

AN ACT TO AMEND THE INDIAN ACT

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. (1) The definitions of "child", "elector" and "member of a band" in subsection 1(1) of the Indian Act are repealed and the following substituted therefor:

"child" includes a child born in or out of wedlock and a legally adopted Indian child";

"elector" means a person who

- (a) is registered on an Active Band List;
- (b) is of the full age of twenty one years and;
- (c) is not disqualified from voting at band elections.

"member of a band" means a person whose name appears on an Active Band List or a General Band List, or who is entitled to have his name appear on either of the said Lists;"

- (2) Subsection 2(1) of the said Act is amended by adding thereto, immediately prior to the definition of "band", the following definition:

"active member of a band" means a person whose name appears on an Active Band List or who is entitled to have his name appear on an active Band List;"

- (3) Subsection 2(1) of the said Act is further amended by adding thereto, immediately after the definition of "estate", the following definition:

"general member of a band" means a person whose name appears on a General Band List or who is entitled to have his name appear on a General Band List;"

2. Section 4 of the said Act is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

"(2.1) For greater certainty, and without restricting the generality of subsection (2), the Governor in Council shall be deemed to have had the authority to make any declaration under subsection (2) that he has made in respect of section 10, 12, 14 or 109 or any portion thereof."

3. Section 5 of the said Act is repealed and the following substituted therefor:

"5. An Indian Register shall be maintained in the Department which shall consist of Active Band Lists, General Band Lists and General Lists and in which shall be recorded the name of every person who is entitled to be registered as an Indian."

NOTE: The terminology respecting "Band Lists" is changed to conform to the Edmonton AFN Resolution.

4. Section 6 of the said Act is repealed and the following substituted therefor:

"6. The name of every person who is a member of a band and is entitled to be registered shall be entered in either the Active Band List or the General Band List for that band, and the name of every person who is not a member of a band and is entitled to be registered shall be entered in a General List."

NOTE: It appears to be the understanding between AFN and NWAC that being on the General Band List does confer membership, although certain rights, i.e., residency and voting, are denied. See: testimony of G. Erasmus before the Standing Committee, Issue No. 17, Tuesday, June 26, 1984.

5. Subsection 7(1) of the said Act is repealed and the following substituted therefor:

"7. (1) The Registrar may at any time add to or delete from an Active Band List, General Band List, or a General List, the name of any person who in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List."

NOTE: Consequential amendment.

6. Subsection 9(1) of the said Act is repealed and the following substituted therefor:

"9. (1) Within six months after a list has been posted in accordance with section 8 or within three months after the name of a person has been added to or deleted from an Active Band List, General Band List or a General List pursuant to section 7

- a) in the case of an Active Band List or a General Band List, the council of the band, any ten electors of the band, or any three electors if there are less than ten electors in the band,
- b) in the case of a posted portion of a General List, any adult person whose name appears on that posted portion, and
- c) the person whose name was included in or omitted from the List referred to in section 8, or whose name was added to or deleted from Active Band List, General Band List or a General List

may, by notice in writing to the Registrar, containing a brief statement of the grounds therefor, protest the inclusion, omission, addition, or deletion, as the case may be, of the name of that person, and the onus of establishing those grounds lies on the person making the protest.

NOTE: Consequential amendment

7. Section 10 of the said Act is repealed.

NOTE: This was section 4 in C-47.

8. Section 11 of the said Act is repealed and the following substituted therefor:

"11. (1) Subject to sections _____, a person is entitled to be registered if:

- a) that person was entitled to be registered pursuant to the provisions of the Indian Act in place before _____ (date of amendment);
- b) that person is a member of a band that has been declared by the Governor in Council after _____ to be a band for the purposes of this Act;
- c) the name of that person was omitted or deleted from the Indian Register
 - (i) under section 10, subparagraph 12(1)(a)(iv), paragraph 12(1)(b), subsection 12(2) or section 14, as each provision read prior to or under any former provision of this Act relating to the same subject-matter as any of those provisions, or
 - (ii) as a result of that person being the wife or child of another person, under section 109, as it read prior to or under any former provision of this Act relating to the same subject-matter as that section; or

NOTE: Should others who lost status unjustly be entitled to reinstatement, i.e., those who supposedly voluntarily enfranchised under s.109 but, in fact, did so under duress; or those who were enfranchised as a band e.g. Michel Band?

