Until then, as many laws as possible should be made which lead to self-government.

9. A neutral body must be created to help federal/First Nations talks.

10. Laws must be made to allow for all the powers needed by all the First Nations governments.

11. These three laws are needed to make First Nations self-government in the areas they want.

- a. First Nations governments which are "accountable" must be recognized.
- b. The federal government must be able to make agreements with the First Nations governments about government powers.
- c. Provincial laws must not be in force on Indian lands.

12. A Ministry of State for Indian First Nation Relations must be made to stand between the federal and First Nations

First Nations government.

Responsibility to Indian People

14. The band must decide who belongs to the band. These band members alone must decide what form of government they want.

15. There must be a "general list" of Indians who are not members of a First Nation.

16. The government must continue to allow Indian rights to those on the "general list".

17. The federal government should have an Indian First Nations Recognition Act allowing all the self-government now possible. Standards would be like:

Recognition

- a. A large majority of the people make it clear that they want the form of government which is set forth.
- b. The form of government set forth is accountable to the members.
- c. A fair membership code must be set forth.

Funding for First Nations government development must be given by the federal government. The Governor General would recognize First Nations governments.

The North has its own special circumstances which must be considered in determining self-government.

The North

First Nations governments must have full control over all matters having to do with Indian people, their lands and resources. In some cases, arrangements may have to be made with federal and provincial governments. A special court would decide upon disputes between First Nations and the other governments.

Scope of Powers

Each First Nation should have control of an economic base. Special trading must be granted there to enable First Nations their communities to have a standard satisfactory to them. With Indian consent the Native Development Fund could be used to found a development bank for First Nations.

Economic Foundations

First Nations must have full control over their assets. The committee recommends that direct transfer payments be made to each First Nation for which the First Nation government would be accountable to its own people. The amount of these payments would be based on the number of people in the band. There would also be money for extra needs. The amount of the direct transfer payments would be determined every five years by Parliament.

Each Indian First Nation must have full control over its lands. These lands should be listed in an official Registry of Indian First Nation Lands. There must be a way for First Nations to get more lands should the need arise because of the encroachment of the number of members. Land claim settlements should be the main way of doing this. Settlements must be made soon. Those First Nations without reserves must be given a land base with all rights.

A new process stressing settlement of claims must be put in place. Settlements should not give up all claims to lands, only those rights that need to be surrendered.

The Minister of Indian and Northern Affairs must have the duty to see that Indian rights and interests are respected. An "Ombudsman" officer would act if the Minister failed to do his job. Trust funds should be set up (paid) to each First Nation, to manage the land base fund.

As First Nations take control of their affairs, DND's duties would be fewer - so that within five years the department would not be needed. First Nations would govern themselves as a distinct order of government. A special seat in Parliament would not be needed. With local First Nation Governments alongside federal and provincial governments, Canada would comply with world agreements on human rights and self-determination.

Fiscal Arrangements

Land and Resource Base

Claim Settlement

The Trust Relationship

Conclusion