Archive Quarterly

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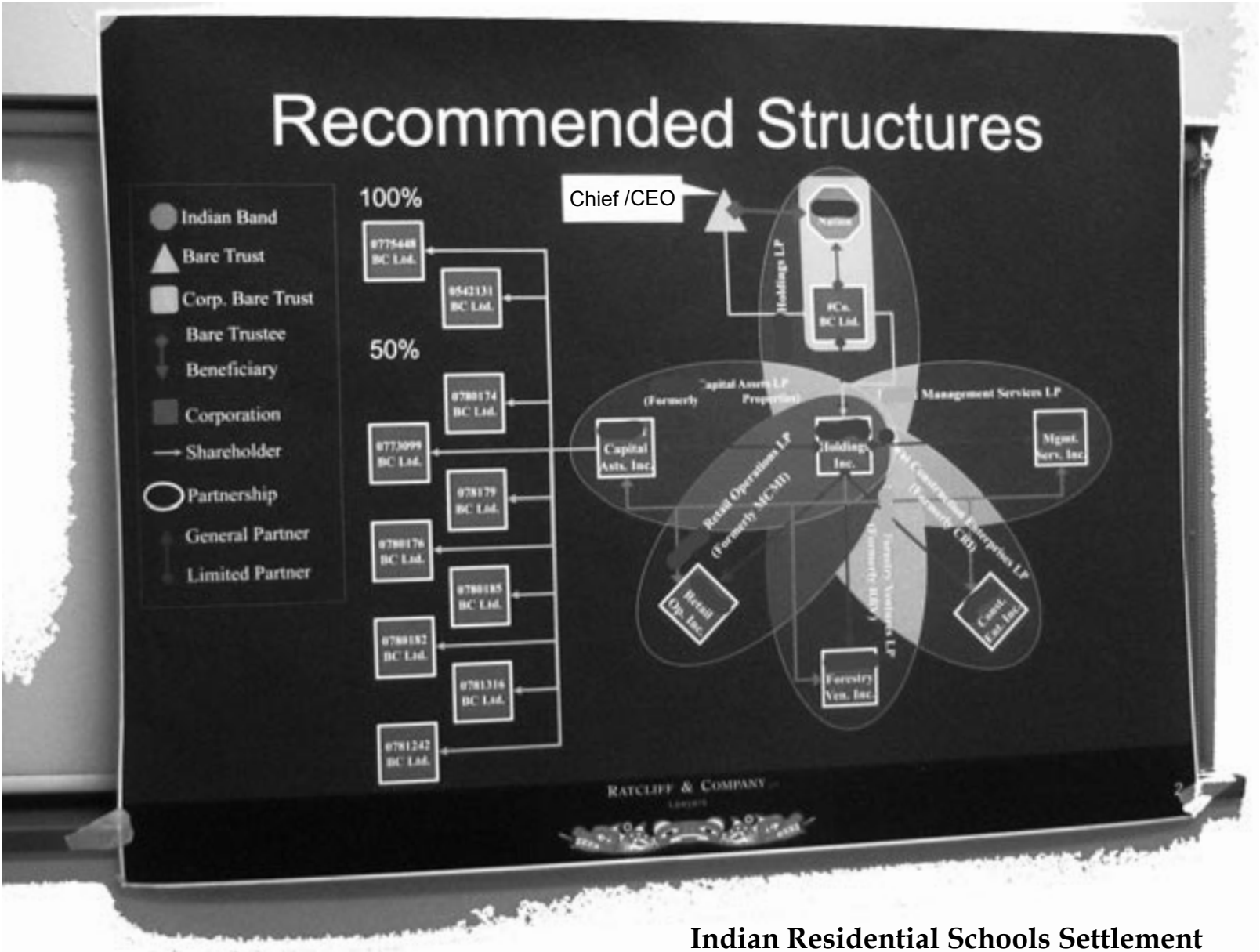
150 YEARS
of the *INDIAN ACT*



...and the only alternative Canada will allow is assimilation.

Under Canada's direct Band Council administrations, empowered and constituted by the *Indian Act,* First Nations will surrender their rights and lands - and consent to be governed by BC and Canada - or remain paralyzed by the Indian Act.

Indian Residential Schools Settlement
Twenty years on, are "past harms" and "forcible removal of children" settled?

1916 BC Indian Conference
"the Committee thinks it important to point out that the Indians of this Province are neither wards of the Government nor citizens of the Dominion"

"I want to get rid of the Indian problem.

until there is ...no Indian question, and no Indian department"

- D.C. Scott, 1920.

Duncan Campbell Scott

joined Canada's Civil Service at the age of 17, in 1879. He started in the Department of Indian Affairs and spent the next 52 years there. Scott was Superintendent of Indian Affairs for two decades.

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Cover image: a 2013 office banner depicting the proposed municipal structure of an Indian Band assimilated into the body politic of Canada.

With special recognition this issue to:
Arthur Manuel and Russel Diabo
Haida Laas journal
UBCIC online archive
Ron George Ruby Dunstan

EMP

Features

BC Indian Conference 1916

Efforts to assist the Imperial, Colonial, Federal and Provincial governments in upholding their arrangements with Indigenous Peoples and Nations are ongoing since at least 1861. In 1915, all of the nations west of the Rockies converged in the Allied Tribes movement.
In 1916, they published a joint statement from their Vancouver conference.

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Chiefs sit for a photo at the time of the Vancouver conference.

Indian Residential Schools Settlement Agreement

Twenty years later, are former students and their families better off? A review of what the Settlement promised, the problematics, and an open letter from William Blackwater to the Indigenous leadership at the time.

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A gathering of former students in Lytton, October 2007.

The *Indian Acts,* 1850 - 2023

Introduction
The Imperial Christian origins of the *Indian Acts*, from 1492. **Page 18**

Statutes 1850 - 1970 Developments in the *Indian Acts,* with sections from the legislation and margin note summaries. **Page 22**

Modern Amendments, Litigation, Commissions
A timeline of events, 1971 - 2025 **Page 84**

A sign recently retrieved from a fencepost in Secwepemc territory.

A highway sign responding to the 2012 Jobs and Growth Act.

Indian Act 2.0

Comparing the "alternatives" to the *Indian Act.* Modern legislation appears to follow the original offer of enfranchisement. **Page 102**

Sectoral Agreement Strategy. Offers to replace the *Indian Act*, by consent, one sector at a time, involve resolving claims, releasing past harms, and waiving the right to self-determination.The real difference is in the amount of money available for the initial implementation. **Page 106**

Impacts and Alternatives to the *Indian Act*

This most subjugating legislation affected everyone. Some helpful quotes about individual experiences, observations of change, and objective criticism. **Page 122**

What would a Real Alternative look like?
A modest proposal for decolonizing Canada. **Page 131**

Hereditary Wet'suwet'en Chief Ron George, speaking to the Indian Act in 2019.

180 years of "British sovereignty" in the Pacific Northwest

The Treaty of Oregon June 15, 1846

Extending a boundary between the United States and "British North America" along the lines established after the War of 1812, the new border along the 49th parallel bisects Sinixt, Sto:lo, and Coast Salish of Vancouver Island.

Over the years, Supreme Court of Canada rulings have selected 1846 as the "effective date" of British sovereignty across what is now called British Columbia. However, no such Declaration was ever made at the time by the crown.

The Court's retroactive finding of "British sovereignty," which it maintains today, has been historically rejected by the original sovereign nations, who never conceded control nor consented to be governed by Britain.

The date is based on the Oregon Treaty because, by that time, Britain had excluded all other Imperial nations from trading in the Pacific Northwest by treaty: with Spain in 1792; with Russia in 1825; and with the USA in 1846.

No discussion of sovereignty or even treaty was held with Indigenous Peoples. What did happen was that the Hudson's Bay Company made arrangements with most nations west of the Rockies for trading forts - on Indigenous terms. Then the British crown announced the formation of colonies:

Map from "A Student's History of the United States," *by Edward Channing, 1908, London, Macmillan & Co. Ltd.*

"Vancouver's Island," in 1849, and BC in 1858, which was described:

"Whereas her Majesty's Subjects and others have, by the Licence and Consent of Her Majesty, resorted to and settled on certain wild and unoccupied Territories on the North-west Coast of *North America*, commonly known by the designation of *New Caledonia*, and from and after the passing of this Act to be named *British Columbia,* and the Islands adjacent, for Mining and other Purposes; and it is desirable to make some temporary Provision for the Civil Government of such Territories, until permanent Settlements shall be thereupon established, and the Number of Colonists increased:

"Be it therefore enacted ... 1. *British Columbia* shall, for the Purposes of this Act, be held to comprise all such Territories within the Dominions of Her Majesty as are bounded to the South by the Frontier of the United States of *America*, …".

"Dominion" does not, in any legal sense of that time or this, denote title to land.

It was not until 1864 that any Indigenous Peoples were publicly addressed as "Subjects" of the Queen - in New Westminster.

The Half Century

International Covenant on Civil and Political Rights

Adopted by UN General Assembly resolution, 1966 December 10,
Entered into force March 23, 1976. Canada acceded to the treaty on May 19, 1976.

Article 1

1. All peoples have the right of self-determination.

By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.

In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The proposed amalgamation of BCANSI and UBCIC, 1976

After the Province-wide Rejection of Funds campaign began a year earlier,
the Union of BC Indian Chiefs and the BC Association of Non-Status Indians negotiated a merger.

Delegates to a UBCIC land claims assembly in Terrace recognized the eligibility of Non-status Indians for a land claims settlement, so long as they were at least one-quarter blood descendants of the original Peoples.

The significance of this move in April, 1975, is substantial: at this time, the federal government rejects any liability to Non-Status Indians, while the Indian Act controls who can be a Band Member - and who can be a Status Indian.

Bill Lightbown, a Non-Status Indian of Kutenai, was President of BCANSI at the time. He described the following year's movement towards unity in his 2018 memoir, *They Made Me An Outlaw!*

"We worked separately for our rights, the Non-Status Indians in one group, and the UBCIC representing a coalition of the Indian Reserves, and they were fighting for their basic human rights, too, as well as trying to deal with the land question. The problem is that the federal government only attaches funding to the Band Council on the basis of on-Reserve membership. And what that meant for us was that urban Aboriginal people and on- Reserve Aboriginal people were pulling in different directions to get their basic needs met.

We were losing energy by working separately, playing into the government's divide and conquer strategy. So we spent a whole year - our Board of Directors meeting with the Union's Chiefs Council. We were showing signs of being able to unify all the Aboriginal people in BC: we were going to amalgamate.

In April 1976, we had a meeting in Comox to address the joining of our two organizations. There were over a thousand people representating.

The meeting started on Monday. And now it's the end of the day, Thursday, and the resolution still has to be dealt with and brought to the floor. But the Chiefs and leaders who had spent the last year in meetings with BCANSI, preparing for this resolution, kept saying, "We really can't deal with it today," and, "why don't you agree we'll table it for the next meeting?" But there was no next meeting, and the vote to amalgamate was never held."

It was later revealed that when Bands re-applied for government funding, out of necessity, Canada obliged - but with one condition: *oppose the amalgamation*.

The Century

The 1926 Special Joint Committee

The *Claims of the Allied Tribes* was originally presented in 1919, as a unified rejection of the Royal Commission into Indian reserves in BC. Canada refused and denied response to the Claims - until the Commission's report had been legislated in 1925.

The 1919 *Claims of the Allied Indian Tribes* was included as "Appendix A" to the Report of the Joint Committee, which finally heard the representatives of the Tribes in 1926.

An excerpt from the *Claims*:

Part III, Conditions Proposed as Basis of Settlement

We beg to present for consideration to the two top Governments the following which we regard as necessary conditions of equitable settlement:

1. That the Proclamation issued by King George III in 1763 and the Report presented by the Minister of Justice in the year 1875 be accepted by the two Governments and established as the main basis of all dealings and all adjustments of Indian land rights and other rights which shall be made.

2. That it be conceded that each Tribe for whose use and benefit land is set aside (under Article 13 of the "Terms of Union") acquires thereby a full, permanent and beneficial title to the land so set aside together with all natural resources pertaining thereto; and that Section 127 of the Land Act of British Columbia be amended accordingly.

3. That all existing reserves not now as parts of the Railway Belt or otherwise held by Canada be conveyed to Canada for the use and benefit of the various Tribes.

4. That all foreshores whether tidal or inland be included in the reserves with which they are connected, so that the various Tribes shall have full permanent and beneficial title to such foreshores.

5. That adequate additional lands be set aside and that to this end a per capita standard of 160 acres of average agricultural land having in case of lands situated within the dry belt a supply of water sufficient for irrigation be established. By "standard" we mean not a hard and fast rule, but a general estimate to be used as a guide, and to be applied in a reasonable way to the actual requirements of each tribe.

6. That in sections of the Province in case of which the character of available land and the conditions prevailing make it impossible or undesirable to carry out fully or at all that standard the Indian Tribes concerned be compensated for such deficiency by grazing lands, by timber lands, by hunting lands or otherwise, as the particular character and conditions of each such section may require.

7. That all existing inequalities in respect of both acreage and value between lands set aside for the various Tribes be adjusted.

8. That for the purpose of enabling the two Governments to set aside adequate additional lands and adjust all inequalities there be established a system of obtaining lands including compulsory purchase similar to the Land Settlement Board of British Columbia.

9. That if the Governments and Allied Tribes should not be able to agree upon a standard of lands to be reserved that matter and all other matters relating to lands to be reserved which cannot be adjusted in pursuance of the preceding conditions and by conference between the two governments and the Allied Tribes be referred to the Secretary of State for the Colonies to be finally decided by that Minister in view of our land rights conceded by the two Governments in accordance with our first condition and in pursuance of the provisions of Article 13 of the "Terms of Union" by such method of procedure as shall be determined by the Parliament of Canada.

10. That the beneficial ownership of all reserves shall belong to the Tribe for whose use and benefit they are set aside.

11. That a system of individual title to occupation of particular parts of

19. That the *Indian Act* be revised for carrying into full effect these conditions of settlement, the matter of citizenship, and adjusting all outstanding matters of Indian affairs in British Columbia

reserved lands be established and brought into operation and administered by each Tribe.

12. That all sales, leases and other dispositions of land or timber or other natural resources be made by Canada as trustee for the Tribe with the consent of the Tribe and that of all who may have such rights of occupation affected, and that the proceeds be disposed of in such way and used from time to time for such purposes as shall be agreed upon between the Government of Canada and the Tribe together with all those having rights of occupation.

13. That the fishing rights, hunting rights and water rights of the Indian Tribes be fully adjusted. Our land rights having first been established by concession or decision we are willing that our general rights shall after full conference between the two Governments and the Tribes be adjusted by enactment of the Parliament of Canada.

4. That in connection with the adjustment of our fishing rights the matter of the international treaty recently entered into which very seriously conflicts with those rights be adjusted. We do not at present discuss the matter of fishing for commercial purposes. However, that matter may stand.

We claim that we have a clear aboriginal right to take salmon for food. That right the Indian tribes have continuously exercised from time immemorial. Long before the Dominion of Canada came into existence that right was guaranteed by Imperial enactment, the Royal Proclamation issued in 1763. We claim that under that Proclamation and other Imperial enactment, Section 109 of the British North America Act, the meaning and effect of which were explained by the Minister of Justice in the words set out above, all power held by the Parliament of Canada for regulating the fisheries of British Columbia is subject to our right of fishing. We therefore claim that the regulations contained in the treaty can not be made applicable to Indian Tribes, and that any attempt to enforce those regulations against the Indian Tribes is unlawful, being a breach of the two Imperial enactments mentioned.

15. That compensation be made in respect of the following matters:
(1) Inequalities of acreage or value
(2) Inferior quality of reserved lands
(3) Location of reserved lands
(4) Damages caused to the timber or other natural resources of any reserved lands
(5) All moneys expended by any Tribe in connection with the Indian land controversy and the adjustment of all matters outstanding.

16. That general compensation for lands to be surrendered be made.
(1) By establishing and maintaining an adequate system of education, including both day schools and residential industrial schools, etc.
(2) By establishing and maintaining an adequate system of medical aid and hospitals.

17. That all compensations provided for by the two preceding paragraphs and all other compensation claimed by any Tribe so far as may be found necessary be dealt with by enactment of the Parliament of Canada and be determined and administered in accordance with such enactment.

18. That all restrictions contained in the Land Act and other Statutes of the Province be removed.

19. That the *Indian Act* be revised and that all amendments of that Act required for carrying into full effect these conditions of settlement, dealing with the matter of citizenship, and adjusting all outstanding matters relating to the administration of Indian affairs in British Columbia be made.

20. That all moneys already expended and to be expended by the Allied Tribes in connection with the Indian land controversy and the adjustment of all matters outstanding be provided by the Governments.

British Columbia Indian Conference 1916

Held at Vancouver,
20th to 23rd June, 1916

Statement

Issued by the Committee
appointed by the Conference,
28th June, 1916

The Indian Tribes of British Columbia have always claimed tribal ownership of the lands of the Province as the lands of their forefathers, and under Royal proclamation, but since the days of Sir James Douglas the local Government has not admitted their claims.

All the Indians of the Province have for many years desired that this land question should be decided, and to that end in the year 1909 sent a petition to the late King Edward VII., and his Imperial Minister, the Secretary of State for the Colonies, asking that the Imperial Government refer the land question to the Judicial Committee of His Majesty's Privy Council.

When, by reason of refusal of British Columbia to agree to a reference, and the McKenna Agreement afterwards entered into by the Governments of Canada and British Columbia, it seemed that the door of the Judicial Committee had been closed against the Indians, the Nishga Tribe was advised that if one tribe presented a direct and independent petition to the King's Great Court, His Majesty's Privy Council, the door of the Judicial Committee might in that way be opened, not only for that one tribe, but for all other tribes. The Nishgas therefore decided to take the responsibility of presenting such a petition for the benefit of all the tribes.

With the approval of the Counsel for the Indian Rights Association, and after full consultation with the Government of Canada, the Petition of the Nishga Tribe was lodged in the Privy Council in May, 1913. That action was taken by the Nishgas with the earnest hope that the other tribes would unite in recognizing their petition as a test case relating to the claims of all the tribes.

After the Nishga Petition had been lodged, the London lawyers of the Nishga Tribe received from the Lord President of the Privy Council a letter stating as reason for not referring it to the Judicial Committee the supposed fact that the Royal Commission appointed under the McKenna Agreement was considering the aboriginal claims, which are the subject of the Petition. Soon afterwards the Nishgas presented to the Royal Commission a memorial in answer to which they were informed that the Commissioners were not considering , and had no power to consider these claims.

Subsequently the Nishga Petition was very fully considered at Ottawa, and as result in June, 1914, the Government passed an Order-in-Council asking that the Indian Tribes accept the findings of the Royal Commission, and agree to surrender their rights if the courts should decide that they have any, taking in place of them benefits to be granted by the Government of Canada.

The Nishga Tribe and the Interior Tribes allied with them, were unwilling to accept these conditions, but made proposals of their own, suggesting that the matter of lands to be reserved be finally dealt with by the Secretary of State for the Colonies and that the matter of fixing compensation for lands to be surrendered be dealt with by the parliament of Canada.

These counter proposals the Government of Canada rejected by Order-in-Council passed in June, 1915, mainly upon the ground that the Government was precluded by the McKenna Agreement from accepting them.

The Nishga and Interior Tribes being still unwilling to accept the Government's terms, and believing that all or nearly all of the tribes of the Province would be unwilling to accept them, in April last sent delegations to Ottawa.

The delegates spent six weeks in Ottawa, and placed the case squarely before the Prime Minister of Canada, the Minister of the Interior, and the Deputy Superintendent-General of Indian Affairs. They also interviewed Sir Wilfred Laurier, who when Prime Minister

promised that the land question would be brought before the Judicial Committee.

The delegates devoted much attention to the expected report of the Royal Commission, and asked that the report be not finally dealt with until the issues contained in the Nishga Petition should have been decided, or at least until the Indian tribes should have an opportunity of making representations regarding its findings.

Having failed to secure any definite answer from the Government, the delegates, before leaving Ottawa, in a statement placed in the hands of the Governor-General of Canada, the Prime Minister of Canada, and the Minister of the Interior, and sent to the Secretary of State for the Colonies, declared their determination to do all in their power by independent efforts to secure that the Nishga Petition shall be referred to the Judicial Committee.

After making some progress at Ottawa, the delegates sent to the Executive Committee of the Indian Rights Association an invitation to join them in a conference for the purpose of considering the interviews had with the Government of Canada, and the whole position reached in efforts being made for the Indian cause, with a view to securing the fullest possible harmony and co-operation.

This invitation was accepted and the Conference opened in Vancouver on Tuesday, June 20. At a number of meetings held from that day until the following Friday, outstanding features of the situation were discussed with some fullness.

The members of the Conference also attended a gathering of natives held on Thursday, June 22nd, addressed by Mr. Duncan C. Scott, Deputy Superintendent-General, whose views then expressed were carefully considered at subsequent meetings of the Conference.

The main result of the Conference was that unanimously the following resolutions were adopted, the first on Tuesday, June 20th, and the second on Friday, June 23rd:

1. That this meeting of the Chiefs of the Indians of British Columbia with the Executive of the Indian Rights Association assembled, repudiate any suggestion that we are satisfied with the terms of the Order-in-Council passed in June, 1914, and Mr. Clark, K.C., of Toronto, quite misunderstood our instructions if he stated to Hon. Dr. Roche that the Indian Rights Association accepted the terms of such Order-in-Council.

2. That a committee be appointed to agree on a general plan of action for the Indians of British Columbia and report to all tribes the result of their deliberations, with power in meantime to take any necessary steps to preserve all rights and claims on the lines of co-operation with the Nishga Tribe.

The Conference also considered other serious matters of dissatisfaction. The two Governments are claiming that the Indians of British Columbia do not own the foreshores of their reserves, and the Government of British Columbia is claiming that the Province still has a reversionary interest in all reserves which it was understood had been extinguished by the agreement made in 1912 between the two Governments.

Later it was explained that the British Columbia Government intended to give up its reversionary claim on the reserves, only after the Indians had agreed to accept the findings of the Royal Commission regarding portions of existing reserves to be relinquished.

Other matters concerning which there was the utmost dissatisfaction were the hunting and fishing rights claimed by the tribes. The Government in its proposals had made no mention of these, and they were evidently intended to be left out of the proposed settlement. The Indians were of the opinion that no settlement should be made with the Governments until all these questions were dealt with in some way satisfactory to them.