- d) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this subsection.

(2) Subject to sections _____, a person is entitled to be registered if that person,

- a) is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1); or,
- b) is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this subsection.

(3) Subject to _____, a person is entitled to be registered if that person;

- a) is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (2); or
- b) is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this subsection.

(4) For the purposes of paragraphs (1)(d) and (2)(a), a person described in paragraph (1)(c) who was no longer living on July 1, 1984 shall be deemed to have been entitled to be registered under that paragraph at the time of death.

NOTE: This is the previous section 11(5). I decided to keep it in for abundant certainty. The previous section 11(4) is dropped. This was the provision which limited reinstatement to only first generation children. The joint AFN/NWAC statement called for the reinstatement of all generations.

11.1 (1) A person is not entitled to be registered under paragraph 11(1)(c), or under paragraph 11(1)(d) or 11(2)(a) as a result of his relationship with a person described in paragraph 11(1)(c), unless an application is made to the Registrar by or on behalf of that person prior to _____.

NOTE: I kept the 19 limitation provision. This was in the AFN/NWAC joint statement.

(2) The name of every person who is entitled to be registered under paragraph 11(1)(c), or under paragraph 11(1)(d) or 11(2)(a) as a result of his relationship with a person described in paragraph 11(1)(c), shall be entered forthwith in a General Band List corresponding to the Band List from which it was omitted or deleted, or, in the case of a person who is entitled to be registered under paragraph 11(1)(d) or 11(2)(a), from which his parent's name was deleted, and deleted therefrom when entered into the corresponding Active Band List accordance with _____.

(3) the name of every person described in subsection (2) shall be entered in the Active Band List which corresponds with the Band List from which it was omitted or deleted, or, in the case of a person who is entitled to be registered under paragraph 11(1)(d) or 11(2)(a), from which his parent's name was omitted or deleted, on the expiration of two years after it was entered in the corresponding General Band List or such shorter period of time as may be authorized for entry of such names in the Active Band List by the council of the band.

NOTE: "Band List" terminology is all that changed here.

"11.2 For greater certainty, no claim lies against any band, council of a band or member of a band or any other person or body in relation to the omission or deletion of the name of a person from the Indian Register under provision referred to in paragraph 11(1)(c)."

NOTE: "Her Majesty in right of Canada, the Minister" is excluded from the paragraph granting legal immunity."

9.(1) Section 12 of the said Act is repealed and the following substituted therefor:

"12. (1) The following persons are not entitled to be registered, namely, a person who

(a) has received or has been allotted half-breed lands or money script;

(b) is enfranchised, except

(i) under section 10, subparagraph 12(1)(a)(iv), paragraph 12(1)(b), sub section 12(2) or section 14, as each provision read prior to July 1, 1984, or under any former provision of this Act relating to the same subject-matter as any of those provisions, or

(ii) as a result of that person being the wife or child of another person, under section 109; as it read prior to July 1, 1984, under any former provision of this Act relating to the same subject-matter as that section; or

NOTE: If it is decided that those who enfranchised pursuant to section 109 under duress, are to be reinstated too, then, this section will have to be changed. Further more, we may decide to drop section 109 altogether. infra.

(c) is a person, registered or entitled to be registered under paragraph 11(1)(f), as it read prior to _____, or under any former provision of this Act relating to the same subject matter as that paragraph, who has become separated or divorced from her husband, or whose husband has deceased.

NOTE: This is new. I do not know if you want it in? It may be seen by non-native women's and human rights groups as slightly severe or even discriminatory (i.e., discrimination on the basis of marital status?) Keep in mind that others of this 11(1)(f) group will be allowed to retain their status so long as they stay married.

I inserted this provision because it seemed to be a predominant feeling among AFN people and NWAC people (especially) that these women should lose status outright. This paragraph does not quite that far. And the idea is taken from the Saskatchewan Resolution which was never introduced in Edmonton.

