Nault shows courage in taking on Indian Act

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Because I'm often critical of the Chrétien government, it's an unusual pleasure to offer congratulations to a Liberal Cabinet minister. Indian Affairs Minister Robert Nault's new First Nations Governance Act really does deserve a round of applause. Such legislation is long overdue; but rather than blame the Liberals for delay, I would rather praise the Minister for acting. It's an act of conspicuous courage to try to replace major parts of the Indian Act, which has undergone nothing but minor amendments since it was first passed in 1876.

The Indian Act was designed for a time when Indian Agents ran all the business affairs of Indian reserves and band councils were merely advisory. But as self-government progressed over the past three decades, the position of Indian Agent was abolished and most of the functions previously performed by agents and by the Department of Indian Affairs were transferred to band councils on the reserves.

The Indian Act was wholly inappropriate to the new era of self-government. It regulated where it shouldn't and failed to regulate where it should have. It required far too many local decisions to be approved by the Minister, thus fostering not only delay but also divided responsibility; but it did not lay down essential rules to cover fiscal decision-making, auditing, disclosure and conflict of interest.

Without such rules, aboriginal self-government easily slipped into a morass of patronage, cronyism and outright corruption. Chiefs and band councillors too often paid themselves big salaries, kept band finances secret and steered jobs and contracts to relatives, friends and political supporters. Of course, these practices weren't universal or even normal, but they were common enough to become scandalous in public opinion and embarrassing to the hard-working aboriginal leaders sincerely trying to improve their people's condition.

Mr. Nault's draft legislation deals with the worst abuses by requiring aboriginal governments to adopt codes for leadership selection, administration of government and financial management and accountability. There will have to be stable election procedures, regular and public meetings of local government, proper minutes and other records, standardized procedures for passing by-laws, annual budgets, independent audits and rules about conflict of interest.

The bill is quite specific about the requirements that these codes must meet. If a band tries to adopt an unacceptable political code, it can be required to follow a general or "default" code drafted by the department. If its financial situation deteriorates, the minister can intervene. Thus the federal government will continue to play its essential supervisory role as senior government, much as provinces supervise municipalities. Overall, the legislation will give First Nations governments enhanced autonomy; but it will also make them more accountable, mainly to their own people, but also, as a last resort, to Ottawa.

Although the bill points in the right direction, I do have one reservation. It sets up a scheme in which each First Nation (and there are more than 600 of them) is expected to draft its own codes for leadership selection, administration of government and financial management. Will it prove practical to have more than 1,800 codes for aboriginal local government authorized under a single piece of legislation? It seems inevitable that some or even many, of these codes may not meet the standards set down in the new act, as those accustomed to profiting under the old regime try to protect their acquired advantages. The act will be meaningless unless the department enforces its standards; but attempts at enforcement could give rise to an interminable series of disputes and litigation.

It would be administratively much simpler for the act to impose the required codes of conduct, perhaps with provision for bands to opt out and design their own codes with approval. Yet that degree of uniformity would be contrary to the philosophy of aboriginal self-government and would almost certainly be rejected by aboriginal communities. Under the circumstances, there seems to be little alternative to the approach contemplated in the bill. Fortunately, it is ordinary legislation, not a constitutionally entrenched treaty, so future amendments to obtain greater workability remain possible.

Also, one should not attach utopian expectations to this legislation. Although it will improve efficiency and accountability, it does not address the single most important problem of aboriginal self-government – its almost total dependence on federal transfer payments. An unpleasant truth about democracy is that it does not work properly unless the government has to raise its revenue from the governed. "No representation without taxation," as some wag has put it.

No one likes taxes, but having to pay them creates incentives for citizens to monitor the performance of government, which helps induce an attitude of responsibility on the part of the governors. When local governments are supported by transfer payments, they readily turn into tacit conspiracies of voters and office-holders to extract as much revenue as possible from outside. When no one has to put their hand into their own pocket to pay the expenses of government, efficiency, accountability and simple honesty are jeopardized.

But enough carping. No bill can solve all problems, and this bill will at least solve some. I hope the opposition parties will criticize it thoroughly and make constructive suggestions for improvement while accepting its general direction.

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