The Committee appointed by the Conference in pursuance of the second resolution consists of the following: Rev. Peter R. Kelly, of Hydah Tribe, Chairman; J.A. Teit, Spence's Bridge, Secretary; Charles B. Barton, of Nishga Tribe; John Tedlenitsa, of the Thompson Tribe; Dennis Peter, of Lower Fraser Tribe, and William Nahinee of Squamish Tribe.

This Committee has held several

meetings, has after full consideration agreed to recognize the Nishga Petition as a test case for the land claims of all the tribes, and has made plans for informing the tribes and otherwise co-operating with the Nishgas.

The Committee also decided to prepare this statement to be placed in the hands of the Governments concerned, as well as each Indian tribe.

In connection with the land question, and all other matters considered at the Conference, the Committee thinks it important to point out that, while the Indians of this Province are subjects of His Majesty, and an obligation for their protection has been placed upon and accepted by Canada, they are neither wards of the Government nor citizens of the Dominion, and that to this day there is no real relation between the Indian tribe and the people of Canada, the tribe remaining a community not yet part of the Canadian people.

The Committee is sure that the Indian tribes will continue to insist upon the right of free assembly and free speach. It should also be known to all concerned that the Indian tribes will continue to jealously guard and freely exercise the right of collecting from members of the tribe, or otherwise securing all funds needed for protecting their rights and promoting their interests.

There is another right which the Committee is satisfied that the Indian tribes of British Columbia will very jealously guard, that of being advised and represented by counsel chosen by themselves.

Under ordinary circumstances, of course, this should be at their own expense. For a test case, like the Nishga Petition, containing issues affecting the Indians of the whole Province, it has been generally thought that parliament may reasonably be asked to provide all funds needed. But what the Committee regard as all important is to preserve the right of choosing counsel.

The Committee, therefore, on behalf of the Indian tribes of this Province makes an earnest protest against any interference whatever with this right on the part of the Government of Canada, or the Indian Department, and particularly against the condition relating to appointment of counsel contained in the Order-in-Council of June, 1914.

Having failed to secure any definite answer from the Government, the delegates declared their determination to do all in their power to secure that the Nishga Petition shall be referred to the Judicial Committee.

The Committee concludes this statement by asserting that, while it is believed that all of the Indian tribes of the Province will press on to the Judicial Committee, refusing to consider any so-called settlement made up under the McKenna Agreement, the Committee also feels certain that the tribes allied for that purpose will always be ready to consider any really equitable method of settlement out of court which might be proposed by the Governments.

The above statement has been issued on behalf of the Committee by the undersigned.

PETER R. KELLY, Chairman
J.A. TEIT, Secretary

Note.- This statement was put into the hands of the Government of Canada and the Secretary of State for the Colonies, was published in the press of Vancouver and was sent to each Indian Tribe.

Indian Residential Schools

Settlement Agreement

May 8 2006

After the break-through ruling in 1997, *Blackwater v. The Queen,* there were "a hundred years of court cases" coming forward.

Individuals and groups sued the churches and government, the individual schools, and the staff, over crimes against students in the residential schools.

The Settlement reduced Canada's financial liabilities, in terms of awards for damages alone, by an estimated *twenty times.*

The Agreement in Context

Politically:
Negotiations began in July, 2005.

An Agreement in Principle for a class action settlement of the serious harms suffered by former students of Indian Residential Schools on November 20, 2005.

The Assembly of First Nations (AFN) had taken on the role of representing the class plaintiffs. The other Parties to the Agreement would be the Government of Canada; the Anglican, Presbyterian, and United Churches of Canada and Roman Catholic Entities; Plaintiffs (former students) already engaged in court actions, as represented by the National Consortium [nineteen law firms], and the Merchant Law Group, and Independent Counsel; and Inuit Representatives.

In December 2005, the federal Conservative Party of Canada held a vote of no confidence and ousted the Liberals. Stephen Harper replaced Paul Martin as Prime Minister, amid progress in the nation-wide, $5billion Transformative Change initiative.

Conservatives formed a new federal government in the first weeks of January, 2006.

Legally:
Since the *Blackwater v. Plint and the Queen* case in 1997, there were "a hundred years of court cases" coming forward, with individuals and groups of classmates suing the government, the church, the church and government, individual schools and staff, over crimes against students in the schools.

The Merchant Law Group, the National Consortium, and independent counsel represented those plaintiffs who were seeking damages in complaints related to Indian Residential Schools. All these actions were brought under the AFN-led class action by the Agreement in Principle, November 2005.

Financially:
In 2004 and 2005, the Liberal government engaged with Indigenous organizations across Canada in something they called the Transformative Change Agreement.

On November 25th, 2005, the Kelowna Accord chapter of Transformative Change, spelled out an agreement on implementation in British Columbia: "The Parties agree that by December, 2006 a detailed tripartite implementation strategy will be developed laying out specific actions and building

upon a shared commitment to undertake as many initiatives as possible in year one of the 10 year plan."

The federal government had created a $5billion fund to implement this Transformative Change, or, as it was described in the Agreement: "close the gap" between Aboriginal communities and the rest of Canadians, in the areas of housing and infrastructure, health, and education – for a start – and, notably, to "improve relationships by supporting a tripartite negotiation forum to address issues having to do with the reconciliation of Aboriginal rights and title."

This fund disappeared from discussion with the collapse of the Liberal government, although the former Prime Minister attempted to have Transformative Change proceed under his private member's bill: the money was there to spend. But it was not spent on the goals identified to "close the gap."

In its place, the Indian Residential Schools Survivors Settlement Agreement (IRSSA) was implemented, at a cost disclosed by the government to be just under $4 billion.

What were the key components of the Settlement?

- it applied to former students who were alive in 2005, their families and direct descendants

- it covered compensation for removal to the schools, in a $10,000 figure for every person who attended one of the schools.

- under the name of "Common Experience Payment," former students were eligible to receive $3,000 for each year they could prove they were in attendance at a residential school. This payment was said to be compensation for loss of language and culture.

- The "Independent Assessment Process" established a unique mechanism for evaluating compensation for former students who were the victims of violent criminal acts of physical, sexual, and psychological abuse. Specific criminal acts were assigned a "points" value, and victims testified to each assault, receiving a total number of "points" and a related compensation figure. This process was substituted for criminal trials of the guilty parties.

Note: The judge in *Blackwater* awarded a rumoured 17 times more compensation than was received by claimants with very similar complaints who used the Independent Assessment Process to evaluate compensation under the Settlement Agreement.

- The Settlement promised a formal apology to former students by the Government of Canada. This was made by Prime Minister Stephen Harper in June, 2008.

- A "Truth and Reconciliation process" was set out in the Agreement, under Schedule N: a mandate and terms of reference that eventually formed the Truth and Reconciliation Commission.

One of the conditions of the Commission's mandate was that it would have no power to subpoena witnesses, nor to press charges against named perpetrators.

- A certain number of Commemoration events were described and designated for funding.

- Canada would provide an endowment to the existing Aboriginal Healing Foundation, and review the AHF's work after the first five-year

- Mental and emotional crisis lines for participants: Canada agreed that it would continue to provide existing mental health and emotional support services, making them available to individuals in the Independent Assessment Process or Common Experience Payment, and those participating in truth and reconciliation or commemorative initiatives.

Note: in the landmark *Blackwater et al.* case of violent physical and sexual abuse in the schools, there were twelve original plaintiffs – but by the end of the trial, some had died by suicide. The personal cost of explaining and re-living

such events was well known at the time of IRSSA.

- if 800 or more eligible members of the class action opted out of the Settlement Agreement, the Agreement would be nullified.

In exchange for benefits under the Settlement, all members of the class action –
former students of Indian Residential Schools, their families and descendants – offered release to the Government of Canada, Churches, Schools, and:

a) …fully, finally and forever released each of the Releasees from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any such Class Member or Cloud Class Member ever had, now has, or may hereafter have, directly or indirectly arising from or

May 8, 2006

Indian Residential Schools Settlement Agreement

WHEREAS:

A. Canada and certain religious organizations operated Indian Residential Schools for the education of aboriginal children and certain harms and abuses were committed against those children;

B. The Parties desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools;

C. The Parties further desire the promotion of healing, education, truth and reconciliation and commemoration;

D. The Parties entered an Agreement in Principle on November 20, 2005 for the resolution of the legacy of Indian Residential Schools:

(i) to settle the Class Actions and the Cloud Class Action, in accordance with and as provided in this Agreement;

(ii) to provide for payment by Canada of the Designated Amount for the Common Experience Payment;

(iii) to provide for the Independent Assessment Process;

(iv) to establish a Truth and Reconciliation Commission;

(v) to provide for an endowment to the Aboriginal Healing Foundation to fund healing programmes addressing the legacy of harms suffered at Indian Residential Schools including the intergenerational effects; and

(vi) to provide funding for commemoration of the legacy of Indian Residential Schools;

E. The Parties, subject to the Approval Orders, have agreed to amend and merge all of the existing proposed class action statements of claim to assert a common series of Class Actions for the purposes of settlement;

F. The Parties, subject to the Approval Orders and the expiration of the Opt Out Periods without the Opt Out Threshold being met, have agreed to settle the Class Actions upon the terms contained in this Agreement;

G. The Parties, subject to the Approval Orders, agree to settle all pending individual actions relating to Indian Residential Schools upon the terms contained in this Agreement, save and except those actions brought by individuals who opt out of the Class Actions in the manner set out, or who will be deemed to have opted out pursuant to Article 1008 of *The Code of Civil Procedure of Quebec*;

H. This Agreement is not to be construed as an admission of liability by any of the defendants named in the Class Actions or the Cloud Class Action.

THEREFORE, in consideration of the mutual agreements, covenants and undertakings set out herein, the Parties agree that all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any Class Member or Cloud Class Member ever had, now has or may hereafter have arising in relation to an Indian Residential School or the operation of Indian Residential Schools, whether such claims were made or could have been made in any proceeding including the Class Actions, will be finally settled based on the terms and conditions set out in this Agreement upon the Implementation Date, and the Releasees will have no further liability except as set out in this Agreement.

in any way relating to or by way of any subrogated or assigned right or otherwise in relation to an Indian Residential School or the operation of Indian Residential Schools and this release includes any such claim made or that could have been made in any proceeding including the Class Actions or the Cloud Class Action whether asserted directly by the Class Member or Cloud Class Member or by any other person, group or legal entity on behalf of or as representative for the Class Member or Cloud Class Member.

b) … agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person or persons in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O. 1990, c. N-3, … in relation to an Indian Residential School or the operation of Indian Residential Schools;

Measurable Results

Healing

The Aboriginal Healing Foundation (AHF) attempted to participate as an advisor to the AFN, which had never taken a lead role in advancing resolution of grievances concerning Indian Residential Schools before.

The AHF had started in 1998 with Canada's "Gathering Strength" response to the 1991-96 Royal Commission on Aboriginal Peoples, and was announced at the same time as a formal statement that Canada "regrets" its participation in the century-long Indian Residential School program of forcible assimilation of Indigenous children. It was established just after the *Blackwater* case. The Foundation had a $350 million fund, and an independent Board.

Under the Settlement, AFN received up to 15% of the initial $2billion fund, for administration.

With the announcement of the class action Settlement, the AHF and the Vancouver-founded Indian Residential Schools Survivors Society, along with a new group in the Interior of BC – Empowered Residential School Survivors, began to organize outside of the AFN in attempts to bring reliable and complete information to members of the class.

The AFN's work in this area was demonstrably late, inadequate, and incomplete to the point of being misleading. For instance, AFN memos received did not stress important factors that *the families and children* of former students also had options to preserve their rights by opting out; that the Settlement was only applicable to former students who were *alive in 2005;* and the extreme limitations of the Truth and Reconciliation Commission as constructed.

Under the new Settlement, Canada would provide an endowment to the existing Aboriginal Healing Foundation, and review the AHF's work after the first five-year funding agreement.

The AHF and IRSSSA reported urgent health concerns to the Parties to the Settlement Agreement, particularly regarding the most likely outcomes of the lump-sum cash settlements coming available to former students under the Settlement Agreement.

According to their extensive research into other class settlements for victims of trauma, around the world, individual payments – the likes of which had never been experienced by most recipients, who were known to mostly live in poverty and often engage in substance abuse – resulted in catastrophic levels of harm and fatalities related to overdose.

The AHF recommended several options to provide slow-release payments, including group investments, the creation of mutual funds, financial counseling, and methods of third-party management. None of their recommendations were acted on.

In 2010, the AHF released a report on the ongoing impacts of the lump-sum settlements. By that time, most former students had received tens of thousands of dollars in the Common Experience Payment. The AHF reported the catastrophic level of fatalities, accidents, violence and overdose among recipients of the lump-sum payments under IAP and CEP, exactly as predicted.

The Government of Canada did not renew AHF funding after that report, which was due to be renewed at the end of the Settlement Agreement's first guaranteed endowment term - 2011.

Ongoing Liability

In 2023, "Four Pillars" compensation funding was awarded.

As a result of a claim brought by a Secwepemc chief (Gottfriedson) and a Sechelt chief (Feschuk), compensation for loss of culture for children and descendants of former IRS students became the subject of a new class action, and settlement was made with 325 Indian Bands who opted in. It is a $2.8 billion fund to revitalize culture or mitigate loss of culture.

The success of this claim showed that, in spite of the "Therefore" section of the IRSSA, the government remains liable for past harms – some of which have arisen during the Truth and reconciliation, and in Survivor testimonies.

Recidivism

Although the 2008 apology promised "not to do it again," a new "Final settlement agreement on compensation for Child Apprehensions" was offered by Canada to Indigenous parties in April 2023.

Children and families are eligible for compensation when a child has been removed from the home. On July 26, 2023, the Canadian Human Rights Tribunal confirmed that this agreement fully met the Tribunal's 2019 orders on compensation. The Federal Court of Canada approved it on October 24, 2023.

Eligible claimants are:
- children who were removed from their homes under the First Nations Child and Family Services Program between April 1, 1991, and March 31, 2022, and
- First Nations individuals living on-reserve or in the Yukon, while under the age of majority, who were, based on the involvement of a child welfare agency, sent off-reserve by a caregiving parent or caregiving grandparent to stay with a non-family member in a placement not funded by Indigenous Services Canada, between April 1, 1991, and March 31, 2022

As of 2025, 51% of children in foster care or Ministry care across Canada are Indigenous.
"Neglect" is by far the most common reason for removal of Aboriginal children.
The #1 reason for "neglect" – as defined by the Minister – is poverty.
The Number One reason for Indigenous poverty is denial of title and rights.

Left to right: James Louie, Lil'wat, Tracey Robinson, IACHR, and Loni Edmonds, Lil'wat, during the IACHR country visit, August 2013.

Edmonds v. Canada

Opting out of the IRSSA 2006, James Louie of Lil'wat joined his case against the crown with Loni Edmonds' complaint: seizure of her children.

At the Permanent Forum on Indigenous Peoples, 2011, Louie stated:

"We are not benefitting from implementation of the Articles in the Declaration on the Rights of Indigenous Peoples, which we would hope would cause states to recognize that we had, we have and we will have the right to exist as a people.

"Today, we draw attention to Article 7, 2: "Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group."

The *Edmonds* case, IACHR 12-929, is ongoing at the Inter-American Court. The case was admitted on the basis that the domestic remedy in Canada was seen to be exhausted.

Blackwater et. al. v. The Queen

Open Letter to the Assembly of First Nations, 2007

Re. Common Experience Payment, Independent Assessment Process, and Truth and Reconciliation Commission Protocol and Process

My name is Sii' Haast from Wilp's (House of) Tsa Bux (Hereditary Chief) of the Wolf Clan from the Gitxsan Nation and a band member of Gitsegukla. I am also the BC representative on the Board of Directors for the National Residential School Survivors' Society.

First and foremost; this letter is *without Prejudice and Discrimination*. My only goal is to support and enhance the fair, just and equal treatment; well being and safety of the Indian Residential School Survivors and intergenerational impacts, which include infants, children, youth, adults, elders, families, communities and nations.

Most importantly, this letter is to create a safe environment for survivors, such as myself, to freely express my concerns without fear of experiencing harassment from my Leadership(s) or their affiliates.

At the round table discussions at our most recent NRSSS Board of Directors meeting in Winnipeg, I now realize that a very brief reminder and overview of Aboriginal history should emphasize the concreteness of our concerns in regards to the National Residential School Survivors' Society initiatives from an Indian Residential School Survivor perspective.

Aboriginal historical losses are positioned from Assimilation / Colonization, Indian Residential Schools and a Foster Care System which is the foundation of the Indian Residential School Survivors leadership of the CEP, IAP & TRC initiatives; it should provide the context for understanding the values and principles that reflect the Aboriginal worldview of the many historical assaults on Aboriginal people.

This also supports the notion that an individual does not have to experience these assaults directly in their own life to suffer; losses in the lives of one generation reflect repeatedly on to the next. Therefore, many Aboriginal people are still suffering a depression of spirit resulting from damage to their culture, languages, identities and self-respect.

To reach "whole health" Aboriginal people must confront the crippling injuries of the ancestral pain of the past; associated with the long procession of collective assaults including the undermined loss of language, culture, spirituality, traditions, values, principals & belief systems.

Unless one is an Aboriginal and has personally experienced these assaults, such as I have; it will be extremely difficult to understand the following. The aftermath of the Historical Assaults mentioned above, in particular the Indian Residential School experiences, still have a devastating effect on the majority of Aboriginal people today.

Those that personally experienced the atrocities inflicted on them for attempting to speak and practice their own respective Aboriginal identity; are the foundational factors of why Aboriginal peoples across Canada fear their own respective Ancestral Laws, Practices, Values and Principles.

It is imperative to proceed with utmost caution when attempting to implement positive & healthy changes, as this will help re-establish the "loss" of Trust, Identity and Self-empowerment of Aboriginal people. These are the critical factors that "must be" in the forefront when addressing CEP, IAP & TRC healing Strategies.

Even though there is a huge and critical concern within the majority of Aboriginal communities throughout BC in regards to CEP, IAP & TRC issues, there is no trusted & identifiable First Nation collective or individual that is sanctioned to move these agendas forward.

It is our perception (Survivors) that these issues still rest with the Government of Canada and the Churches involved who have consulted with Aboriginal leadership such as the Assembly of First Nations on how they should do their work. Even though these consultation processes have created a better sense of collaboration, this work must be further built upon.

Therefore, we strongly suggest that a comprehensive strategy specific to the development and implementation of the CEP, IAP & TRC strategies in general be led by Survivors themselves, under the direction of the National Residential School Survivors Society.

One of the biggest obstacles in the organization and implementation of the CEP, IAP & TRC has been reaching "all" Aboriginal people throughout Canada with "consistent" information to survivors. This critical factor creates a feeling amongst the survivors that they don't have a voice within the mandate of the CEP, IAP & TRC. We the survivors must be given the opportunity to set our own direction and/or take ownership for CEP, IAP & TRC strategic planning.

As a result of this, we the Survivors of BC are strongly demanding the idea that as a first step towards the ongoing development and implementation of CEP, IAP & TRC strategic plans; that AFN demand from the government of Canada sufficient funds to the National Residential School Survivors Society for supporting the development of this collective.

We also strongly demand that the Regional Boards of Directors of the NRSSS act as the "main" working group on behalf of the Survivors throughout Canada in addressing the CEP, IAP & TRC initiatives.

We further and strongly demand that once other Regional Survivors groups have been identified throughout Canada that they are provided adequate funds to have a selected representative to meet with the National Residential School Survivors' Society Board of Directors on a quarterly basis. This survivor's working group from the Provinces, Northwest Territories, Yukon and Inuit will be able to collectively bring instrumental information in setting the CEP, IAP & TRC strategies in perspective to a survivor's mandate.

We truly believe that these collectives can be supported jointly in the creation of what we like to refer to as; *"Residential School Survivors Transformative Change Accord"* which could be at least a ten year plan.

In conclusion: Mr. Fontaine, I remember how proud I had been when took time out from your very busy schedule; to come to BC and sit with us during my court case – "*Blackwater et. al. vs. Her Majesty the Queen in Right of Canada, the United Church of Canada and named employees*". This court case took its toll in the end, we lost the lives of two very dear and courageous survivors; no compensation in the world would ever replace our deepest sorrow for their deaths.

I personally feel that their courageousness and deaths were not recognized as a "Historical" milestone, because they were left out of what the world views as "The Best Deal Negotiated for Residential School Survivors" for "Atrocities" inflicted on us.

Furthermore; I feel that our case is one of the major foundations in the creation of the ADR, CEP, IAP & TRC. The Supreme Court of Canada upheld the decision of BC Supreme Court that the named defendants were "Vicariously but also Directly Liable" for the sexual and physical abuse on the plaintiffs.

Yet throughout your discussions about the fabulous deal AFN made on behalf of Survivors throughout Canada, you've neglected to mention my court case; it is sad to say but this shows me total disregard for the lives lost for "us" to reach this unique milestone.

Our case made the legal attorneys "Millionaires" and quite notable! – Which gives me the impression that we the survivors are only viewed as a gold mine and a tool to be used to acquire fame and glory? "If" this isn't true then, we the survivors should not continue to be treated as though we are incapable and "incompetent" of addressing the historical horrors and pain inflicted on us by the Government of Canada!!

NRSSS Board of Directors: I have been asked by BC Survivors groups to write this letter. I have been also asked to provide our respective BC Aboriginal leadership a brief cover letter requesting their fullest support via the development and passing of a Chiefs resolution and Band Council Resolutions. ...
(AQ: this is a substantial excerpt)

The *Indian Act*

On April 12, 1876, Canada legislated
"An Act to amend and consolidate the laws respecting Indians"
- what we know today as the Indian Act.

But the 1876 Act wasn't just a "consolidation,"
it was a sweeping invasion of Indigenous jurisdiction.
The entire populations of independent nations were subjected to a state of wardship and martial law, enabling the illegal sale and destruction of *their* lands.

Introduction:

Origins of the Indian Act

The legacy of today's *Indian Act* is rooted in European imperialism that goes back to 1492. It is based on nothing more sophisticated than the assertion that the Christian God is better than all other Gods, and that the British Crown – among the Christian monarchs of Europe who were implanted by the Roman conquest of those Peoples, about 1,900 years ago – was anointed by that God.

Since the Pope's decree of 1493, the Papal Bull *Inter Caetera*, the imperialist nations' crimes against humanity have exposed that notion of superiority as a hoax - yet it inspired every subsequent generation of European settlers to forcibly subjugate foreign nations and retrieve the wealth of those lands to Europe, under punitive European colonial rule.