(d) is the child of a person who was registered or entitled to be registered under paragraph 11(1)(f), as it read prior to or under any former provision of this Act relating to the same subject-matter as that paragraph, and is also the child of a person who is not entitled to be registered."

NOTE: This was paragraph 2(1)(c) in Bill C-47. It is aimed at preventing non-Indian women, who gained status by marriage, from transmitting Indian status to their children who are fathered by a non-Indian.

(2) Paragraph (1)(a) does not apply to a person who pursuant to this Act is registered as an Indian on August 15, 1958.

NOTE: This was section 6(2) in Bill C-47.

10. Section 14 of the said Act is repealed and the following substituted therefor:

"14. Any child of persons who are members of different bands may, if that child is entitled to be registered, be registered as a member of one band or the other."

NOTE: This was section 7 of Bill C-47.

11. Subsection 15 (1) and (2) of the said Act are repealed and the following substituted therefor:

"15(1) Subject to subsection (2), an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from Her Majesty

- (a) one per capita share of the capital and revenue moneys held by Her Majesty on behalf of the band, and
- (b) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the band and Her Majesty if he had continued to be a member of the band."

NOTE: This is in the present Act and was not to be amended by C-47. If enfranchisement is done away with, this section will also have to go. It is probably a good idea to do away with pay outs even if enfranchisement is kept. Pay outs have 2 disadvantages: (1) it is an incentive to becoming non-Indian; (2) it is a drain on band capital.

- (2) A person is not entitled to receive any amount under subsection (1)
 - (a) if his name was removed from the Indian register pursuant to a protest made under section 9;
 - (b) if he has at any previous time received an amount thereunder by reason of ceasing to be a member of a band under a provision referred to in paragraph 11(1)(c); or

NOTE: If "enfranchisement" and "pay outs" are retained, then this provision is an absolute necessity, in order to avoid double pay outs. This was one of the changes proposed by the Standing Committee respecting C-47.

- (c) if he is registered under paragraph 11(1)(d) or 11(2)(a) as a result of his relationship with a person described in paragraph 11(1)(c) and has resided on a reserve for less than ten years."

NOTE: This is another provision which was added by the Standing Committee. If "enfranchisement" and "pay outs" are kept, it is likely that a provision such as this will be needed. However, this provision, taken directly from C-47, is inadequate. Although it is probably intended to apply only to present children of reinstated people, it will also apply to future children. Furthermore, the paragraph will result in differential treatment of children which may be a violation of s.15 of the Charter.

If "enfranchisement" and "pay outs" are abolished, subsections 15(3) to (5) will also have to be repealed.

15.1 (1) The name of a person who is entitled to be registered under paragraph 11(1)(c) shall be entered on the Active Band List corresponding to the Band List from which it was omitted or deleted unless

(a) the person has repaid to the capital and revenue moneys held by Her Majesty on behalf of the band, the amount which he was paid as a per capita share pursuant to paragraph 15(1)(a) as this provision read prior to _____, or under any former provision relating to the same subject-matter as this provision; and

NOTE: There are some problems and uncertainties with respect to paragraph (a); they are as follows: (1) should the amount include interest? or an inflation factor? (2) the amount could be so large that it is impossible for the person to repay; (3) what about the minor children who lost status when their father enfranchised under s.109? (4) will this condition apply if the Band has assumed jurisdiction over membership?

(b) Her Majesty has paid into the capital and revenue moneys held by Her on behalf of the band, an amount which is equal to

(i) the amount of one per capita share in the capital and revenue moneys held by Her on behalf of the band, determined as at the date of intended entry of the said name on the Active Band List,

(ii) the amount of the per capita share which the person was paid pursuant to paragraph 15(1)(a) as this provision read prior to _____, or under any former provision relating to the same subject-matter as this provision.

NOTE: This probably sounds confusing, but the basic idea is to avoid dilution of present band per capita shares. There are problems and uncertainties with respect to this: (1) it would undoubtedly cost the Federal government a lot of money, therefore they would not be in favour of it; (2) it could be argued that the rich bands will get richer; (3) would this condition also apply to bands who have jurisdiction over membership?