"New France" was one of those original colonies – yet compared to what came next, it was a model of cooperation and respect. It stretched from Louisianna to Newfoundland, New Brunswick, Quebec, and Ontario.

The modern state of Canada originated in 1760, with the British acquisition of most of New France, by war.

The terms of France's surrender were written up in the *Articles of Montreal,* which included:

Article 40: The Savage or Indian Allies of his Most Christian Majesty [of France] shall be maintained in the lands they occupy if they wish to remain there;

they shall not be disturbed on any pretext whatever for having taken arms and served his Most Holy Majesty."

The Indigenous nations fought alongside France against the British. The oral history reports that they viewed France's surrender as an interim measure, and that their French trading partner would soon be restored.

In the next few years, while the British took over French forts in the area, Article 40 was not upheld. The British also refused regular sale of guns and ammunition, limiting this exchange to a minimum which was inadequate to the Peoples' needs, in an attempt to disarm any rebellion. The new regime also drastically reduced the payment to Indians for furs.

Indigenous Alliances under the Shawnee leader Pontiac, France's ally, undertook a campaign to overthrow the British, destroying their

A sign recently retrieved from a fencepost in Secwepemc territory by the late Arnie Jack.

forts and settlements, with the full expectation that they could return the French to their former position as respected and mutual guests of "New France."

The Indigenous military alliance under Pontiac took back every fort now occupied by Britain. It was this situation which prompted the famous *Royal Proclamation* of 1763, October, guaranteeing to His British Majesty's Indian Allies that no Colonial Governor had the authority to enter into or permit settlement of lands which, "not having been ceded to, or purchased by Us, are reserved for them or any of them."

However, on February 10, 1763, the Treaty of Paris had ended a larger, global war between colonizing European powers. Each European nation promised not to interfere with the others, and to oppose "any who would act against us." At that time, the nations that would act against European colonization were those who were being colonized and subjugated.

This treaty of non-interference pertained to the Atlantic coast of North America; areas of China and Indonesia, North Africa and South America; and India.

Several pieces of subsequent Imperial legislation, which form the basis of Canadian law today, relied on the inter-European amnesty provided by the 1763 Treaty of Paris. Britain formed its own interpretation of its obligations under the 1760 *Articles of Montreal.* In other words, it reneged on that treaty with France.

Indigenous Peoples had not been Parties to the surrender of New France – which amounted to little more than a trade monopoly against other Europeans.

The new British instructions for governance of the colonies included a Proclamation of Annexation by the new King George III, following closely on the February 10 non-interference Treaty of Paris 1763.

Then British Admiral Amherst organized a biological offensive, sending blankets infected with smallpox to be distributed among Pontiac's allies. An estimated 500,000 people died.

At Pontiac's Peace Treaty in 1766, the cessation of military campaign was agreed at Ottawa between Pontiac and the British General William Johnson. That cease-fire included no other conditions, nor was it a surrender.

Pontiac was assassinated, after many attempts, in 1769. His murderer was paid in rum from a British Fort, according to the oral history.

Then followed the *Quebec Act* of 1774. This Imperial action was a reversal of the process established under the October 1763 *Proclamation*, which had provided that tracts of land would be purchased *by the crown from the Indians*, for the settlers' use. The 1774 assumption of "crown land" that was never purchased, ceded, or surrendered, was a legal anomaly that was only possible amid the state of crisis developed among the Indigenous Peoples by the British – and the American War of Independence, which had followed the October 1763 *Proclamation* and saw His Majesty's Indian Allies fighting for Britain, for the protection of that *Proclamation*, against the Americans for the next ten years.

> Article 40:
> "The Indian Allies of his Most Christian Majesty [of France] shall be maintained in the lands they occupy; they shall not be disturbed on any pretext whatever..."
>
> *Articles of Montreal,* 1760, ending the war between Britain and France in North America

The 1774 *Quebec Act*, however ironically, confirmed the October 1763 *Royal Proclamation*:

XVIII. Provided always, and it is hereby enacted, That nothing in this Act contained shall extend, or be construed to extend, to repeal or make void, within the said Province of Quebec, any Act or Acts of the Parliament of Great Britain heretofore made, for prohibiting, restraining, or regulating, the Trade or Commerce of his Majesty's Colonies and Plantations in America; but that all and every the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said Colonies and Plantations, shall be, and are hereby declared to be, in

Force, within the said Province of Quebec, and every Part thereof."

British settlement of the Canadas proliferated, however, in obvious violation of the 1763 *Proclamation*.

The 1840 "Act of Union," or, *Act to reunite the provinces of Upper and Lower Canada*, did not mention Indians at all.

Following the Act of 1840, "British North America" in what is now a much-enlarged Quebec and Ontario, was called the "Province of Canada," from 1841-1867.

In the 1850s, Imperial statutes began to extend British government over autonomous treaty partners and their lands; and over Peoples who had made no treaties; and to define *who* was an Indian – within their own communities, for the purpose of fulfilling treaty obligations and distinguishing Indian rights from those of "Her Majesty's other Subjects."

With the dubiously titled *Act for the better protection of the Lands and Property of the Indians in Lower Canada 1850*, and its 1851 amendment, Britain itself encroached on the rights it had sworn to protect – the promises that had allowed for "peaceful" settlement.

These Acts, and the 1857 *Act for the Gradual Civilization of the Indian Tribes,* were laws passed by Britain for the governance of Canada, and for the entrenchment of Indian rights.

They were, however, a sorry and unilateral collection of colonial violations of previous promises and treaties. They began to extend British government over completely autonomous treaty partners and their lands; and over Peoples who had made no treaties; and to define *who* was an Indian – within their own communities, for the purpose of fulfilling treaty obligations and distinguishing Indian rights from those of "Her Majesty's other Subjects."

In 1867, the British Crown conferred to Canada powers it did not have with respect to its Indigenous Allies and their Lands in North America, in the *British North America Act.*

In Section 91-24, the Dominion government became responsible for "Indians and Lands reserved for Indians." By this time, the significance of that action related to all Indigenous Peoples north of the USA, as the other Colonies and Hudson's Bay Company Charters began to join Confederation as Provinces.

These original violations form the basis on which the *Indian Act* was written and continues today, in spite of occasional attempts to arrest illegal progress at the time.

Such attempts were made by Canada's own Attorney General, in 1875; by various British Lords charged with upholding "British justice," throughout the rest of the 19th century and into the 20th; and even at the UK Parliament and House of Lords during the debate of Canada's 1982 constitution.

Developments in international law since at least 1884, the Berlin Conference, contradict the application of the *Indian Act*.

The *Indian Act* has remained repugnant under the United Nations Charter and International conventions on civil, political, economic, social, and cultural rights, since the 1960s.

International reluctance to hold Canada accountable is based entirely on the cheap exports of raw materials which are made possible by the criminalization and dispossession of Indigenous Peoples, which is achieved by the *Indian Act.*

This is a fact that was referenced in the 1982 UK debate of the *Canadian Constitution Act,* and was unquestionably the Lords' and Parliamentarians' main motivation for ignoring the past harms and liabilities of the United Kingdom – which were described by many in that debate – in relation to His Majesty's onetime Indian Allies.

~

1850

August 10

CAP. 42

The legislation placed control of Indian lands under the Governor and his Commissioner who would, purportedly, manage the lands in the interests of the Tribes.

This legislation did not describe any participation or consent on the part of the Indians in the construct of the Commissioner's office, the appointment of the Commissioner, or the Commissioner's decisions.

An Act for making

more effectual Provision for the Government of the Province of Quebec in North America,

and to make further

Provision for the Government of the said Province

Appointment of a Commissioner of Indian Lands.

All Indian lands are vested in the Commissioner of Indian Lands.

This section does not apply to lands already held by a corporation or a European, although held in trust for or for the benefit of any such Tribe or Body.

I. WHEREAS it is expedient to make better provision for preventing encroachments upon and injury to the lands appropriated to the use of the several Tribes and Bodies of Indians in Lower Canada, and for the defence of their rights and privileges:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, An Act to re-unite the Provinces of Upper and Lower Canada [1840],

and for the Government of Canada, and it is hereby enacted by the authority of the same,

That it shall be lawful for the Governor to appoint from time to time a Commissioner of Indian Lands for Lower Canada, in whom and in whose successors by the name aforesaid, all lands or property in Lower Canada which are or shall be set apart or appropriated to or for the use of any Tribe or Body of Indians, shall be and are hereby vested, in trust for such Tribe or Body,

and who shall be held in law to be in the occupation and possession of any lands in Lower Canada actually occupied or possessed by any such Tribe or Body in common, or by any Chief or Member thereof or other party for the use or benefit of such Tribe or Body,

and shall be entitled to receive and recover the rents, issues and profits of such lands and property, and shall and may, in and by the name aforesaid, be subject to the provisions hereinafter made, exercise and defend all or any of the rights lawfully appertaining to the proprietor, possessor or occupant of such land or property:

Provided always, that this section shall extend to any lands in Lower Canada now held by the Crown in trust for or for the benefit of any such Tribe or Body of Indians, but shall not extend to any lands now vested in any Corporation or Community legally established and capable in law of suing and being sued, or in any person or persons of European descent, although held in trust for or for the benefit of any such Tribe or Body.

The Commissioner cannot be sued in his personal capacity, but any legal action against his office will continue to his successor.

II. And be it enacted, That all suits, actions or proceedings by or against the said Commissioner shall be brought and conducted by or against him by the name aforesaid only, and shall not abate or be discontinued by his death, removal from office or resignation,

but Shall be continued by or against his successor in office;

and that such Commissioner shall have in each District in Lower Canada, an office which shall be his legal domicile, and whereat any process, notice or like matter may be legally served upon him, and may appoint such deputy or deputies, and with such powers as he shall from time to time deem expedient, or as he shall be instructed by the Governor to do : ...

The Commissioner can sell or lease Indian Lands and manage and/or pay to the Tribe of Indians for whom such lands are managed

III. And be it enacted, That the said Commissioner shall have full power to concede or lease or charge any such land or property as aforesaid, and to receive or recover the rents, issues and profits thereof as any lawful proprietor, possessor or occupant thereof might do, but shall be subject in all things to the instructions he may from time to time receive from the Governor, and shall be personally responsible to the Crown for all his acts,

...and shall account for all moneys received by him, and apply and pay over the same in such manner, at such times and to such person or officer, as shall be appointed by the Governor, ...

Individual possession and occupancy of lndian lands protected.

IV. Provided always, and be it enacted, That nothing herein contained shall be construed to

Derogate from the rights of any individual Indian or other private party, as possessor or occupant of any lot or parcel of land forming part of or included within the limits of any land vested in the Commissioner aforesaid.

Who is an Indian.

V. And for the purpose of determining any right of property, possession or occupation in or to any lands… the following classes of persons are and shall be considered as Indians:

First - All persons of Indian Blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants.

Secondly - All persons intermarried with such Indians and residing amongst them, and the descendants of all such persons.

Thirdly - All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such; And

Fourthly - All persons adopted in infancy by any such Tribe or Body of Indians, and their descendants.

1850

August 10

CAP. 74

The legislation suspended Indian business, prohibiting sale and barter; refusing the use of Indian lands and properties as collateral or bond; prohibiting lease of Indian land to non-Indians; and punishing the sale of treaty gfts and tokens.

The Act is to provide protection of the Indian way of life and their lands from unprincipled non-Indians.

Sale of Indian land by Indians to others is prohibited - unless as approved and transacted by the Commissioner.

An Act for the protection of the Indians in Upper Canada from imposition,

and the property occupied or enjoyed by them from trespass and injury

WHEREAS it is expedient to make provision for the protection of the Indians in Upper Canada, who, in their intercourse with the other inhabitants thereof, are exposed to be imposed upon by the designing and unprincipled, as well as to provide more summary and effectual means for the protection of such Indians in the unmolested possession and enjoyment of the lands and other property in their use or occupation:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, ...

That no purchase or contract for the sale of land in Upper Canada, which may be made of or with the Indians or any of them, shall be valid unless made under the authority and with the consent of Her Majesty, Her Heirs or Successors, attested by an Instrument under the Great Seal of the Province, or under the Privy Seal of the Governor thereof for the time being.

II. And be it enacted, That if any person, without such authority and consent, shall in any manner or form, or upon any terms whatsoever, purchase or lease any lands within Upper Canada of or from the said Indians, or any of them, or make any contract with such Indians, or any of them, for or concerning the sale of any lands therein, or shall in any manner, give, sell, demise, convey or otherwise dispose of any such lands, or any interest therein, or offer so to do, or shall enter on, or take possession of, or settle on any such lands, by pretext or colour of any right or interest in the same, in consequence of any such purchase or contract made or to be made with such Indians or any of them, unless with such authority and consent as aforesaid, every such person shall, in every such case, be deemed guilty of a misdemeanor, and shall, on conviction thereof before any Court of competent jurisdiction, forfeit and pay to Her Majesty, Her Heirs or Successors, the sum of Two Hundred Pounds, and be further punished by fine and imprisonment, at the discretion of the Court.

Indian lands and properties are not bondable.

III. And be it enacted, That no person shall take any confession of Judgment or Warrant of Attorney from any Indian within Upper Canada, or by means thereof, or otherwise howsoever obtain any judgment for any debt or pretended debt, or upon any bond, bill, note, promise or other contract whatsoever, unless such Indian shall be seized in fee simple in his own sole right of real estate in Upper Canada, the title to which shall be derived directly or through others by Letters Patent from the Crown, and shall be assessed in respect of such real estate to the amount of twenty-five pounds or upwards.

Indians compelled to maintain public roads through Indian Lands.

V. And be it enacted, ...Indians and persons inter-married with Indians, residing upon any such Indian lands and engaged in the pursuit of agriculture as their then principal means of support, shall be liable, if so directed by the Superintendent General, ...or by any such Commissioner, to perform labour on the public roads laid out or used in or through such Indian lands, such labour to be performed under the sole control of the said Superintendents or Commissioners, who shall have power to direct when, where, how and in what manner the said labour shall be applied, and ... shall have the like power to enforce the performance of all such labor by imprisonment or otherwise as may now be done under any law, rule or regulation in force in this Province for the non-performance of Statute labour...

Provision of alcohol to Indians punishable by fines.

Informers to be paid part of the fines collected.

VI. And be it enacted, That it shall not be lawful for any person to sell, barter, exchange or give to any Indian, man, woman or child, within this Province, any kind of spiritous liquors in any manner or way, or to cause or procure the same to be done for any purpose whatsoever; and that if any person shall so sell, ...as aforesaid, or shall cause the same to be done, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined at the discretion of the Court, not exceeding five pounds for every such offence, and shall forfeit also the sum of one pound five shillings for every such offence, to be recovered as in an action of debt with costs in any Court of competent jurisdiction, by any one who will sue for the same, one moiety of every such last mentioned pecuniary penalty or forfeiture to go to the informer or prosecutor, and the other moiety thereof to be paid to Her Majesty, Her Heirs or Successors, or to some officer acting under Her authority, to be disposed of for the use and benefit of the Indians, as the Governor of this Province for the time being may be pleased to direct: Provided always, nevertheless, that no such penalty shall be incurred by the furnishing to any Indian, in case of sickness, any spirituous liquor, either by a medical man or under the direction of any such medical man.

Non-Indians prohibited from buying gifts or treaty provisions from Indians.

VIII. And whereas certain tribes of Indians in Upper Canada receive annuities and presents, which annuities, or portions thereof, are expended for and applied to the common use and benefit of the said Tribes, more especially for the encouragement of agricultural and other civilizing pursuits among them, although the articles so required or purchased out of such annuities, may be and often necessarily are, in the possession or control of some particular Indian or Indians of such Tribes, and it is important with a view to the progress and welfare of such Tribes, that the property thus acquired or purchased should be protected from seizure, distress or sale, under or by virtue of any process whatsoever: Be it therefore enacted, That none of such presents or of any property purchased or acquired with or by means of such annuities, or any part thereof or otherwise howsoever, and in the possession of any of the Tribes or any of the Indians of such Tribes, shall be liable to be taken, seized or distrained for any matter or cause whatsoever,

Commissioners automatically made Justices of the peace, with or without the relevant qualifications.

IX. And be it enacted, That the Commissioners appointed under the Acts of Parliament in the next section of this Act mentioned, or either of them, and the different Superintendents of the Indian Department, either now in office or who may hereafter be appointed to either of such offices shall, by virtue of their office and appointment, be Justices of the Peace within the County, or United Counties, within which, for the time being, they or any or either of them, may be resident or employed as such Commissioners or Superintendents, without any other qualification; any law to the contrary notwithstanding

Non-Indians prohibited from living on Indian reserve lands without Commissioner's permission.

X. ...That it shall not be lawful for any person or persons other than Indians, and those who may be inter-married with Indians, to settle, reside upon or occupy any lands or roads or allowances for roads running through any lands belonging to or occupied by any portion or Tribe of Indians within Upper Canada, and that all leases, contracts and agreements made or to be made, purporting to have been or to be made, by any Indians, or by any person or persons inter-married with any Indian or Indians whereby any person or persons other than Indians shall be permitted to reside upon such lands, shall be absolutely void; and if any person or persons other than Indians, or those who may be inter-married with Indians as aforesaid, shall without the license of the said Commissioners or any or either of them, settle, reside upon or occupy any such lands, it shall be the duty of the Commissioners ... to remove all such persons...

1851

This act adopted a definition of "Indians" without the second section "all persons intermarried with such Indians" and without including adoptions. A new section was added, permitting non-native women who married male Indians and their descendants to be considered Indians – but not so for spouses of female Indians.

An Act to repeal and in part amend *an Act, entitled,* An Act for the better protection of the Lands and Property of the Indians in Lower Canada, s.c. 1851, c.59.

1851

August 30

An Act to authorize the setting apart of Lands for the use of certain Indian Tribes in Lower Canada

Whereas it is expedient to set apart certain Lands for the use of certain Indian Tribes resident in Lower Canada…

… tracts of Land in Lower Canada, not exceeding in the whole two hundred and thirty thousand [230,000] Acres, may, under orders in Council to be made in that behalf, be described, surveyed and set out by the Commissioner of Crown Lands, and such tracts of Land shall be and are hereby respectively set apart and appropriated to and for the use of the several Indian Tribes in Lower Canada, for which they shall be respectively directed to be set apart in any order in Council, to be made as aforesaid, and the said tracts of Land shall accordingly, by virtue of this Act, and without any price or payment being required therefor, be vested in and managed by the Commissioner of Indian Lands for Lower Canada… .

1857

June 10

An Act to Encourage the gradual Civilization of Indian Tribes in the Province and to amend the Laws respecting Indians

This statute provides for Indians to cease - legally - to be Indians and members of Bands: to *enfranchise*.

Enfranchisement comes with a parcel of land on the reserve, which becomes his private property - bondable and saleable - and the one-time payment of his life-interest in treaty money.

WHEREAS it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and **the gradual removal of all legal distinctions between them and Her Majesty's other Canadian Subjects,** and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as shall be found to desire such encouragement and to have deserved it:

Laws pertaining to Indians will no longer apply to an enfranchised Indian.

I. The *Act for the protection of the Indians in Upper Canada from imposition* ... shall apply only to Indians or persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or reserved for the use of any Tribe or Band of Indians in common) and who shall themselves reside upon such lands, and shall not have been exempted from the operation of the said section, under the provisions of this Act; and such persons and such persons only shall be deemed Indians ... by which any legal distinction is made between the rights and liabilities of Indians and those of Her Majesty's other Canadian Subjects.

The Superintendent, Missionary, or Governor may examine Indians for fitness to enfranchise.

These officials may make formal application on the individual's behalf to complete a legal change of Status.

III. The Visiting Superintendent of each Tribe of Indians, for the time being, the Missionary to such Tribe for the time being, and such other person as the Governor shall appoint from time to time for that purpose, shall be Commissioners for examining Indians who may desire to avail themselves of this Act, and for making due inquiries concerning them: and such Commissioners ...shall have full power to make such examination and inquiry: and if such Commissioners shall report in writing to the Governor that any such Indian of the male sex, and not under twenty-one years of age, is able to speak, read and write either the English or the French language readily and well, and is sufficiently advanced in the elementary branches of education and is of good moral character and free from debt, then it shall be competent to the Governor to cause notice to be given in the Official Gazette of this Province, that such Indian is enfranchised under this

Act; ...and all other enactments making any distinction between the legal rights and liabilities of Indians and those of Her Majesty's other subjects, shall cease to apply to any Indian so declared to be enfranchised, who shall no longer be deemed an Indian within the meaning thereof.

A candidate for enfranchisement must be male, over 21 years of age, literate, free of debt, and of "good moral character."

IV. The said Commissioners may also examine and inquire concerning any male Indian over twenty-one and not over forty years of age, desirous of availing himself of this Act, although he be not able to read and write or instructed in the usual branches of school education; and if they shall find him able to speak readily either the English or the French language, of sober and industrious habits, free from debt and sufficiently intelligent to be capable of managing his own affairs, they shall report accordingly in writing to the Governor; and if such report be approved by the Governor as to any Indian, he shall by virtue of such approval be in a state of probation during three years from the date of the report, and if at the end of that term the Commissioners shall again report in writing to the Governor that such Indian has during such term conducted himself to their satisfaction, then it shall be competent to the Governor to cause notice to be given in the Official Gazette that such Indian is enfranchised under this Act, and he shall thereupon be so enfranchised.

Commissioners may recommend illiterate men who are under the age of 40, can speak French or English, are sober and industrious, free from debt, and "sufficiently intelligent to be capable of managing his own affairs."

A three-year probation is set in effect.

V. Every Indian examined by the Commissioners under this Act, shall at the time of such examination declare to them the name and surname by which he wishes to be enfranchised and thereafter known, such name being his baptismal name if he have one, and such surname any one he may choose to adopt which shall be approved by the Commissioners,

The enfranchised man will choose his own name.

VII. Every Indian enfranchised under this Act shall be entitled to have allotted to him by the Superintendent General of Indian affairs, a piece of land not exceeding fifty acres out of the lands reserved or set apart for the use of his Tribe, and also a sum of money equal to the principal of his share of the annuities and other yearly revenues receivable by or for the use of such tribe; ...and such sum of money shall become the absolute property of such Indian, and such land shall become his property, subject to the provisions hereinafter made, but he shall by accepting the same forego all claim to any further share in the lands or moneys then belonging to or reserved for the use of his Tribe, and shall cease to have a voice in the proceedings thereof:…

The enfranchised man will have up to fifty acres of his Band's lands, as his private property, and his share of monies payable to the Tribe.