- (2) The Name of a person who is entitled to be registered under paragraph 11(1)(d) or 11(2)(a) as a result of his relationship with a person described in 11(1)(c), shall not be entered on the Active Band List corresponding to the Band List from which it was omitted or deleted unless Her Majesty has paid into the capital and revenue moneys held by Her on behalf of the Band, an amount which is equal to one per capital share in the capital and revenue moneys held by Her on behalf of the Band, determined as at the date of intended entry of the said name on the Active Band List.

NOTE: The comments above re: 15.1(1) apply equally here.

12. Subsection 16(3) is repealed.

NOTE: Bill C-47 kept 16(3) with modifications: the words "woman" was changed to "person". I did not think it was necessary since automatic transfer by marriage would be abolished. Furthermore, if "enfranchisement" and "pay outs" are abolished, then, so would this section. The same goes for subsections 16(1) and (2).

13. Subsection 17(1) of the said Act is repealed and the following substituted therefor:

"17.(1) The Minister may whenever he considers it desirable,

(a) constitute new bands and establish Active Band Lists and General Band Lists with respect thereto from existing Active Band Lists or General Lists, or any combination thereof

(b) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated, and

(c) where a band has applied for enfranchisement, remove any name from the Active Bands Lists or General Band List and add it to the General List."

NOTE: With respect to paragraph 17(1)(c), do we want to do away with enfranchisement? If so we can delete said paragraph.

14. The said Act is further amended by adding thereto, immediately after section 18 thereof, the following section:

"18.1(1) The name of a person who is entitled to be registered under paragraph 11(1)(c), or under paragraph 11(1)(d) or 11(2)(a) as a result of his relationship with a person described in 11(1)(c), shall not be entered on the Active Band List corresponding to the Band Lists from which it was omitted or deleted unless Her Majesty has appropriated and set apart for the use and benefit of the band, a tract of land the area of which is equal to the total area of the reserve or reserves of the band divided by the total number of active members of the band, determined as at the date of intended entry to the said name on the Active Band List."

NOTE: This provision may sound confusing but the basic formula contained therein would provide for a non-dilution of per capita interests in the existing reserve land base. I know that the formula promoted for land base increase was the treaty formula, but there are two different formulae (i.e., Treaties 1, 2, 5 & 8: 160 acres/formity of five; and Treaties 3, 4, 6, 7, 9, 10 & 11: one square mile/formity of five) and I did not know which to choose. Furthermore I think the above formula is much more consistent with the AFN "proportioned increase to land base argument" and therefore more defensible.

The problem with this provision is that the larger reserves will just get larger. Also what about subsurface rights. There are undoubtedly federal-provincial implications.

(2) The tract of land appropriated and set apart by Her Majesty for the use and benefit of the band, pursuant to subsection (1), shall be deemed to be part of the reserve or reserves of the band.

NOTE: This subsection is added out of an abundance of caution to ensure that the lands take on reserve status.

18.2(1) The tract of land referred to in section 18.1 shall be selected jointly by the Minister and the Council of the Band in consultation with the person who is applying for entry on the Active Band List.

(2) Lands adjacent to or nearest to the reserve of the band shall receive priority consideration for the purposes of subsection (1).

NOTE: We may or may not want this level of detail.

18.3 For the purposes of the Expropriation Act, any land that, in the opinion of the Minister and the Council of the Band, is required for the purposes of section 18.1, shall be deemed to be land that is, in the Minister's opinion, required for a public work on other public purpose, and in relation thereto, a reference to the Crown in that Act shall be construed as a reference to the Band.

NOTE: This is derived from some draft language proposed by Alan Pratt in an attachment to a memo to H. Cardinal, dated April 26, 1984.

15. Subsection 20(1) of the said Act is repealed and the following substituted therefor:

"20(1) No Indian is lawfully in possession of land in a reserve unless.

(a) he is an active member of the band, and

(b) with the approval of the Minister, possession of the land has been allotted to him by the Council of the Band."

NOTE: This is new. The qualification that one must be an active band member in order to hold land is added. Query: even though general band members can not possess the land, do they nevertheless share in the common interest of all band lands with other band members? *NO*

16. Section 24 of the said Act is repealed and the following substituted therefor:

24. An Indian who is lawfully in possession of lands in a reserve may transfer to the band or to another Active member of the band the right to possession of the land, but not transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister.

NOTE: The word "active" is added to member.

17. Subsection 25(1) of the said Act is repealed and the following substituted therefor:

"25.(1) An Indian who ceases to be entitled to reside on a reserve may, within six months or such further period as the Minister may direct, transfer to the band or another Active member of the band the right to possession of any lands in the reserve of which he was lawfully in possession."

NOTE: Again, the word "active" is added.

18. Subsection 28(1) of the said Act is repealed and the following substituted therefor:

"28(1) Subject to subsection (2), a deed, lease, contract, instrument, document or agreement of any kind whether written or oral, by which a band or an Active member of a band purports to permit a person other than a Active member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void."

NOTE: "Active" added

19. (1) Subsections 48(13) and (19) of the said Act are repealed.

(2) Subsection 48(16) of the said Act is repealed and the following substituted therefor:

"(16) In this section "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom."

NOTE: This is section 11 in C-47.

20. Section 64 of the said Act is repealed and the following substituted therefor:

"64. With the consent of the council of a band, the Minister may authorize and direct the expenditure of capital moneys of the band

- (a) to distribute per capita to the Active members of the band an amount not exceeding fifty per cent of the capital moneys of the band derived from the sale of surrendered lands;

- (b) to construct and maintain roads, bridges, ditches and water courses on the reserves or on surrendered lands;
- (c) to construct and maintain outer boundary fences on reserves;
- (d) to purchase land for use by the band as a reserve or as an addition to a reserve;
- (e) to purchase for the band the interest of an Active member of the band in lands on a reserve;
- (f) to purchase livestock and farm implements, far equipment, or machinery for the band;
- (g) to construct and maintain on or in connection with a reserve such permanent improvements or works as in the opinion of the Minister will be of permanent value to the band or will constitute a capital investment;
- (h) to make to Active members of the band, for the purpose of promoting the welfare of the band, loans not exceeding one-half of the total value of:
 - (i) the chattels owned by the borrower, and
 - (ii) the land with respect to which he holds or is eligible to receive a Certificate of Possession.

and may charge interest and take security therefor;

- (i) to meet expenses necessarily incidental to the management of lands on a reserve, surrendered lands and any band property;
- (j) to construct houses for Active members of the band, to makes loans to Active members of the band for building purposes with or without security and to provide for the guarantee of loans made to Active members for the band for building purposes; and
- (k) for any other purpose that the opinion of the Minister is for the benefit of the band.

NOTE: "Active" added.

21. Section 68 of the said Act is repealed and the following substituted therefor:

"68. Where the Minister is satisfied that an Indian

- (a) has deserted his spouse or family without sufficient cause,
- (b) has conducted himself in such a manner as to justify the refusal of his spouse or family to live with him, or
- (c) has been separated by imprisonment from his spouse and family,

the Minister may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of the spouse or family or both the spouse and family of that Indian."

NOTE: This was s.13 in C-47.

22. Section 77 of the said Act is repealed and the following substituted therefor:

"77(1) An Active member of a band who is of the full age of twenty-one years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band, and where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors.

(2) An Active member of a band who is of the full age of twenty-one years and is ordinarily resident in a section that has been established for voting purposes is qualified to vote for a person nominated to be councillor to represent that section."

NOTE: "Active" added.

- 23(1) Section 81 of the said Act is repealed and the following substituted therefor:

"81(1) The Council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely:

- (a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infestious diseases;
- (b) the regulation of traffic;
- (c) the observance of law and order;
- (d) the prevention of disorderly conduct and nuisances;

- (e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;
- (f) the construction and maintenance of water courses, roads, bridges, ditches, fences and other local works;
- (g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone;
- (h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;
- (i) the survey and allotment of reserve lands among the active members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60;
- (j) the destruction and control of noxious weeds;
- (k) the regulation of bee-keeping and poultry raising;
- (l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;
- (m) the control and prohibition of public games, sports, races, athletic contests and other amusements;
- (n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;
- (o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;
- (p) the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prohibited purposes;
- (q) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and
- (r) the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section.