An enfranchised man's wife and children are also enfranchised and cease to be Indians.

VIII. The wife, widow, and lineal descendants of an Indian enfranchised under this Act, shall be also enfranchised by the operation thereof, and shall not be deemed members of his former tribe, unless such widow or any such lineal descendant being a female, shall marry an Indian not enfranchised and a member of such tribe, in which case she shall again belong to it and shall no longer be held to be enfranchised under this Act.

An enfranchised man's wife and children receive their share of annuities to the Band.

IX. The wife and children of any Indian enfranchised under this Act shall be entitled to their respective shares of all annuities or annual sums payable to the tribe; subject to the provisions hereinafter made as to such shares.

The enfranchised man's property in land is for his life.

He may pass it to his children in his will, to be theirs in fee-simple.

If he has no children, the land reverts to the crown at his death.

His widow may have the use of the land until her death or re-marriage, at which time the land reverts to the crown.

X. An Indian enfranchised under this Act, to whom any of the lands reserved for the use of his Tribe shall be allotted as aforesaid, shall have a life estate only therein, but he shall have power to dispose of the same by will to any of his children or lineal descendants, and if he dies intestate as to any such lands, the same shall descend to his children or lineal descendants according to the laws of that portion of the Province in which such lands are situate, and the said children or lineal descendants to whom such land shall be so devised or shall descend, shall have the fee simple thereof; but if such Indian die without leaving any child or lineal descendant but leaving a widow, she shall, instead of Dower to which she shall not be entitled, have the said land for life or until her re-marriage, but upon her death or re-marriage it shall escheat to the Crown: and if any child or lineal descendant of such Indian shall take such land or any part thereof and die leaving no lineal descendant and without having disposed of such land or part thereof by will or otherwise, it shall escheat to the Crown.

The monies payable to the child of an enfranchised man are held by the Superintendent in trust until he is 21 years old.

If the child dies before 21, the money is applied to any other children. If there are none, the money returns to the Tribe.

XIII. The capital of the share of each child of an Indian enfranchised under this Act, in any annuity or annual sum payable to his Tribe, shall be held in trust by the Superintendent General of Indian Affairs for such child, and the interest, thereon shall, ...until such child shall obtain the age of twenty-one; Provided always that if such child shall be put apprentice to any trade, the money so held in trust may be applied to the payment of his apprentice fee or other expenses attending such apprenticeship; and if any such child shall die before attaining the age of twenty-one, one half the money then held in trust for him shall revert to his Tribe, and the other half shall go to the other child or children of such Indian, ...and if there be no other child, then the whole shall revert to the Tribe.

The lands held by an enfranchised man will be taxed by the municipality or province, including for school fees.

The land may be seized to pay debts.

The land may be sold to non-Indian persons, who then own it in fee and may use and occupy it.

XIV. Lands allotted under this Act to an Indian enfranchised under it shall be liable to taxes and all other obligations and duties under the Municipal and School Laws of the section of this Province in which such land is situate, as he shall also be in respect of them and of his other property; and his estate therein shall be liable for his *bona fide* debts, but he shall not otherwise alienate or charge such land or his estate therein ; and if such land be legally conveyed to any person, such person or his assigns may reside thereon, whether he be or be not of Indian blood or intermarried with any Indian ; any thing in the Act first cited to the contrary notwithstanding.

Indian reserves will be included in school catchment areas.

XV. It shall be lawful for the Council of any Municipality in Upper Canada, or the School Commissioners of any School Municipality in Lower Canada, on application of the Superintendent General of Indian affairs, to attach the whole or any portion of any Indian Reserves in such Municipality to a neighboring School Section or District, or to neighboring School Sections or Districts, and such land shall thereupon become a portion of the School Section or District to which it may be attached, to all intents and purposes.

1867

British North America Act

March 29

30-31 Vict., c. 3 (U.K.)

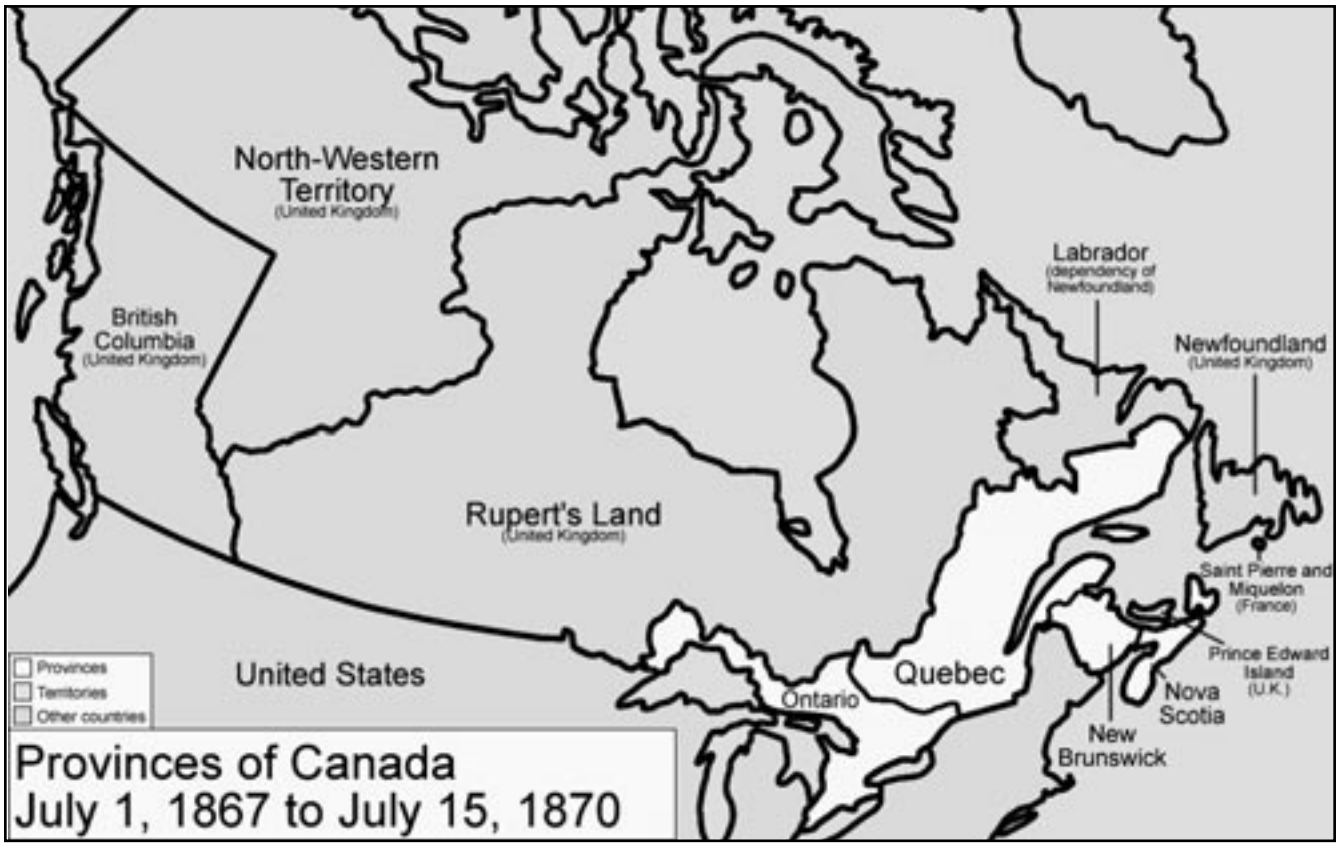
Also called the *Constitution Act,* 1867, this Act forms the basis of Confederation of colonies in British North America, including a division of powers between the new federal government and the Colonies, now four Provinces.

Under Section 91/24, only the federal government has power to address "Indians and lands reserved for Indians."

Under Section 109, "All Lands, Mines, Minerals and Royalties belonging to the several provinces of Canada, Nova Scotia and New Brunswick at the Union, and all such Lands, Mines, Minerals or Royalties, shall belong to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interests other than that of the Province in the same."

The Act provided the mechanism for the other Colonies and Hudson's Bay Company Charter areas to join the Dominion of Canada.

Map of British North America, 1867, showing the four Provinces of Canada in white.



1868

May 22

S.C. 1868, c. 42 (31 Vict.), s. 15.

An Act providing for the organization of the
Department of the Secretary of State of Canada,
and for the management of
Indian and Ordnance Lands,

This Statute established the transfer of British offices to Canadian offices, repeating most existing laws respecting Indians and introducing many new ones - including all access to Indian lands and resources - for a total of 42 sections.

Creation of the Department of the Secretary of State.

The Secretary of State shall be the Superintendent General of Indian affairs.

Control and management of lands and properties of Indians lies with the Secretary.

The Governor will receive, hold, spend and invest all Indian monies arising from their lands and benefits.

Indian lands cannot be sold by Indians, only surrendered by Indians to the crown.

Who is an Indian: able to hold, use, or enjoy lands held by the Department for the use of Indians or bands.

1. There shall be a department to be called "The Department of the Secretary of State of Canada," over which the Secretary of State of Canada for the time being, appointed by the Governor General by commission under the Great Seal, shall preside; ...

5. The Secretary of State shall be the Superintendent General of Indian affairs, and shall as such have the control and management of the lands and property of the Indians in Canada.

10. …no release or surrender of any such lands to any party other than the Crown, shall be valid.

11. The Governor in Council may direct how, and in what manner, and by whom the moneys arisng from sales of Indian Lands, and from the property held or to be held in trust for the Indians, or from any timber thereon, or from any other source for the benefit of Indians, shall be invested from time to time, and how the payments or assistance to which the Indians may be entitled shall be made or given,
and may provide for the general management of such lands, moneys and property, and direct what percentage or portion thereof shall be set apart from time to time, to cover the cost of and attendant upon such management under the provisions of this Act, and for the construction or repair of roads passing through such lands, and by way of contribution to schools frequented by such Indians.

15...the following persons and none other to be considered Indians:

Firstly. All persons of Indian blood, reputed to belong to the tribe, band or body of Indians interested in such lands or immoveable property, and their descendants;

Secondly. All persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians or an Indian reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and the descendants of all such persons; And

Thirdly. All women lawfully married to any of the persons included in the several classes hereinbefore designated; the children of such marriages, and their descendants.

22. If any person without the license in writing of the Secretary of State, or of some officer or person deputed by him for that

No one shall cut or remove one twig without license from the Superintendent or his deputy.

purpose, trespasses upon any of the said [Indian] lands or roadster allowances for roads, by **cutting, carrying away or removing therefrom, any of the trees, saplings, shrubs, underwood or timber** thereon, or by removing any of the stone or soil of the said lands, roads or allowances for roads, the person so trespassing shall for every tree he cuts, carries away or removes, forfeit and pay the sum of twenty dollars, and for cutting, carrying or removing any of the saplings, shrubs, underwood or timber, if under the value of one dollar, the sum of four dollars,...

The Dominion Department replaces the British Commission.

26. The Secretary of State is hereby **substituted** for the Commissioner of Indian Lands for Lower Canada,

The Governor of the Dominion will regulate and manage Indian lands by legislation.

28. In all cases of encroachment upon any lands set apart for Indian reservations or for the use of the Indians, not hereinbefore provided for, it shall be lawful to proceed by information in the name of Her Majesty in the Superior Courts of Law or Equity, **notwithstanding the legal title may not be vested in the Crown.**

The Dominion will act on encroachment of any Indian lands, even if the crown does not have legal title.

29. The Governor may authorize surveys, plans and reports to be made of any lands reserved for Indians showing and distinguishing the **improved lands, the forests and lands fit for settlement,** and such other information as may be required.

The Dominion assumes control and management from the Commissions for New Brunswick and Newfoundland - areas with Indian-Britain treaties.

30. The **proceeds arising** from the sale or lease of any Indian proceeds of lands or from the timber thereon shall be **paid to the Receiver General** to the credit of Indian Fund.

31. The fifty-seventh chapter of the Revised Statutes of **Nova Scotia,** Third Series, is hereby **repealed**, and the chief Commissioner and Deputy Commissioners under the said chapter, shall forthwith pay over all monies in their hands arising from the selling or leasing of Indian lands, or otherwise under the said chapter, to the Receiver General of Canada by whom they shall be credited to the Indian Fund of Nova Scotia;
and all such monies in the hands of the Treasurer of Nova Scotia, shall be paid over by him to the Receiver General of Canada, by whom they shall be credited to the said Indian Fund.
And all Indian lands and property now vested in the said Chief Commissioner, Deputy Commissioner, or other person whomsoever, for the use of Indians, shall henceforth be vested in the Crown and shall be under the management of the Secretary of State.

32. The eighty-fifth chapter of the Revised Statutes of **New Brunswick** respecting Indian Reserves is hereby repealed,... [as above]

37. The Governor in Council may, from time to time, make such **Regulations** as he deems expedient for the protection and management of the Indian lands in Canada or any part thereof,

1869

An Act for the gradual enfranchisement of Indians, *the better management of* Indian affairs, and to extend *the Act 31st Victoria, CAP. 42*

S.C. 1869, c. 6. (32-33 Vict.)

No Indian is legally in possession of his land on a reserve.

Indians claiming ownership may be evicted, unless they have a location ticket from the Superintendent.

Any member of a tribe with less than one-quarter Indian blood shall not benefit.

The cost of legal procedure and impriconment will be paid with band money.

An Indian woman who marries a non-Indian is no longer an Indian, nor are children of the marriage.

1. In Townships or other tracts of land set apart or reserved for Indians in Canada, and subdivided by survey into lots, **no Indian or person claiming to be of Indian blood, or intermarried** with an Indian family, shall be deemed to be **lawfully in possession of any land** in such Townships or tracts, unless he or she has been or shall be located for the same by the order of the Superintendent General of Indian affairs;

and any such person or persons, assuming possession of any lands of that description, shall be dealt with as **illegally in possession, and be liable to be summarily ejected therefrom**, unless that within six months from the passing of this Act, a location title be granted to such person or persons by the said Superintendent General of Indian affairs or such officer or person as he may thereunto authorize;

but the conferring of any such location title shall not have the effect of rendering the land covered thereby transferable or subject to seizure under legal process.

4. In the division among the members of any tribe, band, or body of Indians, of any annuity money, interest money or rents, no person of **less than one-fourth Indian blood**, born after the passing of this Act, shall be deemed entitled to share in any annuity, interest or rents, after a certificate to that effect is given by the Chief or Chiefs of the band or tribe in Council, and sanctioned by the Superintendent General.

5. Any Indian or person of Indian blood who shall be convicted of any crime punishable by **imprisonment** in any Penitentiary or other place of confinement, shall, during such imprisonment, be excluded from participating in the annuities, interest money, or rents payable to the Indian tribe, band, or body, of which he or she is a member ; and whenever any Indian shall be convicted of any crime punishable by imprisonment in a Penitentiary, or other place of confinement, the **legal costs** incurred in procuring such conviction, and in carrying out the various sentences recorded, may be defrayed by the Superintendent General of Indian Affairs, and **paid out of any annuity** or interests coming to such Indian, or to the band or tribe, as the case may be.

6. Section 15 is amended by adding the following proviso:

"Provided always that **any Indian woman marrying any other than an Indian,** shall cease to be an Indian within the meaning of this

Act, nor shall the children issue of such marriage be Indians, not to considered as Indians within the meaning of this Act;

A woman who marries an Indian from another band becomes a member of his band, as do their children.

Provided also, that any Indian woman marrying an Indian of any other tribe, band or body shall cease to be a member of the tribe to which she formerly belonged, and become a member of **the tribe of which her husband is a member**, ...the children of this marriage shall belong to their father's tribe only."

The Governor may prescribe procedures for the selection of leadership of the band.

10. The Governor may order that the **Chiefs** of any tribe, band or body of Indians **shall be elected** by the male members of each Indian Settlement of the full age of twenty-one years at such time and place, and **in such manner**, as the Superintendent General of Indian Affairs may direct, and they shall in such case be elected for a period of three years, unless deposed by the Governor for dishonesty, intemperance, or immorality, and they shall be in the proportion of one Chief and two Second Chiefs for every two hundred people; but any such band composed of thirty people may have one Chief; Provided always that all **life Chiefs now living shall continue** as such until death or resignation, or until their removal by the Governor for dishonesty, intemperance or immorality.

Chiefs are responsible for the maintenance of roads.

The powers of Chiefs are defined.

11. The Chief or Chiefs of any tribe, band or body of Indians shall be bound to cause the **roads, bridges, ditches and fences** within their Reserve to be put and maintained in proper order, in accordance with the instructions received from time to time from the Superintendent General of Indian Affairs; and whenever in the opinion of the Superintendent General of Indian Affairs the same are not so put or maintained in order, he may cause the work to be performed **at the cost of the said tribe**, band or body of Indians, or of the particular Indian in default, as the case may be either out of their annual allowances, or otherwise.

12. The Chief or Chiefs of any Tribe in Council may frame, subject to confirmation by the Governor in Council, **rules and regulations** for the following subjects, viz:

1. The care of the public health.
2. The observance of order and decorum at assemblies of the people in General Council, or on other occasions.
3. The repression of intemperance and profligacy.
4. The prevention of trespass by cattle.
5. The maintenance of roads, bridges, ditches and fences.
6. The construction of and maintaining in repair of school houses, council houses and other Indian public buildings.
7. The establishment of pounds and the appointment of pound-keepers.

13. The Governor General in Council may on the report of the Superintendent General of Indian Affairs order the issue of Letters Patent **granting to any Indian who from the degree of civilization** to which he has attained, and the character for integrity and sobriety which he bears, appears to be a safe and suitable person for becoming a

proprietor of land, a life estate in the land which has been or may be allotted to him within the Reserve belonging to the tribe band or body of which he is a member;
and in such case such Indian shall have power to dispose of the same by will, to any of his children, and if he dies intestate as to any such lands, the same shall descend to his children according to **the laws of that portion of the Dominion of Canada in which such lands are situate,** and the said children to whom such land is so devised or descends **shall have the fee simple thereof.**

The Governor may make any Indian's land the subject of fee simple title and the laws of the Province.

15. The wife or unmarried daughters of any deceased Indian who may, in consequence of the operation of the thirteenth and sixteenth sections of this Act be deprived of all benefit from their husband's or father's land, shall in the periodical division of the annuity and interest money or other revenues of their husband's or father's tribe or band, and **so long as she or they continue to reside upon the reserve** belonging to the tribe or band, and **remain in widowhood or unmarried**, be entitled to and receive two shaves instead of one share of such annuity and interest money.

The rights of widows and unmarried daughters to their husband or father's interests in land or monies depend on their remaining unmarried and residing on the same reserve.

21. Indians not enfranchised shall have the right to sue for any debt due to them, or for any wrong inflicted upon them, or to compel the performance of obligations made with them.

Indians who are not enfranchised have legal recourse to compel their rights under the Act.

Map of Canada, 1871, with Manitoba, the North West Territories, and British Columbia in Confederation..

1873

May 3

Non-treaty, unsurrendered and ungranted Indian Lands in the North West Territories, Manitoba, and British Columbia, are brought under Dominion legislation.

An Act to provide for the establishment of

"The Department of the Interior"

2. The Minister of the Interior shall have the control and management of the affairs of the North West Territories.

3. The **Minister shall be the Superintendent General of Indian affairs**, and shall, as such, have the control and management of the lands and property of the Indians in Canada.

8. The several clauses of *"An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands,"* relating to the management of Indian affairs and lands, and of Ordnance Lands, shall govern the Minister of the Interior

9. The Governor in Council may, exempt from the operation of this Act, ...Indians, or any tribe of them, or the **Indian Lands, or any portion of them, in the North West Territories, or in the Province of Manitoba, or in the Province of British Columbia**, and may again, by like proclamation, from time to time, remove such exemption.

1874

May 26

This Act came at the time of the *BC Lands Act,* which assumed control of all Indian lands within British Columbia.

By the *Terms of Union* with BC, 1871, however, the Dominion had promised in Article 13 never to follow a policy less "liberal" than that which had governed the Colony's original mandate.

This Act contradicted those terms, and the terms of the 1763 Royal Proclamation, October, by imposing force of governance over non-treaty Peoples who were "not to be molested or disturbed."

An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians *to the* Provinces *of* Manitoba *and* British Columbia

Automatic detention for intoxicated Indians.

4. It shall be lawful for any constable, **without process of law, to arrest any Indian** whom he may find in a state of intoxication, and to convey him to any common gaol, house of correction, lock-up or other place of confinement, there to be kept until he shall have become sober; and such Indian shall, when sober, be brought before any Judge, Stipendiary Magistrate, or Justice of the Peace, and if convicted of being so found in a state of intoxication, shall be liable to imprisonment in any common gaol, house of correction, lock-up or other place of confinement, for any period not exceeding one month.

Refusal to inform on suppliers of intoxcants results in extended sentence.

And if any Indian having been so convicted as aforesaid, shall refuse, upon examination, to state or give information of the person, place, and time from whom, where and when he procured intoxicating liquor, and if from any other Indian, then, if within his knowledge, from whom, where and when such intoxicating liquor was originally procured or received, he shall be liable to **imprisonment as aforesaid for a further period** not exceeding fourteen days.

All laws pertaining to Indians are extended to Manitoba and British Columbia.

9. Upon, from and after the passing of this Act, the Acts and portions of Acts hereinafter mentioned of the Parliament of Canada shall be and are hereby **extended to and shall be in force in the Provinces of Manitoba and of British Columbia**: and all enactments and laws theretofore in force in the said Provinces, inconsistent with the said Acts, or making any provision in any matter provided for by the said Acts, other than such as is made by the said Acts, shall be repealed on and after the passing of this Act.

1876

April 12

An Act to amend and consolidate

the laws respecting Indians

The first statute to be named "The Indian Act," it incorporated every article of legislation concerning Indians.

It reads like a *Criminal Code* - and this was required because Indians were not Canadian citizens.

WHEREAS it is expedient to amend and consolidate the laws respecting Indians:

1. This Act shall be known as the "*Indian Act,* 1876" and shall apply to all the Provinces, and the North West Territories, including the Territory of Keewatin.

3. Terms

1. The term "band" means any tribe, band or body of Indians who own or are interested in a reserve or in **Indian lands in common, of which the legal title is vested in the Crown,** or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible; the term "the band" means the band to which the context relates; and the term "band," when action is being taken by the band as such, means the band in council.

A "band" is a group with a collective interest in a reserve or treaty annuities.