NOTE: "Active" added in paragraph 81(1)(i) and section renumbered.

(2) The Council of a band may make a membership by-law provided the following conditions are met:

- (a) the Band shall have a written membership by-law;
- (b) the membership by-law shall be consistent with the Canadian Charter of Rights and Freedoms and International Human Rights Covenants to which Canada is a signatory;
- (c) the support of the members of the Band for membership by-law shall be established by a referendum held in accordance with the regulations; and
- (d) the membership by-law shall identify or provide for an independent appeal mechanism for reviewing decisions with respect to membership in the Band.

(3) The Band Membership code shall make provision for,

- (a) membership criteria;
- (b) membership rights and benefits;
- (c) rights and benefits of non-members;
- (d) institutions of membership; and,
- (e) an independent appeal process.

NOTE: The above subsections 81(2) and (3) are fairly simple membership provisions. We might want to propose something a little more complicated, as is hereinafter set out. You will recognize it as being borrowed from C-52 the Self-Government Bill:

81.1 (1) A Band may exercise jurisdiction with respect to its membership where the members thereof, in a referendum held in accordance with the regulations, have expressed their desire to do so.

(2) Where a Band has expressed a desire to exercise jurisdiction with respect to its membership, it shall serve notice of this desire upon the Minister.

81.2 The Minister may, with the approval of the Governor in Council, enter into an Agreement with the Council of Band which has served notice upon him pursuant to subsection 19.1(2), to defray costs incurred in making the application to the Panel, and costs of activities undertaken in preparation for the exercise of jurisdiction with respect to its membership.

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81.3 Where a Band has expressed a desire to exercise jurisdiction with respect to its membership, the Council of the Band may bring an application for recognition of its jurisdiction, after it has served notice pursuant to subsection 14.1(2), to the Panel for recognition of Indian jurisdiction over membership.

81.4 The jurisdiction of a Band with respect to its membership shall only be recognized if the following conditions are met:

- (a) the Band shall have a written membership code;
- (b) the membership code shall be consistent with the Canadian Charter of Rights and Freedoms and International Human Rights Covenants to which Canada is a signatory;
- (c) the support of the members of the Band for the membership code shall be established by a referendum held in accordance with the regulations; and,
- (d) the membership code shall identify or provide for an independent appeal mechanism for reviewing decisions with respect to membership in the Band.

81.5 The Band Membership code shall make provision for,

- (a) membership criteria;
- (b) membership rights and benefits;
- (c) rights and benefits of non-members;
- (d) institutions of membership; and,
- (e) an independent appeal process.

81.6 (1) The panel may, on application made under section 14.3; issue an order recognizing the jurisdiction of a Band with respect to its membership if it is satisfied that the conditions set out in section 14.4 have been met.

(2) The Chairman of the Panel shall forthwith on issuing an order recognizing the jurisdiction of a Band with respect to its membership,

- (a) give notice to the Minister that the order has been issued, and
- (b) send a copy of the Membership Code of the Band to the Minister;

(3) The Chairman of the Panel shall, forthwith on deciding not to issue an order recognizing the jurisdiction of a Band with respect to its membership, give notice to the Minister of that decision.

81.7 Where an application has been made to the Panel under section 14.3 for recognition of the jurisdiction of a Band with respect to its membership, but the Panel decides not to issue an order under subsection 14.6(1) in respect of the Band, the Governor in Council may, within six months after notice of the decision is given under subsection 14.6(3), on application made by or on behalf of the Band, by order, recognize the jurisdiction of the Band with respect to its membership.

81.8 (1) The Membership code of a Band, whose jurisdiction with respect to its membership is recognized, shall come into force on the date provided in the Membership Code or on the date in which it is proclaimed into force by the Council of the Band.

(2) The Council of the Band shall provide the Minister with notice of proclamation of its Membership Code, forthwith after proclamation.

81.8 (1) The Membership Code of a Band, whose jurisdiction with respect to Membership has been recognized, may only be amended in accordance with this section.

(2) The Panel may, on application by a Band whose jurisdiction with respect to membership has been recognized, issue an order amending the membership Code of the Band if,

(a) a referendum has been held in accordance with the regulations in which the members of the Band have demonstrated their support for the amendment; and

(b) the Panel is satisfied that the Membership Code so amended continues to meet the condition set out in paragraph —,

(3) The Chairman of the Panel shall, before hearing an application for an amendment to the Membership Code of a Band, give the Minister notice of the application.

(4) The Chairman of the Panel shall, forthwith on issuing an order amending the Membership Code of a Band,

(a) give notice to the Minister that the order has been issued; and

(b) send a copy of the amendments to the Minister.

81.10 Where an application has been made to the Panel under subsection 14.9(2) for amendment of a Membership Code, but the Panel decides not to issue an order under subsection 14.9(2) in respect of the Band, the Governor in Council, may within six months after notice of the decision is given, on application made by or on behalf of the Band, issue an order amending the membership code.

81.11 The Council of a Band whose jurisdiction with respect to membership is recognized shall send a copy of its Membership Code and amendments thereto enacted by it to the Minister forthwith on enactment.

The Minister shall keep a copy of every law received by him under this section in a central location and shall afford the public reasonable access thereto.

81.12 The Statutory Instruments Act does not apply to the Membership Codes and amendments thereto enacted by Bands pursuant to this Act.

81.13 For greater certainty, nothing in provisions 14.1 to 14.7 of this Act affects the application of the remaining provisions of this Act, to a Band whose jurisdiction with respect to membership has not been recognized.

- 81.14 For a Band whose jurisdiction with respect to membership has been recognized, sections X - Y of this Act shall continue to apply except to the extent that they are inconsistent with sections 14.1 to 14.7, or the Membership code of the particular Band.
- 81.15 (1) There shall be a Panel to be known as the Recognition Panel consisting of a Chairman and six other members to be appointed by the Governor in Council on the recommendation of the Minister.
- (2) Three of the members to be appointed after subsection (1) must be Indians.
- (3) The Minister shall consult with representatives of the Indian peoples of Canada before making his recommendation on the appointment of the Chairman and the members of the Panel.
- 81.16 (1) The Chairman shall be appointed to hold office for a term of not exceeding five years.
- (2) The members of the Panel, other than the Chairman, shall be appointed to hold office for such term not exceeding three years as will ensure as far as possible the expiration in any one year of the terms of fewer than half of the members so appointed.
- (3) A member of the Panel, including the Chairman, whose term of office has expired is eligible for re-appointment to the Panel in the same or another capacity.
- (4) The Chairman or any other member of the Panel may be removed for cause.
- 81.17 (1) Each member of the Panel shall, before entering on the duties of his office, take an oath that he will duly and faithfully, and to the best of his skill and knowledge, execute the powers and trusts reposed on him as a member of the Panel.
- (2) The oath referred to in subsection (1) shall be administered to the Chairman of the Panel before the Chief Justice of the Federal Court of Canada, and to the other members of the Panel by the Chairman, or in his absence or incapacity, by any other member.
- 81.18 (1) The Chairman is the chief executive officer of the Panel and has supervision over and direction of the work of the Panel.
- (2) In the event of the absence or incapacity of the Chairman, or if there is no Chairman, the Governor in Council may authorize a member to act as Chairman for the time being and a member so authorized, while so acting, has and may exercise and perform all the powers and duties of the Chairman.
- 81.19 The Chairman and other members of the panel shall be paid such salary as may be fixed by the Governor in Council, and are entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Act.