2. The term "irregular band" means any tribe, band or body of persons of Indian blood **who own no interest in any reserve or lands of which the legal title is vested in the Crown**, who possess no common fund managed by the Government of Canada, or who have not had any treaty relations with the Crown.

An "irregular band" is a group with no reserve and no treaty relations with the crown.

3. The term "Indian" means

Who is an Indian.

First. Any male person of Indian blood reputed to belong to a particular band.

Secondly. Any child of such person;

Thirdly. Any woman who is or was lawfully married to such a person:

a) Provided that any illegitimate child, unless having shared with the consent of the band in the distribution moneys of such band for a period exceeding two years, may, at any time, be excluded from the membership thereof by the band, if such proceeding be sanctioned by the Superintendent-General:

b) Provided that any Indian having for five years continuously resided in a foreign country shall with the sanction of the Superintendent-General, cease to be a member thereof and shall not be permitted to become again a member thereof, or of any other band, unless the consent of the band with the approval of the Superintendent-General or his agent, be first had and obtained; but this provision shall not apply to any professional man, mechanic, missionary, teacher or interpreter, while discharging his or her duty as such:

(c) Provided that any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-

Who is a band member

annual distribution of their annuities, interest moneys and rents; but this income may be commuted to her at any time at ten years' purchase with the consent of the band:

Who is entitled to use reserve lands and receive annuities.

(d) Provided that any Indian woman marrying an Indian of any other band, or a non-treaty Indian shall cease to be a member of the band to which she formerly belonged, and become a member of the band or irregular band of which her husband is a member:

"Half-breeds" excluded.

(e) Provided also that **no half-breed** in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and that no half-breed head of a family (except the widow of an Indian, or a half-breed who has already been admitted into a treaty), shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty.

Who is a "non-treaty Indian."

4. The term "non-treaty Indian" means any person of Indian **blood** who is **reputed to belong** to an irregular band, or who **follows the Indian mode of life**, even though such person be only a temporary resident in Canada.

Who is an enfranchised Indian.

5. The term "enfranchised Indian" means any Indian, his wife or minor unmarried child, who has received **letters patent** granting him in fee simple any portion of the reserve which may have been allotted to him, his wife and minor children, by the band to which he belongs, or any unmarried Indian who may have received letters patent for an allotment of the reserve.

What is an Indian reserve.

6. The term "reserve" means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal **title** is in the Crown, but **which is unsurrendered**, and includes all the trees, wood, timber, soil, stone, minerals, metals, or other valuables thereon or therein.

7. The term "special reserve" means any tract or tracts Special of land and everything belonging thereto set apart for the use or benefit, of any band or irregular band of Indians, the **title** of which is vested **in a society, corporation or community legally established**, and capable of suing and being sued, or in a person or persons of European descent, but which land is held in trust for, or benevolently allowed to be used by, such band or irregular band of Indians

8. The term "Indian lands" means any reserve or portion of a reserve which has been **surrendered** to the Crown.

No lawful possession of land on an Indian reserve.

6. In a reserve, or portion of a reserve, subdivided by survey into lots, **no Indian shall be deemed to be lawfully in possession** of one or more of such lots, or part of a lot, unless he or she has been or shall be located for the same by the band, with the approval of the Superintendent-General: Provided that no Indian shall be dispossessed of any

lot or part of a lot, on which he or she has improvements, without receiving compensation therefor, (at a valuation to be approved by the Superintendent-General)…

Superintendent-General may issue location ticket

7. On the Superintendent-General approving of any location as aforesaid, he shall issue in triplicate a **ticket granting a location title** to such Indian, one triplicate of which he shall retain in a book to be kept for the purpose; the other two he shall forward to the local agent, one to be delivered to the Indian in whose favor it was issued, the other to be filed by the agent, who shall permit it to be copied into the register of the band, **if such register has been established**:

Location ticket only transferrable to aother Indian member of the same band

8. The conferring of any such location title as aforesaid **shall not have the effect of rendering the land covered thereby subject to seizure under legal process**, or transferable except to an Indian of the same band, ...

Location ticket land cannot be seized - is not mortgageable or bondable.

9. Upon the death of any Indian holding under location or other duly recognized title any lot or parcel of **land, the right and interest therein of such deceased Indian** shall, together with his goods and chattels, devolve one-third upon his widow, and the remainder upon his children equally; and such children shall have a like estate in such land as their father; but should such Indian die without issue but leaving a widow, such lot or parcel of land and his goods and chattels shall be vested in her, and if he leaves no widow, then in the Indian nearest akin to the deceased, but if he have no heir nearer than a cousin, then the same shall be vested in the Crown for the benefit of the band:

Location ticket to be issued to Indians whose occupied family lands are included in an Indian reserve, re. British Columbia.

But whatever may be the final disposition of the land, the claimant or claimants shall **not be held to be legally in possession until they obtain a location ticket** from the Superintendent- General in the manner prescribed in the case of new locations.

10. Any Indian or non-treaty Indian in the Province of British Columbia, the Province of Manitoba, in the North-West Territories, or in the Territory of Keewatin, who has, or shall have, previously to the selection of a reserve, possession of and made permanent improvements on a plot of **land which has been or shall be included in or surrounded by a reserve**, shall have the same privileges, neither more nor less, in respect of such plot, as an Indian enjoys who holds under a location title.

Only band members may live on and use reserve lands.

11. **No person, or Indian other than an Indian of the band**, **shall settle,** reside or hunt upon, occupy **or use** any land or marsh, or shall settle, reside upon or occupy any road., or allowance for roads running through any reserve belonging to or occupied by such band; and all certain mortgages or hypothecs given or consented to by any Indian, and **all leases, contracts and agreements made or purporting to be made by any Indian**, whereby persons or Indians other than Indians of the band are permitted to reside or hunt upon such reserve, shall be **absolutely void**.

A "person" is an individual other than an Indian.

12. The term **"person"** means **an individual other than an Indian**, unless the context clearly requires another construction.

The use of descriptions may be used in place of the name of an Indian in legal documents.

18. In all orders, writs, warrants, summonses and proceedings whatsoever made, issued or taken by the Superintendent-General, or any officer or person by him deputed as aforesaid, it shall not be necessary for him or such officer or person to insert or express **the name of the person or Indian summoned**, arrested, distrained upon, imprisoned, or otherwise proceeded against therein, except when the name of such person or Indian is truly given to or known by the Superintendent-General, or such officer or person, and if the name be not truly given to or known by him, he may name or describe the person or Indian by any part of the name of such person or Indian given to or known by him; and if no part of the name be given to or known by him **he may describe the person or Indian proceeded against in any manner by which he may be identified**; and all such proceedings containing or purporting to give the name or description as aforesaid shall *prima facie* be sufficient.

Recourse against damages to reserve lands by public work.

20. If any **railway, road or public work** passes through or causes **injury** to any reserve belonging to or in possession of any band of Indians, or if any act occasioning damage to any reserve be done under the authority of any Act of Parliament, or of the Legislature of any Province, compensation shall be made to them therefor in the same manner as is provided with respect to the lands or rights of other persons...

Majority vote by male band members allows surrender.

21. In all cases of encroachment upon, or of violation of trust respecting any special reserve, it shall be lawful to proceed by information in the name of Her Majesty, in the superior courts of law or equity, **notwithstanding the legal title may not be vested in the Crown**.

The Superintendent-General may license timber and wood cutting on reserves to "any Indian or person."

26. No **release or surrender of a reserve**, or portion of a reserve, held for the use of the Indians of any band or of any individual Indian, shall be valid or binding, except on the following conditions:

1. The release or surrender shall be assented to by a **majority of the male members** of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose according to their rules, and held in the presence of the Superintendent-General, or of an officer duly authorized ...

Provided that no Indian shall be entitled to vote or be present at such council, unless he **habitually resides** on or near and is interested in the reserve in question;

2. The ...release or surrender ...shall be **certified** on oath before some judge ...[and[shall be submitted to the Governor in Council for acceptance or refusal;

3. But nothing herein contained shall be construed to prevent the **Superintendent - General** from issuing a **license to any person or Indian to cut and remove trees,** wood, timber and hay, or to quarry

and remove stone, and gravel on and from the reserve;

Provided he, or his agent acting by his instructions, first obtain the **consent of the band** in the ordinary manner hereinafter provided.

Consent of the band by majority vote required for release of timber and other licenses.

29. All Indian lands, being reserves or portions of reserves surrendered or to be surrendered to the Crown, shall be deemed to be held for the same purposes as before the passing of this Act; and **shall be managed, leased and sold as the Governor in Council may direct,** subject to the conditions of surrender, and provisions of this Act.

Management of Indian lands controlled by Superintendent-General.

31. Every certificate of sale or receipt for money received on the sale of Indian lands, heretofore granted or made or to be granted or made by the Superintendent-General or any agent of his, so long as the sale to which such receipt or certificate relates is in force and not rescinded, shall entitle the party to whom the same was or shall be made or granted, or his assignee, by instrument registered under this or any former Act providing for registration in such cases, to **take possession of and occupy the land** therein comprised, subject to the conditions of such sale, and thereunder, unless the same shall have been revoked or cancelled, to maintain suits in law or equity against any wrongdoer or trespasser, as effectually as he could do **under a patent from the Crown** ;—

Rights of persons who buy or lease Indian lands.

and such receipt or certificate shall be ***prima facie*** **evidence for the purpose of possession** by such person, or the assignee under an instrument registered as aforesaid, in any such suit; but the same shall have no force against a license to cut timber existing at the time of the making or granting thereof.

Recourse of personos who buy Indian lands.

37. Whenever any rent payable to the Crown on any lease of Indian lands is in arrear, the Superintendent-General, or any agent ...may issue a warrant, ...for the collection of such arrears as in either of the said last mentioned cases; or an action of debt as in ordinary cases of rent in arrear may be brought therefor in the name of the Superintendent-General; but **demand of rent shall not be necessary** in any case.

40. In all cases in which grants or letters patent have issued for the same land inconsistent with each other through error, and in all cases of sales or appropriations of the same land inconsistent with each other, the Superintendent-General may, in cases of sale, cause a repayment of the purchase money, with interest, or when the land has passed from the original purchaser or has been improved before a discovery of the error, **he may in substitution assign land or grant a certificate entitling the party to purchase Indian lands**, of such value and to such extent as to him, the Superintendent General, may seem just and equitable under the circumstances; but no such claim shall be entertained unless it be preferred within five years from the discovery of the error.

41. Whenever by reason of **false survey or error in the books or plans in the Indian Branch** of the

Department of the Interior, any grant, sale or appropriation of land is found to be deficient, or any parcel of land contains less than the quantity of land mentioned in the patent therefor, the Superintendent-General may order the purchase money of so much land as is deficient, with the interest thereon from the time of the application therefor, …

42. In all cases wherein **patents for Indian lands** have issued through fraud or in error or improvidence, the Exchequer Court of Canada, or a superior court of law or equity in any province may, upon action, bill or plaint, respecting such lands situate within their jurisdiction, and upon hearing of the parties interested, or upon default…

False information to would-be buyers of Indian lands prohibited.

43. If any agent appointed or continued in office under this Act knowingly and falsely informs, or causes to be informed, any person applying to him to **purchase any land within his division and agency**, that the same has already been purchased, or refuses to permit the person so applying to purchase the same according to existing regulations, such agent shall be liable therefor to the person so applying in the sum of five dollars for each acre of land which the person so applying offered to purchase, to be recovered by action of debt in any court, having jurisdiction in civil cases to the amount.

Intimidation of would-be buyers of Indian lands prohibited.

44. If any person, before or at the time of **the public sale of any Indian lands**, by intimidation, combination, or unfair management, hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale, every such offender, his, her, or their aiders and abettors, shall, for every such offence, be guilty of a **misdemeanor**, and on conviction thereof shall be liable to a fine not exceeding four hundred dollars, or imprisonment for a term not exceeding two years, or both, in the discretion of the court.

Legal description of Indian lands to be licensed.

45. The Superintendent-General, or any officer or agent authorized by him to that effect, may **grant licenses to cut timber on reserves and ungranted Indian lands** at such rates, and subject to such conditions, regulations and restrictions, as may from time to time be established by the Governor in Council, such conditions, regulations and restrictions to be adapted to the locality in which such reserves or lands are situated.

46. No license shall be so granted for a longer period than twelve months from the date thereof;…

47. Every license shall describe the lands upon which the timber may be cut, and shall confer for the time being on the nominee, **the right to take and keep exclusive possession of the land** so described, …

License and authority to cut timber on Indian lands.

52. If any person without authority cuts or employs or induces any other person to cut, or assists in **cutting any timber of any kind on Indian lands**, or removes or carries away or employs or induces or

Fines for removing timber without a license.

assists any other person to remove or carry away any merchantable timber of any kind so cut from Indian lands aforesaid, he shall not acquire any right to the timber so cut, or any claim to any remuneration for cutting, preparing the same for market, or conveying the same to or towards market,—and when the timber or saw-logs has or have been removed out of the reach of the officers of the Indian Branch of the Department of the Interior, or it is otherwise found impossible to seize the same, he shall in addition to the loss of his labour and disbursements, **forfeit a sum of three dollars for each tree**…

Revenue from sale or lease of Indian lands to benefit and support of the band of Indians.

58. All moneys or securities of any kind applicable to the support or benefit of Indians, or any band of Indians, and **all moneys accrued or hereafter to accrue from the sale of any Indian lands or of any timber on any reserves or Indian lands** shall, subject to the provisions of this Act, be applicable to the same purposes, and be dealt with in the same manner as they might have been applied to or dealt with before the passing of this Act.

Proceeds from Indian lands payable to the Receiver General.

Governor may decide how to spend moneys arising from sale and licensing.

59. The Governor in Council may, subject to the provisions of this Act, direct how, and **in what manner, and by whom the moneys arising from sales of Indian lands, and from the property held or to be held in trust for the Indians, or from any timber on Indian lands or reserves**, or from any other source for the benefit of Indians (with the exception of any small sum not exceeding ten percent of the proceeds of any lands, timber or property, which may be agreed at the time of the surrender to be paid to the members of the band interested therein), shall be invested from time to time, and how the payments or assistance to which the Indians may be entitled shall be made or given, and may provide for the general management of such moneys, and direct what percentage or proportion thereof shall be set apart from time to time, to cover the cost of and attendant upon the management of reserves, lands, property and moneys under the provisions of this Act. and for the construction or repair of roads passing through such reserves or lands, and by way of contribution to schools frequented by such Indians.

60. The proceeds arising from the sale or lease of any Indian lands, or from the timber, hay, stone, minerals or other valuables thereon, or on a reserve, shall be paid to the Receiver General to the credit of the Indian fund.

Councils and Chiefs

61. At the **election** of a chief or chiefs, or the granting of any ordinary consent required of a band of Indians under this Act, those entitled to vote at the council or meeting thereof shall be the **male members** of the band of the full age of twenty-one years; and the vote of a majority of such members at a council or meeting of the band summoned according to their rules, and held in the presence of the Superintendent-General, or an agent acting under his instructions, shall be sufficient to determine

such election, or grant such consent;

Entitlement to vote for Band council.

62. The Governor in Council may **order that the chiefs of any band of Indians shall be elected,** as hereinbefore provided, at such time and place, as the Superintendent-General may direct, and they shall in such case be elected for a period of three years, unless deposed by the Governor for dishonesty, intemperance, immorality, or incompetency; and they may be in the proportion of one head chief and two second chiefs or councillors for every two hundred Indians; but any such band composed of thirty Indians may have one chief:

Governor may order the procedure for recognizing Indian chiefs.

Life chiefs continue unless removed by the Governor.

Provided always, that all life chiefs now living shall continue as such until death or resignation, or until their removal by the Governor for dishonesty, intemperance, immorality, or incompetency.

Powers of Chiefs on reserve

Powers of chief and council on reserve, subject to Governor approval in each action.

63. The chief or chiefs of any band in council may frame, subject to confirmation by the Governor in Council, rules and regulations for the following subjects, viz.:

1. The care of the public health;
2. The observance of order and decorum at assemblies of the Indians in general council, or on other occasions;
3. The repression of intemperance and profligacy;
4. The prevention of trespass by cattle;
5. The maintenance of roads, bridges, ditches and fences;
6. The construction and repair of school houses, council houses and other Indian public buildings;
7. The establishment of pounds and the appointment of pound-keepers;
8. The locating of the land in their reserves, and the establishment of a register of such locations.

TAXATION

Lands held by Crown in trust for Indians will not be taxed.

64. No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds real estate under lease or in fee simple, or personal property, outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate.

65. All land vested in the Crown, or in any person or body corporate, in trust for or for the use of any Indian or non-treaty Indian, or any band or irregular band of Indians or non-treaty Indians shall be **exempt from taxation.**

Real or personal property of an Indian may be taxed under s. 64.

66. No person shall take any security or otherwise obtain any lien or charge, whether by mortgage, judgment or otherwise, upon real or personal property of any Indian or non-treaty Indian within Canada, **except on real or personal property subject to taxation** under section sixty-four of this Act:

No Indian may acquire a homestead or pre-emption.

70. No Indian or non-treaty Indian, resident in the province of Manitoba, the North-West Territories or the territory of Keewatin, shall be **held capable of having acquired or acquiring a homestead or pre-emption right** to a quarter section, or any portion of laud in any surveyed or unsurveyed lands in the

said province of Manitoba, the North-West Territories or the territory of Keewatin, or the right to share in the distribution of any lands allotted to half-breeds, subject to the following exceptions:

Rights of permanent improvements.

(a) He shall not be disturbed in the occupation of any plot on which he has or may have permanent improvements prior to his becoming a party to any treaty with the Crown:

Canada may compensate for land without surrender.

(*b)* Nothing in this section shall prevent the Government of Canada, if found desirable, from compensating any Indian for his improvements on such a plot of land without obtaining a formal surrender therefor from the band:

Indians who withdrew from treaty exempt from this section.

(c) Nothing in this section shall apply to any person who **withdrew from any Indian treaty** prior to the first day of October, in the year one thousand eight hundred and seventy four.

Power to stop payments on basis of morality.

72. The Superintendent-General shall have power to **stop the payment of the annuity and interest money of any Indian** … woman having no children, who deserts her husband and lives immorally with another man.

Superintendent-General may allocate band moneys for the aid of the needy.

73. The Superintendent-General in cases where **sick, or disabled, or aged and destitute** persons are not provided for by the band of Indians of which they are members, may furnish sufficient **aid** from the funds of the band for the relief of such persons.

Evidence of non-Christian Indians.

74. Upon any inquest, or matter involving a criminal charge, or upon the trial of any crime or offence whatsoever or by whomsoever committed, it shall be lawful for any court, judge, stipendiary magistrate, coroner or justice of the peace to receive the evidence of any Indian or non-treaty Indian, who is **destitute of the knowledge of God** and of any fixed and clear belief in religion or in a future state of rewards and punishments, ... upon his solemn affirmation or declaration to tell the truth, the whole truth and nothing but the truth, or in such form as may be approved by such court, judge, stipendiary magistrate, coroner or justice of the peace as most binding on the conscience of such Indian or non-treaty Indian.

80. The **keg, barrel, case, box, package or receptacle** whence any intoxicant has been sold, exchanged, bartered. supplied or given, and as well that in which the original supply was contained as the vessel wherein any portion of such original supply was supplied as aforesaid, and the remainder of the contents thereof, ...and any intoxicant imported or manufactured or brought into and upon any reserve or special reserve, or into the house, tent, wigwam or place of abode of any Indian or non-treaty Indian, **may be seized** by any constable wheresoever found on such land or in such place;

and on complaint before any judge, stipendiary magistrate or justice of the peace, he may, on the evidence of any credible witness that this Act has been contravened in respect thereof, declare the same **forfeited**, and cause the same to be forthwith **destroyed**;

Power to seize intoxicants and the containers they are stored in.

Penalties for possession of intoxicants.

Power to seize vessels carrying intoxicants and the containers they are stored in.

Sale of seized vessels, proceeds to crown.

Intoxicated Indians to be locked up.

No appeal except in court.

Prosecution and conviction need only conform to the "true meaning of this Act."

and may condemn the Indian or other person on whose person in possession they were found to pay a penalty not exceeding **one hundred dollars** nor less than fifty dollars, and the costs of prosecution ; and **one-half of such penalty shall belong to the prosecutor and the other half to Her Majesty,** for the purposes hereinbefore mentioned;

and in default of immediate payment, the offender may be committed to any common **gaol, house of correction, lock-up or other place of confinement** with or without hard labor, for any time not exceeding six nor less than two months unless such fine and costs are sooner paid.

81. When it is proved before any judge, stipendiary magistrate or two justices of the peace that any **vessel, boat, canoe or conveyance of any description upon the sea or sea coast, or upon any river**, lake or stream in Canada, is employed in carrying any intoxicant, to be supplied to Indians or non-treaty Indians, such vessel, boat, canoe or conveyance so employed may be **seized and declared forfeited**, as in the next preceding section, and sold, and the proceeds thereof paid to Her Majesty for the purposes hereinbefore mentioned.

83. It shall be lawful for any constable, **without process of law, to arrest any Indian** or non-treaty Indian whom he may find in a state of intoxication, and to convey him to any common gaol, house of correction, lock-up or other place of confinement, there to be kept until he shall have become sober; and such Indian or non-treaty Indian shall, when sober, be brought before any judge, stipendiary magistrate, or justice of the peace, and if convicted of being so found in a state of intoxication shall be liable to imprisonment in any common gaol, house of correction, lock-up or other place of confinement, for any period not exceeding one month. And if any Indian or non-treaty Indian, having been so convicted as aforesaid, refuses upon examination to state or give information of the person, place and time from whom, where and when, he procured such intoxicant, and if from any other Indian or non-treaty Indian, then, if within his knowledge, from whom, where and when such intoxicant was originally procured or received, he shall be liable to imprisonment as aforesaid for a further period not exceeding fourteen days.

84. No appeal shall lie from any conviction under the next five preceding sections of this Act, except to a Judge of any superior court of law, county, or circuit, or district court, or to the Chairman or Judge of the Court of the Sessions of the Peace, ...

85. No prosecution, conviction or commitment under this Act shall be invalid on account of want of form, so long as the same is according to the true meaning of this Act.

1879

An Act to amend The Indian Act

May 15

Half-breed rights under treaty.

1. Paragraph *(e)* is amended
"And any half-breed who may have been admitted into a treaty shall be allowed to withdraw therefrom on refunding all annuity money received by him or her under the said treaty, or suffering a corresponding reduction in the quantity of any land, or scrip, which such half-breed may be entitled to receive ...