- 81.20 (1) The provisions of the Public Service Superannuation Act, other than those relating to tenure of office, apply to members of the Panel.
- (2) A member of the Panel is deemed to be employed in the public service of Canada for the purposes of the Government Employees Compensation Act and any regulations made under section 7 of the Aeronautics Act.
- 81.21 Such employees as are necessary for the proper conduct of the work of the Panel shall be appointed in accordance with the Public Service Employment Act.
- 81.22 (1) The functions of the panel are,
- (a) to hear and determine applications for recognition; and,
 - (b) to hear and determine applications for the amendment of Membership Codes of Bands whose jurisdiction with respect to Membership is recognized.
- (2) Subject to sections , a determination of the Panel is final.
- 81.23 The panel is a court of record and shall have an official seal, which shall be judicially noticed.
- 81.24 The Panel has, in relation to an application made to it under this Act, power
- (a) to summon and enforce the appearance of persons before it and to compel them to give oral and written evidence on oath and to produce such documents and things as the Panel deems requisite to the full investigation and consideration of the application in the same manner and to the same extent as a superior court of record;
 - (b) to administer oaths; and
 - (c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Panel sees fit.
- 81.25 The Panel is not bound by any legal or technical rules of evidence in conducting a hearing for the purposes of this Act, and all applications shall be dealt with by the Panel as informally and expeditiously as the circumstances and considerations of fairness permit.
- 81.26 The head office of the Panel shall be in the National Capital Region described in the schedule to the National Capital Act or at such other place in Canada as may be designated by the Governor in Council.
- 81.27 The Panel may, with the approval of the Governor in Council, make rules for the regulation of its proceedings and the performance of its duties and functions under this Act, including the number of members that constitutes a quorum of the Panel.

- 81.28 The Minister may, with the approval of the Governor in Council enter into an agreement with a Band whose jurisdiction with respect to membership has been recognized under which funding would be provided by the government of Canada to the Band over such period of time to maintain its membership institutions, and subject to such terms and conditions as are specified in the agreement.
- 81.29 The government of every Indian Nation that is recognized shall, within three months after the end of each fiscal year of Canada submit a report to the Minister relating to the source and application of funds received from the government of Canada pursuant to section 14.28 during that year.
- 81.30 Any sums required for the purposes of section , shall be paid out of such moneys as may be appropriated by Parliament for those purposes.
- 81.31 (1) The Minister may establish advisory committees to assist him in developing advice to be given to the Governor in Council in respect of amendments to this Act, regulations or policies relating to the subject matter of this Act.
- (2) The members of an advisory committee may be paid for their services such remuneration and expenses as are fixed by the Governor in Council.
- 81.32 A Roll of Bands whose jurisdiction with respect to membership has been recognized shall be maintained by the Minister.
- 81.33 (1) The Minister shall cause to be published in the Canada Gazette forthwith on the recognition of the jurisdiction of a Band with respect to its membership, the Membership code of the Band.
- (2) The Minister shall forthwith on receipt of a copy of an amendment to the Membership code of a Band under paragraph 10 cause the amendment to be published in the Canada Gazette.
- 81.34 The Panel shall, within three months after the end of each fiscal year of Canada, submit to the Minister a report of the activities of the Panel during that year.
- 81.35 (1) The Governor in Council may make regulations prescribing who is responsible for organizing and holding referenda for the purposes of paragraph , subsection , and paragraph , setting out criteria for determining who may vote in such referenda, establishing procedures to be followed in the conduct of such referenda and establishing the method of determining the results of such referenda.

24. Subsections 109(1) and (3) of the said Act are repealed and the following substituted therefor:

"109(1) On the report of the Minister that an Indian has applied for enfranchisement and that in the opinion of the Minister the Indian,

(a) is of the full age of twenty-one years,

(b) is capable of assuming the duties and responsibilities of citizenship, and

(c) when enfranchised, will be capable of supporting himself and his dependants,

the Governor in Council may by order declare that the Indian is enfranchised."

NOTE: This was s.15 in C-47. If enfranchisement is abolished, ss. 109 - 113 will have to be repealed.

25. Such committee of the House of Commons as may be designated or established by the House of Commons for the purpose of this section shall, within eighteen months after the coming into force of this Act, undertake a comprehensive review of sections and , and , of the Indian Act, as enacted by this Act, and shall within three months after the review is undertaken, or within such further time as the House of Commons may authorize, submit a report to the House of of Commons 3 thereon including a statement of any changes the committee would recommend.

26. This Act shall come into force on _____.