Powers of Chiefs extend to protection of sheep, prevention of noxious weeds, and power to impose penalties for infraction of bylaws on reserve.

[Powers of Chiefs extended]:
4. " also for the protection of sheep"…
And (9) The repression of noxious weeds; and
(10) The imposition of punishment, by fine or penalty, or by imprisonment, or both, for infraction of any of such rules or regulations,—the fine or penalty in no case to exceed thirty dollars, and the imprisonment in no case to exceed thirty days.

Prostitution punishable under the Indian Act.

7. If any person, being the keeper of any house, allows or suffers any Indian woman ... with the intention of prostituting herself therein, such person shall be deemed guilty of an offence against this Act, ... liable to a fine of not less than ten dollars, or more than one hundred dollars, or to imprisonment for a term not exceeding six months.

Indians who are not band members (including women married out) may not access natural resources on reserve without license.

16. If any person or Indian, **other than an Indian of the band** to which the reserve belongs, without the license in writing for
...cutting, carrying away, or removing therefrom any of the trees, saplings, shrubs, underwood, timber or hay thereon, or by removing any of the stone, soil, minerals, metals or other valuables, …shall, on conviction thereof …forfeit and pay the sum of twenty dollars…

1880

The Indian Act 1880

May 7

The Department of Indian Affairs is created by the *Indian Act.*
It now has 113 sections.

7. ...the Department of the Interior as relates to Indian Affairs, and which has hitherto been conducted in what is usually known as the " Indian Branch" of that Department, shall fall under the management, charge and direction of the **Department of Indian Affairs**;...

1881

March 24

An Act to Amend The Indian Act 1880

Regulation and prohibition of social, economic, and cultural exchange between Indians and non-Indians.

1. The Governor in Council may make such provisions and regulations as may, from time to time, seem advisable for **prohibiting or regulating the sale, barter, exchange or gift, by any band or irregular band of Indians, or by any Indian** of any band or irregular band, in the North-West Territories, the Province of Manitoba, or the District of Keewatin, of any grain or root crops, or other produce grown upon any Indian Reserve in the North-West Territories, the Province of Manitoba, or the District of Keewatin;

Regulation and prohibition of sale of agricultural products raised by Indians.

and may further provide that such **sale, barter, exchange or gift shall be absolutely null and void** unless the same be made in accordance with the provisions and regulations made in that behalf. All provisions and regulations made under this Act shall be published in the *Canada Gazette.*

Punishment for possession of crops raised by Indians.

2. Any person who buys or otherwise acquires from any such Indian, or band, or irregular band of Indians, contrary to any provisions or regulations made by the Governor in Council under this Act, is guilty of an offence, and is punishable, upon summary conviction, by fine, not exceeding **one hundred dollars, or by imprisonment** for a period not exceeding three months, **in any place of confinement other than a penitentiary, or by both fine and imprisonment.**

3. If any such **grain or root crops** or other produce as aforesaid be **unlawfully in the possession of any person**, within the intent and meaning of this Act, and of any seizure of provisions or regulations made by the Governor in Council, under this Act, any person acting under the authority, either general or special, of the Superintendent General may, with such assistance in that behalf as he may think necessary, **seize and take possession of the same,** and he shall deal therewith as the Superintendent General or any officer or person thereunto by him authorized, may direct.

1881-88 Northwest Coast Reserve Commissions

On the Coast, a procession of hurried, badly timed, and then abandoned Reserve Commissions wreaked havoc on the land amid duelling church missionary societies who competed for "flocks" and the government money that went with them.

Commissioners and their mandates - reserves, Indian Agents and the *Indian Act* - were rejected by many, but used by others to leverage individual advantage over fishing grounds and valuable areas.

Instructions to Commissioner Mr. Joseph Planta, from
A E.B. Dame, Attorney-General
Victoria, September 17, 1887.

SIR,- ...proceed to the Naas River and Fort Simpson, and there meet the Indians of those localities, for the purpose of hearing the expression of their views, wishes, and complaints, if any. Such will be the main object and scope of your visit, and you will please be careful while assuring the Indians that all they say will be reported to the proper authorities not to give undertakings or make promises, and in particular you will be careful to discountenance, should it arise, any claim of Indian title to Provincial lands. I need not point out that the Provincial Government are bound to make, at the request of the Dominion, suitable reserves for the Indians; and it will be advisable, should the question of title to land arise, to constantly point this out, and that the Terms of Union secure to the Indians their reserves by the strongest of tenures.

It may be that the Indians will ask for some timber land, or the enlargement of some of their reserves. As to such matters, the Provincial Government desires the fullest information; for, while it would be impolitic to increase reserves once established, yet the Government is anxious that the Indians should have as much land as they can reasonably use, and I believe that as regards timber land no reserve has yet been made.

As regards the attendance of missionaries at your meetings, there can be no objection to their acting as interpreters for the Indians, should the latter so wish, but the Government do not deem it advisable that the clergymen of any denomination should act as Indian advocates.

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The Report

"The Commissioners had claims and demands reiterated before them by the chiefs and others who addressed them, much more sweeping in character than was the case at Kincolith.

They were accompanied by declarations as to what would take place were such demands or claims not settled by the Government in a way entirely satisfactory to them.

The basis of the claims advanced was the assertion of the "Indian Title" to the whole country.

The Commissioners had to combat and deny this by stating the law on the subject, as required by their instructions, and it was done temperately but firmly, and other points as to the interpretation of the "Indian Act," etc., etc., were explained.

...Your Commissioners found that the wishes and demands of the Indians embraced several points about which there was a total divergence of opinion among them.

As to the "Indian Title," your Commissioners found that this was not shared in by the Kincolith branch of the Nish-kar nation, while it was strongly pressed by the people of Greenville and some of the chiefs from farther up the river.

... All were in accord, however, in asking for some extension of existing reserves, the reservation of nu-

merous other fishing stations, and the setting apart for the exclusive use of different families and chiefs certain extensive tracts of country for hunting purposes. Then, as to the control of some of the reserves in existence on the Naas river and established for the oolachan fishery, your Commissioners found there was great rivalry and opposition between the bands of the tribe.

It appeared that formerly all these matters were more or less amicably managed by the chiefs, but that now when religious differences have sprung up, owing to the presence in the same neighborhood of missionaries of different missionary societies, all charitable forbearance in such matters seems to be at an end...

From the Minutes and Proceedings: Kincolith, October 17th, 1887.

Arthur Gurney: Ever since Mr. O'Reilly was here, we have been dissatisfied with our reserves. After he had made the reserves which we thought were for us, the Fort Simpson Tsimpseans built houses on all of them, ...and they kept some of our pits of potatoes, saying that they were on their land. It was very hard; we had no seed and couldn't plant potatoes that summer, ...yet we waited for the hand of the Government to protect us.

We depended on the Queen's hand to defend us on our reserve.

~

1882

May 17

An Act to further amend The Indian Act, 1880

"Unsurrendered Indian land" is struck out of all definition, - its legal identity absorbed within "reserve land."

1. The sixth sub-section of the second section of *The Indian Act,* 1880, is hereby amended by striking out of fourth line thereof the words **"but which is unsurrendered,"** and inserting in lieu thereof the words "and which **remains a portion of the said Reserve**. "

Any Indian Agent shall have the power of a Stipendiary Magistrate or Police Magistrate to enforce the Indian Act.

3. "Wherever, in *The Indian Act 1880,* or in this Act, power is given to any Stipendiary Magistrate or Police Magistrate to dispose of cases of infraction of the provisions of the said Acts brought before him, **any Indian Agent shall have the same power as a Stipendiary Magistrate or a Police Magistrate** has in respect to such cases.

No appeal is allowed from a decision that results in a fine of ten dollars or less - when the dispute is between Indians.

4. The seventy-eighth section is hereby amended by adding: "But in any suit between Indians **no appeal shall lie from an order made by any District Magistrate**, Police Magistrate, Stipendiary Magistrate or two Justices of the Peace, when the sum adjudged does not exceed ten dollars."

1884

April 19

An Act to Amend the Indian Act 1880

The infamous Potlatch Laws are added to the Indian Act, as well as criminalization of Indian protests. Automatic enfranchisement follows university graduation or legal practice.

Indian protest criminalized.

Incitement of Indian protest criminalized.

Sale of ammunition to Indians in Manitoba or North-West Territories punishable up to $200 or six months in prison, or both.

Participation in a Potlatch or Sundance (Tamanawas) - direct or indirect - punishable by two to six months in prison.

Automatic enfranchisement of any Indian who completes a university degree, or enters any practice of law, or enters work in a Christian denomination.

1. Whoever induces, incites or stirs up any **three or more Indians, non-treaty Indians, or half-breeds** apparently acting in concert,—
(a.) **To make any request or demand of any agent or servant of the Government in a riotous, disorderly or threatening manner**, or in a manner calculated to cause a breach of the peace ; or—
(b.) To do an act calculated to cause **a breach of the peace**, -
Is guilty of a misdemeanor, and shall be liable to be imprisoned for any term not exceeding **two years, with or without hard labor.**

2. The Superintendent General may, when he considers it in the public interest to do so, **prohibit**, by public notice to that effect, the **sale, gift** or other disposal, to any Indian in the Province of Manitoba or in any part thereof, or in the North West Territories or in any part thereof, of any **fixed ammunition or ball cartridge**; ...a penalty of not more than **two hundred dollars**, or shall be liable to imprisonment for a term of not more than **six months, or to both** fine and imprisonment ...and every offender against the provisions of this section may be tried in a summary manner by two Justices of the Peace or by any stipendiary or other magistrate having the power of two Justices of the Peace.

3. Every Indian or other person who engages in or assists in celebrating **the Indian festival known as the "Potlach,"** or in the **Indian dance known as the "Tamanawas"** is guilty of a **misdemeanor**, and shall be liable to **imprisonment** for a term of not more than six nor less than two months in any gaol or other place of confinement; and any Indian or other person who encourages, either directly or indirectly, an Indian or Indians to get up such a festival or dance, or to celebrate the same, or who shall assist in the celebration of the same is guilty of a like offence, and shall be liable to the same punishment.

99. 4) **Every Indian who is admitted to the degree of doctor** of medicine, **or to any other degree by any university of learning,** or who is admitted in any Province to practise **law** ... or who enters **holy orders**, or who is licensed by any denomination of Christians ...,
***ipso facto* become and be enfranchised under this Act,** and he shall then be entitled to all the rights and privileges to which any other member of the band to which he belongs would be entitled if he was enfranchised under the provisions of this Act ; and the Superintendent General may give him a suitable allotment of land from the lands belonging to the band...

1884

April 19

The Indian Advancement Act

An Act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal powers.

Bands may opt to be goverened by this statute, instead of the wholly imposed *Indian Act.*

***The* Advancement Act further defines the mode of governance and election on reserve, giving the elected Council the additional powers of:**

- taxing their members who are enfranchised, and those who have location tickets;
- raising funds to implement their bylaws and pay their Indian Agent for his expertise as Secretary Treasurer; and,
- imposing fines and penalties on their members for breach of bylaws.

3. Whenever any band or bands of Indians shall be declared by Order of the Governor in Council to be considered fit to have this Act applied to them, it shall so apply from the time appointed in such Order, ...

4. Any reserve to which this Act is to apply shall, be divided into sections,—the number of which shall be not less than two nor more than six, having in each a number of male Indians of full age, equal as nearly as may be found convenient to such proportion of the male Indians of full age resident on the reserve, as one section of the reserve will bear to all the sections; each section shall be distinguished by a number from one upwards; ...

5. The agent of the Superintendent General for the reserve shall preside at the election...take and record the votes of the electors, and have full power, ...to admit or reject the claim of any Indian to be an elector, and determine the councillors ,...

6. On a day, and at a place, and between hours to be designated by the Superintendent General ... within eight days from the date the councillors were elected), the said councillors shall meet and elect one of their number to act as chief councillor;...

9. The council shall meet for the despatch of business, at such place on the reserve, and at such times as the agent for the reserve shall appoint, not being less than four nor more than twelve times in the year...

10. The council shall have power to make by-laws, rules and regulations... *[including]*

11) The raising of money for any or all of the purposes for which the council is empowered to make by-laws, by assessment and taxation on the lands of Indians enfranchised, or in possession of lands by location ticket in the reserve...

12) The appropriation and payment to the local Agent as Treasurer by the Superintendent General of so much of the moneys of the band as may be required for defraying expenses necessary for carrying out the by-laws, including those incurred for assistance absolutely necessary for enabling the council or the agent to perform the duties assigned to them by this Act;

13) The imposition of punishment by fine or penalty or by imprisonment or both, for any infraction of or disobedience to any by-law... by any Indian of the reserve...

13. The provisions of "*The Indian Act,* 1880," and of any Act amending it, shall continue to apply to any band to which this Act has been declared to apply, in so far, but in so far only, as they are not inconsistent with this Act:

1886 The Indian Act 1886

The Indian Act now contains 141 sections.

Indian Agents are police officers *and* have the power of two judges.

Powers of the Superintendent are clarified and extended over all lands and properties of Indians.

Traditional chiefs may not exercise powers unless they have been elected.

Gambling criminalized.

Fines and imprisonment for possession of intoxicants increased.

Informers receive half the fines.

70. The Governor in Council may, subject to the provisions of this Act, direct **how, and in what manner, and by whom, the moneys arising from the disposal of Indian lands,** or of property held or to be held in trust for Indians, or timber on Indian lands or reserves, or from any other source for the benefit of Indians (with the exception of such sum, not exceeding fifty percent of the proceeds of any lands, and not exceeding ten per cent of the proceeds of any timber or other property, as is agreed at the time of the surrender to be paid to the members of the band interested therein), shall be invested from time to time, and how the payments or assistance to which the Indians are entitled shall be made or given; and he may provide for the general management of such moneys, and direct what percentage or proportion thereof shall be set apart, from time to time, to cover the cost of and incidental to the management of reserves, lands, property and moneys under the provisions of this Act, and may authorize and direct the expenditure of such moneys for surveys, for compensation to Indians for improvements or any interest they have in lands taken from them, for the construction or repairs of roads, bridges, ditches and watercourses on such reserves or lands, for the construction and repair of school buildings and charitable institutions, and by way of contribution to schools attended by such Indians.

72. The Superintendent General **may stop the payment** of the annuity and interest money of, **as well as deprive of any participation in the real property of the band,** any Indian who is proved, to the satisfaction of the superintendent general, **guilty of deserting his family**...

75. (2) Life chiefs and councillors or headmen now living may continue to hold rank until death or resignation, or until their removal by the Governor in Council for dishonesty, intemperance, immorality or incompetency ; but in the event of the Governor in Council providing that the chief and councillors or headmen of a band shall be elected, the **life chiefs and councillors or headmen shall not exercise powers as such unless elected** under the provision aforesaid.

99. Any constable or peace officer may **arrest without warrant any person or Indian found gambling, or drunk, or with intoxicants in his possession, on any part of a reserve**, and may detain him until he can be brought before a justice of the peace, and such person or Indian shall be liable upon summary conviction to imprisonment for a term not exceeding **three months** or to a penalty not exceeding **fifty dollars** and not less than ten dollars, with costs of prosecution, half of which penalty shall belong to the informer.

The terms of the Potlatch Law are extended.

114. Every Indian or other person who engages in, or assists in celebrating or encourages either directly or indirectly another to celebrate, any Indian festival, dance or other ceremony of which **the giving away or paying or giving back of money, goods or articles of any sort forms a part, or is a feature,** whether such gift of money, goods or articles takes place before, at, or after the celebration of the same, and every Indian or other person who engages or assists in any celebration or dance of which the wounding or mutilation of the dead or living body of any human being or animal forms a part or is a feature, is guilty of an indictable offence and is liable to imprisonment for a term not exceeding six months and not less than two months; but nothing in this section shall be construed to prevent the holding of any agricultural show or exhibition or the giving of prizes for exhibits thereat.

Indian Agents are peace officers, with the power and authority of two justices of the peace.

117. *2)* In the North-west Territories and Manitoba and British Columbia every Indian agent shall for all such purposes and with respect to any such offence be *ex officio* a justice of the peace and have the power and authority of two justices of the peace anywhere in the said territories or provinces, whether or not the territorial limits of his jurisdiction as a justice ...extend to the place where he may have occasion to act as such justice or to exercise such power or authority, and whether the Indians charged with or in any way concerned in or affected by the offence, matter or thing to be tried, investigated or otherwise dealt with, are or are not within his ordinary jurisdiction, charge or supervision as Indian agent.

Governor may enforce attendance of children at school.

137. The Governor in Council may make regulations, either general or affecting the Indians of any province or of any named band, to secure the **compulsory attendance of children at school.**

(2.) Such regulations, in addition to any other provisions deemed expedient, may provide for the **arrest and conveyance to school, and detention there, of truant children** and of children who are prevented by their parents or guardians from attending: and such regulations may provide for the punishment, upon summary conviction, by **fine or imprisonment, or both, of parents and guardians,** or persons having the charge of children, who fail, refuse or neglect to cause such children to attend school.

Fines and/or imprisonment for non-compliant parents or guardians.

Governor may establish boarding schools for Indian children.

138. The Governor in Council may establish an **industrial school or a boarding school for Indians,** or may declare any existing Indian school to be such industrial school or boarding school for the purposes of this section.

Additional reserve lands may be purchased.

139. The Governor in Council may, with the consent of a band, authorize and direct the expenditure of any capital moneys standing at the credit of such band, in the purchase of **land as a reserve for the band or as an addition to its reserve**, or in the purchase of cattle for the band, or in the construction of permanent improvements upon the reserve of the band, or such works thereon or in connection therewith as, in his opinion, will be of permanent value to the band, or will, when completed, properly represent capital.

1887

June 23

An Act to Amend The Indian Act 1880

The Superintendent-General will have power to decide who is and is not a member of an Indian Band:

1. The Superintendent General, may, from time to time, upon the report of an officer, or other person specially appointed by him to make an inquiry, **determine who is or who is not a member of any band of Indians** entitled to share in the property and annuities of the band ; and the decision of the Superintendent General in any such matter shall be final and conclusive, subject to an appeal to the Governor in Council.

Added: powers to subpoena and hold in contempt of court.

2. The Superintendent General, his deputy, or other person specially authorized by the Governor in Council, shall have power, by subpoena issued by him, to summon any person before him and to examine such person under oath in respect to any matter affecting Indians, and to compel the production of papers and writings before him relating to such matters; and if any person duly summoned neglects or refuses to appear at the time and place specified in the subpoena upon such person duly served, or refuses to give evidence or to produce the papers or writings demanded of him, may, by warrant under his hand and seal, cause such person, so refusing or neglecting, to be taken into custody and to be imprisoned in the nearest common gaol, as for contempt of court, for a period not exceeding fourteen days.

1906 The Indian Act 1906

Now with 199 sections, this version of the Indian Act incorporated the *Advancement Act* and the *Soldier Settlement Act*.

Indian bands may be exempted from the Indian Act (provided they opt-in to be governed by other legislation) - and the Governor can return them to the Indian Act at his discretion.

3. The Governor in Council may, by proclamation, from time to time, **exempt** from the operation of this Part, or from the operation of any one or more of the sections of this Part, Indians or non-treaty Indians, or any of them, or **any band** or irregular band of them, or the reserves or special reserves, or Indian lands, or any portions of them, in any province or in the Territories, or in any of them ; and may again, by proclamation, from time to time, remove such exemption. R.S., c. 43, s. 3.

Eskimos under Indian Department.

The Superintendent General of Indian Affairs shall have charge of **Eskimo affairs**.

Powers of Chiefs extended to subdividing reserve land among the members.

Powers of Chiefs, added:
7. *(d)* The **subdivision of the land** in the reserve, and the distribution of the same amongst the members of the band; also, the setting apart, for common use, of land for other purposes

Location ticket lands may be appropriated for a school.

11. a. The Governor in Council **may take the land** of an Indian held under location ticket or otherwise **for school** purposes upon payment to such Indian of the compensation agreed upon, or in case of disagreement such compensation as may be determined in such manner as the Superintendent General may direct.

Tracking the goal of enfranchisement by annual reports of enfranchised Indians.

111. The Minister shall, within fifteen days after the Parliament, opening of each session of Parliament, submit to both Houses of Parliament **a list of the Indians enfranchised under this Act during the previous fiscal year,** and the amount of land and money granted and paid to each Indian so enfranchised.

1913

Indian Reserve Commission

Indian Reserves in BC are reviewed by a Joint Committee of the Province and Dominion

Chiefs testify that the effects of the *Indian Act* are shocking and widespread.

The following interview between the Chiefs of Haida and the Reserve Commissioners is representative of about 28 such meetings that were held in 1913.

The central themes presented by Chiefs are:

- questioning the Commissioners on the Crown's claim to their lands;
- objection to the original designation of the reserves, notably in the absence of most of the people – particularly the Chiefs;
- the betrayal of the original stated purpose of bringing all the people together to one settlement, for education and religious purposes, which the government later relied on as evidence that the People had abandoned other lands and villages;
- Indian Agent rule over activities and residents on the reserve;
- the idea that the People expected their original arrangements with the Queen would be upheld by the Queen's subjects, but were not;
- the idea that the People expected to be treated equally to other subjects, but were not;
- objection to the encroachment of foreign settlers on their lands;
- rejection of the ongoing sale of their lands with no notice to, consent by, or benefit to themselves;
- note of the damages to the lands carried out by newcomers;
- note of overwhelming interference in fisheries and hunting;
- the expectation of compensation and/or restoration of sold or dispossessed lands;
- shock at the realization that the government now expected all the villages and their Chiefs to live on a single reserve together;
- note of the humiliating treatment of the People by government and settlers;
- sadness and depression among the People since being confined to the reserve, dispossessed of their rights to all the other lands, and seeing the desecration of those lands;
- the failed expectation that peaceful cooperation with the new government would ensure justice;
- distrust of the underlying purpose of the Commission, and of the Commissioners' own speeches;
- note that the People had no representation on the Commission;
- that the overall land question was before the Privy Council;
- reluctance to engage in discussion of the reserves, in case this would prejudice their legal case or be used as evidence of willing consultation and acceptance of decisions.

Also, the threatening language used by the Commissioners, attempting to coerce participation concerning the reserves, was common to most meetings.

Massett, September 9, 1913

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The address of welcome was read by Chief Councilor A. Adams, for the Haida Nation of Queen Charlotte Islands

… Since the coming of our White friends, we have been Wards of the government, and the limits of our land have been drawn, giving to us an interest in six acres apiece of the many thousands over which we formerly roamed, and held against invaders.

As you are aware, each of our separate tribes had places of their own and were governed by their Chiefs. The missionaries came among us, and the government took charge of us. We were asked to centralize, to be Christianized and educated, and we came here, to Massett, and built our homes, returning, now and then, to our old homes, where we fished and where the bodies of our forefathers laid.

At the mouth of every river and stream, you will find our old camping grounds. All along the coastline are our former hunting grounds and the places where we fished, hunted and made our boats and canoes.

These places are now covered by coal and timber licenses and

occupied by pre-emptors. Year by year, the limits have been drawn, and we are now restricted to a small piece of land, here and there, the whole Band not having as much land as one prospector can cover with coal licenses. Where a foreigner can obtain 160 acres, we are allowed six, and we have always been British subjects since the flag of Britain was raised on our Islands.

… We cannot again have our old homes; the former Commissioners did not meet us and ask what our wants were. They met a few old men, while the majority of our people were away, seeking a livelihood at our fishing grounds, and we were appropriated six acres apiece, land that old men were interested in. When the pre-emptor and purchaser of land applied for it, we were not considered, and our old houses were torn down. Even on our reserve, [their]cattle roam at will.

Without any treaty; without being conquered; we have quietly submitted to any laws made for our government, and this we intend to be our course. With other Indians, who claim to have to have the same grievances, we asked that our claims be taken before to Privy Council of the Nation; to be finally settled there, once and for all time.

On your Commission we have no direct representative, in the councils of the country, we are not represented. None of us are allowed the privilege of the Franchise; no matter how advanced we may become, or are.

… We have advisors that are writing to us about our grievances. In their hands we placed our claims, and we do not desire to hamper them in any way, by making suggestions.

We are pleased to meet with you and to see that recognition is given by sending a body of gentlemen to look into our land affairs.

We can show you the homes of our ancestors now occupied by others.

We wish you to realize that we have been self-supporting and we are thankful for the aid the government has given our children, in the way of free education, on the same line as the Whites.

We have lived for many years, in harmony with our White brethren, respecting the law and proud of being under the flag of Great Britain.

We would not desire to be understood as against anything that would make these islands more prosperous for the Whites as well as for our people. Our lot has been thrown in together, and we hope to live our lives in peace and contentment.

The problems to be solved are not so difficult and we trust that your report will pave the way to have them adjusted satisfactorily.

We trust that God will direct you in looking into the case of the Indians, and that any clouds that may appear will be brushed aside by the sunshine of a happy day.

May the God of the White man and the same Ruler of the Indians bless your deliberations, and may your visit mark a speedy ending of the troubles that we claim to have in respect to the lands our forefathers hand over to our generation.

We can show you the homes of our ancestors now occupied by others.

To which the Commissioner replies:

The Commissioners are very much obliged for the address which you have just presented and for the kind way in which you have received us. We trust with you that our work may be satisfactory all round, not only to the Indians but to the governments which we represent, and that it may be the means of bringing increased happiness and prosperity to the Indians.

Insofar as the right which you speak of are concerned we have nothing to do with the question of Indian title, I stated in my remarks at the beginning of this meeting.

With regard to your past history, I do not wonder that you look back upon that with very great regret and I think that would be especially true of a people who are descendants of such men as the Haida Indians who, I have always understood, were among the strongest of the Indians in this part of the world.

We cannot deal in any way with the matter, which you suggest

should be brought before the Privy Council, because that is a judicial court. We have no such power and no such authority.

You have referred to the condition, which the Indians present in this village and you stated that none of have been tried as yet in the courts for any criminal offense, and I think that is most creditable to you.

Judging from the assemblage of men I see before me this morning, I am not surprised to hear that fact that you are just as you have described most emphatically stated by the gentleman here on my right, who is the clergyman laboring among you. I think it is the desire of all white men to see the Indians advance and become more prosperous, because it is better to live with the people who are advanced in civilization. Of course there are exceptions, but I am satisfied that all the best thinking white people are desirous of seeing the Indians advance in civilization and prosperity.

We have nothing to say with regard to your advancement in Christianity, because we know that you are for the most part members of a Christian community.

In regard to the matter you have touched on as to your having no voice in the councils of the nation, and no power to elect your representatives to parliament. I believe I am right in stating that an Indian may obtain the franchise. They have done so down in Eastern Canada. It seems to me that the power, which an Indian had to obtain the franchise, should not be as small as it is.

But it depends largely upon his intelligence. I understand that if you can convince the authorities by certificates, recommendations, etc., that an Indian has the qualifications to obtain the franchise he can do so. And judging by the appearance of the Indians here I cannot see any reason why they have not got the franchise.

I think that the Indians powers as regards this might be enlarged and it is a matter, which I think might very properly be brought under the notice of the government. Some of the tight strings, which are at present around the Indians in this respect, might be in some ways relaxed.

Henry Edenshaw

Gentlemen:

On behalf of the people of Massett I also wish to welcome you to our reserve, as representatives of two governments appointed to look into our affairs.

We are a people who desire to live in the best of harmony with all of our neighbors, be they White or Indian, and we have endeavored in the past to accept all that has been taught to us for betterment.

You are aware that we have our homes and all on these islands,...

Many years ago, our forefathers fought to hold these islands, and kept them, not only for others of our own race; but from the people of other nations, who dared not come to this country, knowing we were ready to die for our homes.

The White men came here, and were welcomed. We accepted your flag, and we also accepted your religion and government.

Since then we have gradually lost the rights we had, not through war or treaty; but through the laws made for the government of a people as a whole.

At that time there was no question of our rights to the land. We owned it all, by the power of our right as a nation.

Since then we have gradually lost the rights we had, not through war or treaty; but through the laws made for the government of a people as a whole.

We are not complaining of the Whites coming here. They must live as well as the Indian; but we ask for compensation, or land, that we consider is ours still. It may appear wrong to those who do not understand that we are a lot of men who desire to have our difficulties settled early, so that all heartburning may be over and done with.

We hope your visit will be of assistance settling our troubles and that the day is not far distant when this land question, which appears to be the only one in dispute between us, may be amicably settled to the satisfaction of all of us.

Mark Ingraham
Gentlemen:
As one of the Councilors of the Massett I feel that you will be satisfied that the young men are pleased with your visit.

We welcome those who are looking into our affairs with their eyes and minds turned towards us in a way that will help to settle troubles.

You will see that we have some reason to ask for assistance in settling our troubles.

Our land is being taken up by the White settlers. We call it our land because our forefathers owned before the White man came here.

We know that we cannot occupy it all; but we did not get even get a fair share of it.

Many years ago, before we were men, the Commissioners came and talked with a few old men. Our fathers and mothers were away. They only marked out a few places and left. We have now found that our land is a small piece, here and there, and many old settlements were left out.

The Missionaries asked our people to bring us here, and they left the old homes and came to one town. That should not mean that we lost the old homes. Because the missionaries and the government wanted to have us all in one place to be educated and to learn to accommodate the teachers of our people and to be advanced, and people then said we left these places and they are no longer ours.

Other Indians did not do this, and they have large reserves for a few families. We have a small piece of land each, when all is divided among us, about six acres each, and that is not enough, when a White man can take up to 160 acres.

We could go on and show many other reasons for giving us justice; but you will understand that we are a people who want to advance with the islands.

Every year
some person comes
on our old settlements
and says
'this is mine
I have a record on it
from the
government'

Roger Weat
Gentlemen:
As one of the Councilors of Massett and Chief of a Tribe, I am very glad to meet you and hope you will look into our affairs in a way that will bring to an end our troubles over our land.

We have our gardens and our graveyards, and have our old timberlands and fishing grounds, that are now lost to us. We will never get them back, because the White man has taken them up for his own use.

Some of us are trying to hold pieces of land, and we do not know whether they are ours or not.

Every year some person comes on our old settlements and says 'this is mine I have a record on it from the government', and we cannot dispute it.

… You give 160 acres to any man who wants it. Why do we get only six acres of our old homes, which all belonged to us not long ago.

We look to you to help us getting our rights and we are glad to know that something is being done to change the mistakes the commissioners made many years ago.

SKIDEGATE
September 13th, 1913

James Sterling
Skidegate Band Chief Councilor
Our land troubles are, we understand, the principal reason for your visit, and we have no solution to offer you. Most of our land, of former days, is gone forever from us. What can we say regarding it?

Our fishing and hunting grounds, our graveyards and woodland, is all taken up by others. We have little to call our own, and cannot dispose of the little, if we want to.

We are Wards of the government, a people governed by a people, with no voice in the deliberations.

When some persons advised us that they had taken up our grievances, we said to go forward and do the best for all of the Indians. We considered that the troubles of our great family were not ours alone, although we feel that we have lost more than many of our Indian brethren.

We are Wards
of the government,
a people governed
by a people,
with no voice
in the deliberations.

Although we have every respect for you in your visit to us, we must say that we have asked to have our rights brought before the Privy Council of the country.

We look upon any settlement by the government as one that might not prove satisfactory if taken to the high court, which settles all difficulties, once and for all time, our side of the grievances would be heard and all would end there. It is useless for us to bring before you what you already know.

Our people claim that we were not treated right by those who gave us the small tracts of land called our reserves. Then was the time to give us enough of our land to satisfy everyone; then was the time to make a treaty with us.

We were then very ignorant (to the ways of the white men); but we would have stood by and arrangement made between two contracting parties. We were not consulted at all.

Whether the older men of the Band made any arrangement with the Commissioners of the early days, we are also ignorant (unaware). We were told that this and that piece of land was all we could look forward to, and we have not been contented ever since.

The Chairman
in reply to the address said:
…know that at present I am only going to mention one thing, contained in that address, and that is with respect to the question of what is called "Indian Title." All we can say with respect to that is, that it is not within our powers to deal with and we have therefore nothing whatever to do with it.

Sterling:
Our hearts have been made heavy, as the years have passed, to see strangers come among us, stay a few days, put a stake in the ground and go away.

This seemed strange to us at first, but stranger still when we were told that they sold their stakes for many thousands of dollars.

It is too true Sirs, that most of the timber about our homes, the land, on which our fathers set their traps, and the streams from which our forefathers took their fish, have passed into the hands of strangers. White men have come and by settlement, loadmaking and fires have driven our game away.

… You Gentlemen have come to us. We are glad of that, but we shall rejoice still more if after looking into our affairs you shall see and appreciate things from our standpoint.

Our hearts
have been made
heavy,
as the years pass,
to see strangers come,
stay a few days,
put a stake in the
ground and go away.
This seemed
strange to us at first,
but stranger still
when we were told
that they sold
their stakes for many
thousands of dollars.

… We have been told that the land outside of our small reserves is not for Indians. We supposed it was ours, but are surprised that we can neither pre-empt or purchase land anywhere in British Columbia.

To us; this seems to be an injustice and a hardship. We have been told that we belong to the British Empire and that we are numbered among the subjects of the King.

Yet, Sirs; we have been humiliated as the years have been going by, to know that the BC Government made no record of our births,

marriages and deaths.

Most of our young men are more or less educated yet the franchise has been denied them. It was on account of what we have already mentioned and other troubles, that we collected money, employed Lawyer Clarke to lay our claims before the Privy Council. We hope Gentlemen that as a result of your visit the Government shall remove what has troubled us.

Amos Russ:
We are glad that you people from Ottawa and the other lawmakers are here, and we are here to put before you our troubles.

That as far back as ever we can remember, without any doubt at all, the Queen Charlotte Islands practically belong to the Indians.

It came about after a little while that the Islands were the Queen Charlotte Islands, but we don't know who gave them that name.

As far back as we can remember we can claim that the Islands fairly belong to us and as far back as we can remember there was never any treaty with respect to this land, between the Government and the Indians.

We have never had a fight for the Islands. No nation ever came and fought us for them and won them from us. We don't know why the Government took them away from us. If we had had a Treaty with the Government we would not claim the Islands.

…We laid our case in the hands of the lawyers and the Privy Council of England is taking up the Case, which I don't doubt that you people know.

We laid our case
in the hands of the lawyers,
and the Privy Council of England
is taking up the Case,
which I don't doubt
that you people know.

We are glad that we can say that we have seen people come in and take land among us and we have never had any trouble the same as the white people have.

For instance, the Boers and the English fought over their land troubles. We have not fought because we have kept what the missionaries taught us, and what more it doesn't look manly to fight.

Up at the North of the Island, there used to be villages and villages, right from North Island to the present village of Massett, these villages stood side by side, but at the present there is only one village there, namely Massett.

North Island was so named by the Indians, and now the Government has called it Langara. I can say that myself, if I took a piece of land and claimed it without any title to it, I would naturally call it another name and that is the case with North Island.

At this end of the Island as far down as the Island extends, there were villages and villages side by side right to the furthest point and at the present time there is only the village of Skidegate.

We know that day by day the Government is selling land far down this coast and also down the west coast of the Island. We know for a fact that the Government is selling this land and yet we can say that the Queen Charlotte Islands are ours.

You can see right around the Island there are villages and villages and you can see our Totem poles which are the same to us as the white men's pre-emption stakes are to them.

We cannot take a step further in the question until we hear what our lawyer Clark has to say to us.

We cannot put any trouble before you people but we will hear and know later what to do.

We congratulate you gentlemen that you have taken the time and the trouble to visit our villages, for we thank you gentlemen very much. I cannot call myself a gentlemen before others, but this I know and claim, that I am a Christian Gentlemen. That is all I have to say.

The Chairman to the Interpreter:
Is he speaking on behalf of all the Indians here?

The Interpreter *after consulting with Amos Russ.*
Yes.

The Chairman: Then understand that these Indians decline to make any other statements as to their

grievances, before this Commission? (To the Interpreter) Ask him if he has the authority of all the Indians here, when he says: "We cannot take a step further in the question until we hear what Lawyer Clark has to say."

… **The Interpreter:**
Yes, he is speaking on behalf of all the Skidegate people.

The Chairman: I understood the Councilor to say, that the Privy Council were about to take action in this matter of the "Indian Title" to the land?

The Interpreter: Yes.

The Chairman: Does he mean by that the Court of the Privy Council is taking action?

The Interpreter: That is the understanding we got through the mail from Mr. Tate.

The Chairman: For more than 60 years I have been a lawyer and have been very familiar with the means of bringing cases before the Court of the Privy Council, and I know what state a matter must be in before it can go before the Privy Council.

I am very much surprised to hear that you have had any advice of that sort, because I know that there is nothing in the case, which is in a position to go before the Privy Council at all so you must have been misinformed in some way or other.

That is none of my business, I am only telling you this for your information. Somebody is misleading you or you have misunderstood something.

The Chairman to the Interpreter: Tell them there is no necessity for taking further statements in view of what Councilor Russ has stated.

Now if any of you wish to give testimony with respect to the character of your reserves, as to whether they are for cultivation or gardening of any sort, or as to any cattle or any stock you may posses, or any ship or rigs, the number of boats you own, launches or otherwise, how the different reserves laid off for you are used by you, or other matters of a similar nature.

We will hear what testimony you wish to give. Of course I think it is right that you should understand that we would get this information somewhere else if you don't care to give it yourselves.

Councilor James Sterling:
I know for what purpose you have come to this village. It will never do to go about it in a rough way, and talk it over in any sort of a way, as it is a very important thing, and it will have to be done right, and before our people I would like to ask you this question, "How many of you gentlemen are here to represent the Government?"

The Chairman:
There are five gentlemen on this Commission. This Commission is issued by the Dominion Government under the Great Seal of Canada, and signed by the Acting governor-general that Commission appoints us five gentlemen to act.

Dr. McKenna & Mr. White has been appointed by the Dominion Government and Mr. Shaw and Mr. Macdowall have been appointed by the Provincial Government, and these four gentlemen have elected me as Chairman.

Councilor James Sterling:
I know that the Dominion Government are on the look out to see that no one interferes with the Indians.

I know for a fact that the Provincial Government at the present time is practically working right against the Indians.

…. We are somewhat nervous. We feel just as though we cannot say what we want to say, because we do not know who is to represent the Indians, of the five who are present at the meeting, and we have got this idea that the two Governments, Provincial and Dominion are fighting over our lands, and therefore we are afraid to put the question before these gentlemen.

I know what the Indian Reserves are alright, but although they are reserves set aside for the use of the Indians we are not allowed to do as we like in our own reserves. We have been somewhat cramped and crushed up and we cannot move round, as we want to.

You gentlemen have asked us not to say anything about the Privy Council or Lawyer Clark.

The Chairman:
I simply said that you had either been misled or that there had been some misunderstanding
about the matter.

I know for a fact that the Provincial Government at the present time is practically working against the Indians.

Councilor James Sterling:
I would like to ask you gentlemen a question, and I must have an answer to it. I want to know above all things that the Queen Charlotte Islands and these reserves belong to?

The Chairman:
As to the ownership of the Queen Charlotte Islands, the Indians claim to own the whole of the Islands.

The Dominion Government and the British Columbia Government claim that both or one of them own the Indian reserves on these Islands, and the British Columbia government
claims to own the whole of the lands on the Queen Charlotte Islands outside of the reserves,
except those places which they have granted to private individuals.

The Dominion Government doesn't claim any of the land on the Islands outside of the Indian Reserves, but the Indian reserves they claim for the Indians.

Councilor James Sterling:
I would like to ask one more question. The Dominion Government and the BC Government between them, they own these Islands?
I would like to ask this question. Why and in which way did they both get the Islands? If you could give us evidence of how they got the Islands, before all these people, we would be contented.

The Chairman:
That is just the question, which you want the Privy Council to decide. I won't give an opinion in that respect. Let the Privy Council do it. I have had enough cases taken from my judgment to the Privy Council without having another one.

Councilor James Sterling:
I know the time when Judge O'Reilly came to the Islands to stake the Reserves. I think it was in 1883 that the Reserve was laid out. Our fathers fully depended that there would be no trouble after the Reserves had been laid out. I thought it was already settled at the time when Judge O'Reilly staked the Reserves out, and I don't fully understand why you Commissioners are around here to look up cases of this kind, to see what is the trouble.

The Chairman:
It would seem to be running through your mind that we have come here with the intention of depriving you of some of your reserves or of some portions of them.

We have to a certain extent, considered the situation here and know pretty well what the character of the land is, and the nature of the reserves. We got sufficient information through sworn testimony to come to a certain conclusion with respect to that.

I am authorized to state that the Commissioners have no intention whatever of cutting off any reserves or portion of any reserve belonging to the Haida Tribes on the Island.
We have come to the conclusion that you have no more land belonging to either band – Massett or Skidegate – than you reasonably require, and we are leaving the question of adding to your reserve, open until we hear what you have to say, if you wish to say it.

When the reserves are dealt with, whether they are kept as they are, or additions made to them after this Commission gets through they cannot be changed without the consent of the Indians, and you interests in the land will not, as heretofore, be subject to any control or interference by the Government of British Columbia.

Now if you desire to give testimony with respect to your reserves etc., we will be prepared to hear it.

Note by Mr. Commissioner Macdowall
Commissioners Shaw and MacDowall had an interview with James Sterling and succeeded in convincing him that the members of the Commission were not biased in any way, and that they had no instructions from their respective Governments, irrespective of what is contained in the Commission.

Solomon Wilson:
I want to say, really in regard to what you are here for, will this interfere with any of our lawyer questions.

The Chairman:
I am not prepared to say. It may or it may not.

Solomon Wilson:
I want a true answer please.

The Chairman:
I cannot give you any other answer.

Solomon Wilson:
If we were to ask you for anything will it interfere with our other claims?

The Chairman: I say it may. I cannot say whether it will or not.

Solomon Wilson:
Then you are leaving us to risk it?

The Chairman: Well, I will not tell you that it will, and I will not tell you that it will not, because I do not know.

The Chairman to the Interpreter: After hearing what this man has said to them, what conclusion have they come to with respect to giving testimony as the quality of the reserves, and as to any additional lands they may require, or any other matters affecting their reserves?

The Interpreter: Mr. Wilson's idea when he got up to ask you that question, as to whether anything that was stated would interfere with the matter lawyers Clark has got in hand, was he wanted to know if we would have the right to vote and we also wanted to ask you for 160 acres, and we wanted to find out if asking these things would interfere with our other business which lawyer Clark has in hand.

The Chairman: I am not prepared to say whether it will or will not. I say it may.

The Interpreter: We have just got a telegram from Prince Rupert, from Peter Kelly, saying, "Make the Commissioners wait."

Mr. Shaw: Who is Peter Kelly?

The Interpreter: He is a member of this band, and one of our advisors. He is at present at New Westminster College, studying for the ministry. We would like the Commission to wait until he comes, as he had got a holiday on purpose to appear before the Commission.

NOTE by the Chairman, written
On being interrogated as to whether any person is prepared to testify as to the character of the reserves, the population thereof, and state as to the property on the reserves and the area of the reserves, I am asked if this will prejudice their rights as to the "Indian Title."

I stated that it may, and thereupon being again asked if any person would testify no one responded. I therefore hold that they do not wish to give testimony.

The Chairman:
I don't wish it to be understood, that we intend to force our rights under this Commission if you do not wish to testify as to the reserves, but don't run away with the idea that the Commission is without power to act, because we could order witnesses to be summoned to give evidence before us, and if they refused to come we could arrest them, and bring them here, and when we got them before us, if they refused to testify we could imprison them, but we don't intend to take that course at all.

We don't desire to act in any unkind way towards the Indians. We want to maintain good feeling all round, but we are going to call

Solomon Wilson:
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The Chairman:
I am not prepared to
say. It may or may not.

Solomon Wilson:
I want a true answer
please.

The Chairman:
I cannot give you
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The Chairman

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This section from "Commission minutes" printed in *Haida Laas, journal of the Haida Nation*, September 2001.

The Royal Commission Chairman, N. W. White, in 1913. Photo reprinted from Haida Laas*,* Journal of the Hiada Nation, *September 2001.*

witnesses ourselves, and that course having being entered on our books, whatever evidence we take would not prejudice you, because we will produce the evidence and you won't.

If you call the witnesses it might prejudice you as I have stated. If we call the witnesses, it won't. That is all.

Their tribe don't want any additions to their villages. Any evidence which the Indians gave in which they asked for increases on the Reserves might prejudice their claims with respect to "Indian Title," now we propose to call evidence that is called by us cannot prejudice your claim. Any evidence that is taken is taken at the distinct instance of the Commission.

Henry Green: [changing the subject] Mr. Chairman and other Commissioners, I want to know if you can do anything towards helping us in a local matter. Right here in this village we have a musical band and we have hired a man from Victoria – Arthur Solomon – who has improved our band quite a lot, and we have gone to Prince Rupert 3 times and won the contest for the cup.

The Indian Agent and Mr. Tyson have told us that the very next time we have a Band practice within the Reserve, they will put Arthur Solomon off the Reserve.

Now what do you think about that?

The Chairman: We will report this matter to the Government that is all we can do.

What have you to say regarding this matter Mr. Deasy?

Indian Agent Deasy:
I might say that all I have done in connection with the Band Instructor has been to report to the Department of Indian Affairs, that he is not in my estimation a fit man to be allowed to live on the Reserve. I have carried out the instructions of the Department in the matter.

A complaint was made to me regarding this man, and upon investigation I found out it was true, and the man had to go. The Band Instructor was informed that he could not live on the Reserve.

~

1918-20 compulsory enfranchisement

Here are some quotations from Ottawa's leaders, discussing the purpose and effect of their Bills for the no-consent franchise:

The following from "Indian Women and the law in Canada - Citizens Minus," by Kathleen Jamieson, 1978:

The Superintendent could unilaterally commute a non-status female band member's annuities, cutting off her last connection with her band. In discussion of the amendment, a department official stated:

"When an Indian woman marries outside the band, whether a non-treaty Indian or a white man, it is in the interests of the Department, and in her interests as well, to sever her connection wholly with the reserve and the Indian mode of life, and the purpose of this section was to enable us to commute her financial interests. The words 'with the consent of the band' have in many cases been effectual in preventing this severance as some bands are selfishly interested in preventing the expenditure of their funds. The refusal to consent is only actuated by stupidity because the funds are not really in any way impaired. The amendment makes in the same direction as the proposed Enfranchisement Clauses, that is it takes away the power from unprogressive bands of preventing their members from advancing to full citizenship." [reference to notes of the Session, S.C. 1919-20, c. 50, 2 "14"]

The following from the United Native Nations presentation to Standing Committee on Bill C-31, March 19, 1985, evening session, read into the record by Bill Lightbown, UNN President:

In 1918, D.C. Scott, Superintendent-General of Indian Affairs, reported only 65 families had enfranchised between Confederation and 1918. He felt this number inadequate, blaming some of the requirements imposed by the Indian Act for the failure to achieve more.

These requirements were described to the House of Commons by Prime Minister Meighen in his introduction of an amendment to simplify the procedure of enfranchisement:

"The Indian must not only be willing to surrender his interests and receive his share of the capital funds, but he must make application to be enfranchised; he must have ceased to follow the Indian mode of life, and, most important of all, he must satisfy the Superintendent-General that he is self supporting and fit to be enfranchised.

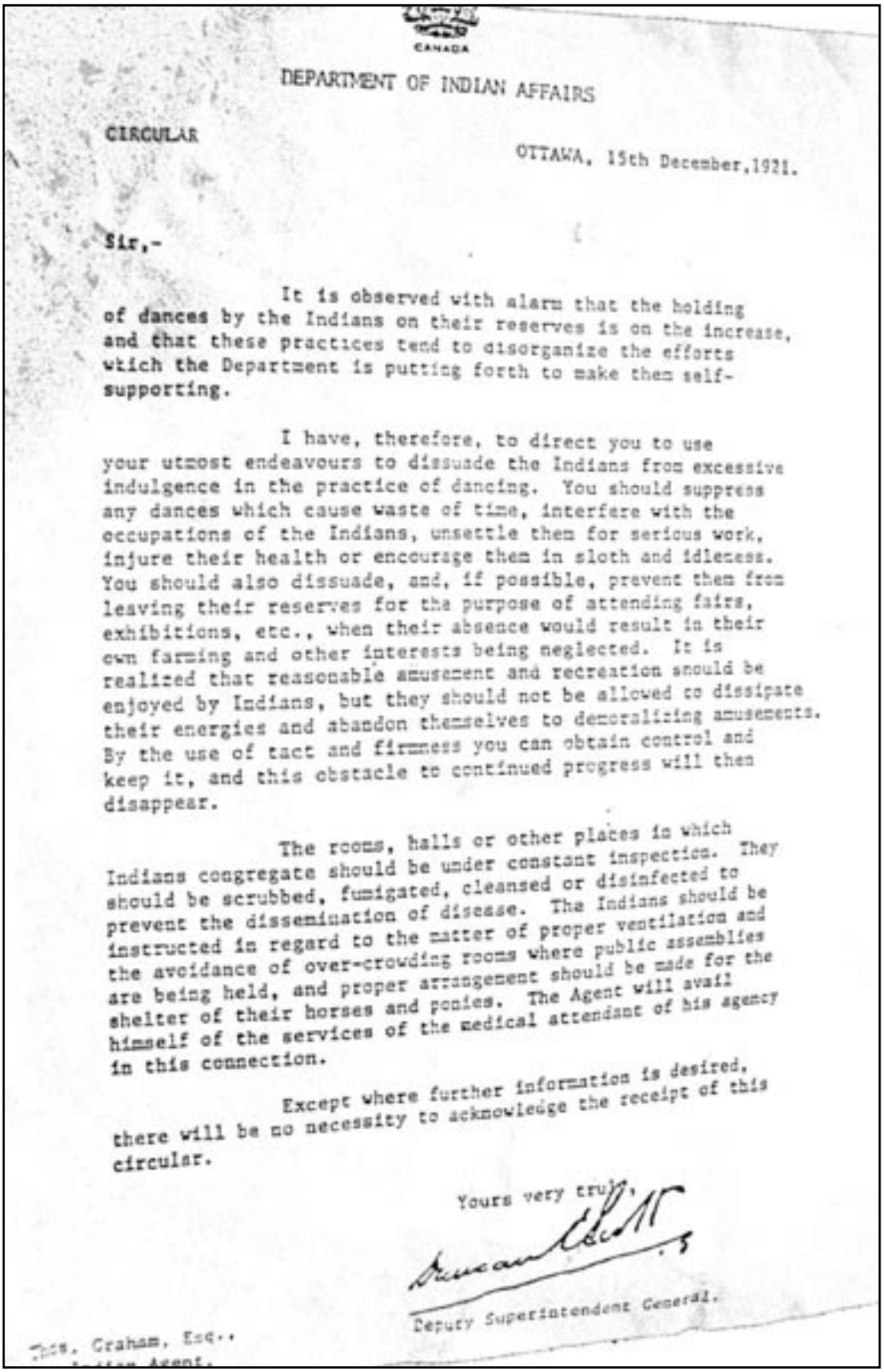
"Similar provision was made in the Act heretofore: but it was hedged around by the restraint: that before an Indian could have the privilege of enfranchisement, he had to be a landed Indian: to be in possession of a share of the landed estate of the band… This provision is to remove that restraint."

Fear of carving up or losing their reserves altogether had led many bands to refuse their consent to enfranchisement. This obstacle was a major factor in the introduction of compulsory enfranchisement two years later. The proposed amendment became S. 122(a) with the amendment Bill of 1918.

At that time, MacKenzie King read into the record the statement of the Allied Tribes put before the Special Committee, expressing concern that compulsory enfranchisement would break up tribes and their reserves and prevent them from pursuing their Aboriginal Rights Claims, and "…forcibly separate from the Tribes by enfranchisement any Indian who takes an independent stand or is active against the autocratic decrees of the Indian Department or its agents."

Scott confided as much in a memorandum to Meighen:
"It would also check the intrigues of smart Indians on the reserves, who are forming organizations to foster these aboriginal feelings, and to thwart the efforts and policy of the Department."
He gave Mr. F.O. Lofts of the Six Nations as an example: "Such a man should be enfranchised."

1921 DIA circular re. “Indian Dances”



CANADA

DEPARTMENT OF INDIAN AFFAIRS

CIRCULAR

OTTAWA, 15th December, 1921.

Sir,-

It is observed with alarm that the holding of dances by the Indians on their reserves is on the increase, and that these practices tend to disorganize the efforts which the Department is putting forth to make them self-supporting.

I have, therefore, to direct you to use your utmost endeavours to dissuade the Indians from excessive indulgence in the practice of dancing. You should suppress any dances which cause waste of time, interfere with the occupations of the Indians, unsettle them for serious work, injure their health or encourage them in sloth and idleness. You should also dissuade, and, if possible, prevent them from leaving their reserves for the purpose of attending fairs, exhibitions, etc., when their absence would result in their own farming and other interests being neglected. It is realized that reasonable amusement and recreation should be enjoyed by Indians, but they should not be allowed to dissipate their energies and abandon themselves to demoralizing amusements. By the use of tact and firmness you can obtain control and keep it, and this obstacle to continued progress will then disappear.

The rooms, halls or other places in which Indians congregate should be under constant inspection. They should be scrubbed, fumigated, cleansed or disinfected to prevent the dissemination of disease. The Indians should be instructed in regard to the matter of proper ventilation and the avoidance of over-crowding rooms where public assemblies are being held, and proper arrangement should be made for the shelter of their horses and ponies. The Agent will avail himself of the services of the medical attendant of his agency in this connection.

Except where further information is desired, there will be no necessity to acknowledge the receipt of this circular.

Yours very truly,

Duncan C. Scott

Deputy Superintendent General.

Thos. Graham, Esq.,

“The department is confronted with serious problems in the slow process of weaning the Indian from his primitive state…
It may seem arbitrary on our part to interfere with the native culture.
The position of our department, however, can be readily understood:
Indians will spend a fortnight preparing for a Sundance, another fortnight engaging in it, and another fortnight to get over it.
Obviously, this plays havoc with summer ploughing.”
- Report by D.C. Scott, 1931

From Kathleen Jamieson, “Indian Women and the Law in Canada,” 1978, referencing “The Rebirth of Canada’s Indians,” by Harold Cardinal, 1977.

1927

An Act to amend the Indian Act

April

In concert with this *Indian Act* Amendment, the much-anticipated Report of the Committee on the Claims of the Allied Indian Tribes of British Columbia was released.

The suspension of access to justice, by prohibition of lawyers working for Indians, was a response to the *Claims* - which were denied.

The Governor will provide day schools, industrial and boarding schools.

School attendance compulsory, fines and/or imprisonment to parents who prevent attendance.

Superintendent-General may cause children age sixteen to eighteen to remain at schools.

Regulations to prohibit and control the buying of wild game, fur or animal parts from Indians.

2. *(e)* "Indian lands" means any reserve or portion of a reserve which **has been surrendered** to the Crown;
(j) "reserve" means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, and which remains so set apart and **has not been surrendered** to the Crown, and includes all the trees, wood, timber, soil, stone, minerals, metals and other valuables thereon or therein ;

9. The Governor may establish
(a) **day schools** in any Indian reserve for the children of the res.;
(*b)* industrial or **boarding schools** for the Indian children of any reserve

9. 4.) The Superintendent General shall have power to make regulations prescribing a standard for the buildings, equipment, teaching and discipline of and in all schools, and for the inspection of such schools.
5.) The chief and council of any band that has children in a school shall have the right to inspect such school at such reasonable times as may be agreed upon by the Indian agent and the principal of the school.

10. 1) **Every Indian child between the full ages of seven and sixteen years who is physically able shall attend** such day, industrial or boarding school as may be designated by the Superintendent General for the full periods during which such school is open each year; provided that where it has been made to appear to the satisfaction of the Superintendent General that it would be detrimental to any particular Indian child to have it discharged from school on attaining the full age of sixteen years, the Superintendent General may direct that such **child be detained at school** for such further period as may seem to be advisable, but not beyond the full age of eighteen years, and in such case the provisions of this section with respect to truancy shall apply to such child and its parents, guardians or persons with whom such child resides during such further period of school attendance.

4.) Any **parent,** guardian or person with whom an Indian child is residing **who fails to cause such child to attend school** as required by this section after having received three days' notice shall, on the complaint of the truant officer, be liable on **summary conviction** before a justice of the peace or Indian agent to a **fine** of not more than two dollars and costs, or **imprisonment** for a period not exceeding ten days or both, and **such child may be arrested** without a warrant and conveyed to school by the truant officer.

42 A. 1) The Governor in Council may make **regulations to prohibit and control the buying** or otherwise acquiring from any Indian, non-treaty Indian or band or irregular band of Indians any wild animal or the skin or other part of such

Fines up to $500 for purchase of wild game from Indians, imprisonment up to six months, or both.

No DIA official or employee shall trade or barter goods with Indians.

No person shall trade or barter goods with Indians.

Companies with provincial licenses may take up reserve land for road, rail, or utility.

Superintendent General shall choose arbitrator and represent Indian band in dispute over compensation.

Surface rights on reserves for mining may be surrundered by Superintendent without band consent.

Indians may be removed from reserves adjoining towns.

animal. Without restricting the generality of the foregoing the regulations may prescribe:—
(a) that the Superintendent General or Agent acting on his behalf may issue permits to buy or otherwise acquire any wild animal or parts thereof as aforesaid and may fix the terms upon which such permits may be issued;
(b) that a fine not exceeding **five hundred dollars** or imprisonment for a term not exceeding **six months** or both fine and imprisonment may be imposed for any violation of such regulations.

44. No official or employee connected with the inside or outside service of the Department, and no missionary in the employ of any religious denomination, or otherwise employed in mission work among Indians, and no school teacher on an Indian reserve, shall, without the special license in writing of the Superintendent General, **trade with any Indian, or sell to him directly or indirectly, any goods or supplies, cattle or other animals**.

45. No person shall barter directly or indirectly with any Indian on a reserve in the province of Manitoba, Saskatchewan or Alberta, or the Territories, or sell to any such Indian any goods or supplies, cattle or other animals without the special license in writing of the Superintendent General.

48. No portion of any reserve shall be taken for the purpose of any **railway, road, public work,** or work designed for any public utility without the consent of the Governor in Council, **but any company or municipal or local authority having statutory power, either Dominion or provincial**, **for taking or using lands** or any interest in lands without the consent of the owner may, with the consent of the Governor in Council as aforesaid, and subject to the terms and conditions imposed by such consent, **exercise such statutory power with respect to any reserve or portion of a reserve.**
(2.) In any such case compensation shall be made for to the Indians of the band…
(3.) The Superintendent General shall, in any case in which an arbitration is had, **name the arbitrator on behalf of the Indians,** and shall act for them in any matter relating to the settlement of compensation.
(4.) The amount awarded in any case shall be paid to the Minister of Finance for the use of the band...

50. (2.) The Governor in Council may make regulations enabling the Superintendent General **without surrender** to issue leases for **surface rights on Indian reserve**,

52. In the case of **an Indian reserve which adjoins** or is situated wholly or partly within an incorporated **town or city** having a population of not less than eight thousand, and which reserve has not been released or surrendered by the Indians, the Governor in Council may, upon the recommendation of the Superintendent General, refer to the judge of the **Exchequer Court of Canada for inquiry** and report the question as to whether it is expedient, having regard to the interest of the public and of the Indians of the band for whose use the reserve is held, that **the Indians should be removed from the reserve** or any part of it.

Location ticket lands on reserve may be seized by local municipalities for taxes.

Location ticket lands on reserve may be seized by local municipalities for taxes.

Provincial hunting laws apply to Indians with same force as if included in the Indian Act.

No Indian band member, council, or chief may make fiscal contract.

Governor may reduce purchase or lease price on Indian land after sale or lease.

Governor may take over powers of Council to authorize costs and capital projects on reserve.

Governor may lease uncultivated reserve land without surrender.

61. Whenever the proper municipal officer having, by the law of the province in which the land affected is situate, authority to make or execute deeds or **conveyances of lands sold for taxes**, makes or executes any deed or conveyance purporting to grant or convey Indian lands which have been sold **or located**, but not patented, or the interest therein of the locatee or purchaser from the Crown, and such deed or conveyance recites or purports to be based upon a sale of such lands or such interest for taxes, the Superintendent General may approve of such deed or conveyance, and act upon and treat it as a **valid transfer of all the right and interest of the original locatee** or purchaser from the Crown, and of every person claiming under him in or to such land to the grantee named in such deed or conveyance.

69. 3*(a)* **Indians in such parts of such provinces** and Territories as to him seems expedient, **that laws** either in the same terms as, or in like terms to, or in other terms than, those in force in such provinces and territories, **with relation to game** in general or to specific game, **shall apply**, upon publication thereof in the *Canada Gazette,* **with the same force as if enacted in this Act, to such Indians as such regulations shall prescribe** ;

90. (2.) **No contract or agreement binding** or purporting to bind, or in any way dealing with the moneys or securities referred to in this section, or with any moneys appropriated by Parliament for the benefit of Indians, **made either by the chiefs or councillors** of any band of Indians or by the members of the said band, other than and except as authorized by and for the purposes of this part shall be valid ...until it has been approved in writing by the Superintendent General. R.S.V c. 81, s. 87; 1910, c. 28, s. 2.

91. The Governor in Council may **reduce the purchase money** due or to become due on sales of Indian lands, or reduce or remit the interest on such purchase money, or reduce the rent at which Indian lands have been leased, when he considers the same excessive.

93. (2.) In the event of a **band refusing to consent to the expenditure** of such capital moneys as the Superintendent General may consider advisable for any of the purposes mentioned in subsection one of this section, and it appearing to the Superintendent General that such refusal is detrimental to the progress or welfare of the band, **the Governor in Council may, without the consent of the band, authorize and direct the expenditure** of such capital for such of the said purposes as may be considered reasonable and proper.
(3.) Whenever **any land in a reserve** whether held in common or by an individual Indian is **uncultivated** and the band or individual is unable or neglects to cultivate the same, the Superintendent General, notwithstanding anything in this Act to the contrary, may, **without a surrender, grant a lease of such lands for agricultural or grazing** purposes for the benefit of the band or individual,…

94. (A.) The Superintendent General may **operate farms** on a Reserve employing such persons as may be considered necessary, for the purpose of instructing the

Superintendent may operate farms on reserve.

Indians in farming and for the supply of pure seed to Indian farmers and may from time to time apply any profits arising therefrom in the extension of such operations or in making loans to Indians to enable them to engage in farming or other operations or apply such proceeds in any other way for their progress and development.

Loans may be extended to Indian bands.

(B) For the purpose of granting **loans to Indian Bands**, groups of Indians, or individual Indians …the Minister of Finance may, from time to time, authorize the advance to the Superintendent General **of** Indian Affairs out of the Consolidated Revenue Fund of Canada … to Indians… for the purchase of farm implements, machinery, live stock, fishing and other equipment, seed grain and materials to be used in native handicrafts and to expend loan money for the carrying out of co-operative projects on behalf of the Indians. …

Superintendent may regulate operation of pool halls, dance rooms, and "places of amusement" on reserve.

95. The Superintendent General may
(g) make regulations governing the operation of **pool rooms, dance halls** and other places of amusement **on Indian Reserves**.

The Indian Agent will advise a band council, and organize, oversee, record, regulate, adjourn, and report all proceedings of a band council.

99. A. (1) At meetings of the council **the agent for the reserve, or** his deputy appointed for the purpose with the consent of the Superintendent General, shall
(a) preside, and record the proceedings;
(b) control and regulate all matters of procedure and form, and adjourn the meeting to a time named or *sine die;*
(c) report and certify all by-laws and other acts and proceedings of the council to the Superintendent General;
(d) address the council and explain and advise the members thereof upon their powers and duties.

Any lawyer who obtains payment of any kind from an Indian for the purpose of prosecuting a claim of the Indian or band is guilty of an offence and liable on summary conviction to a fine of $200 or imprisonment.

141. Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from any Indian payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the **prosecution of any claim which the tribe or band of Indians** to which such Indian belongs, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of said tribe or band, shall be **guilty of an offence and liable upon summary conviction** for each such offense to a penalty not exceeding **two hundred dollars** and not less than fifty dollars or to **imprisonment** for any term not exceeding two months.

1951

The Indian Act 1951

June 20

The DIA was moved under the Department of Citizenship and Immigration.

"Indians" were no longer defined under the *Act* as "a person of Indian blood," but, "a person who is registered as an Indian."

This Act introduced the Indian Register.

This was the first time that changes to the Act were undertaken after consultations - with Indigenous organizations - but mostly DIA administrators, non-native interest groups, and government.

The Special Joint Committee held hearings through 1946. The Native Brotherhood of BC participated, and Guy Williams testified that, "the Indian is a displaced person. He is not free… he is segregated." NBBC launched *The Native Voice* newspaper to promote their proposals.

The Committee recommended, "with few exceptions, all sections of the Act be either repealed, or amended."

Instead, the 1951 Indian Act was expanded - only prohibitions on hiring lawyers were lifted.

An Indian is defined by registration under the Act.

First ever definition of Indian monies

The Minister of Citizenship and Immigration is the Superintendent General.

Indians are either members of a band or are registered without a band on a General List.

Who can be registered.

2. (1)(g) [an Indian is] "**a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian".**

(h) "**Indian moneys"** means all moneys collected, received or held by His Majesty for the use and benefit of Indians or bands;

3. (1) This Act shall be administered by the **Minister of Citizenship and Immigration, who shall be the superintendent general of Indian affairs.**

6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the **Band General 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**.

11. Subject to section twelve, a **person** is **entitled to be registered** if that person
(a) on the twenty-sixth day of May, eighteen hundred and seventy-four, was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, chapter forty-two of the statues of 1868, as amended by section six of chapter six of the statutes of 1869, and section eight of the chapter twenty-one of the statutes of 1874, considered to be entitled to hold, use or enjoy the lands and

Entitlement to Indian Status is exhaustively prescribed.

other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;
(b) is a member of a band
(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b);
(d) is the legitimate child of
(i) a male person described in paragraph (a) or (b), or
(ii) a person described in paragraph (c);
(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d), unless the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered; or
(f) is the wife or widow of a person who is entitled to be registered by paragraph (a), (b), (c), (d) or (e).

The Indian Register keeps the names of every person entitled to be registered as an Indian.

The Registrar may add or delete names.

12. (1) The following persons are not entitled to be registered,
(a) a person who
(i) has received or has been allotted half-breed lands or money scrip,
(ii) is a descendant of a person described in sub-paragraph (i),
(iii) is enfranchised, or
(iv) is a person born of a marriage entered into after the coming into force of this Act and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph (a), (b), (d), or entitled to be registered by virtue of paragraph (e) of section eleven, unless being a woman, that person is the wife or widow of a person described in section eleven, and *(b)* a woman who is married to a person not an Indian.

Location tickets for land on reserves become "Certificates of Possession"

The Minister may decide the terms and types of use and occupancy of lands held under Certificate of Possession.

5. An **Indian Register** shall be maintained in the Department

7. (1) The Registrar may at any time add to or delete from a Band List or a General List any person...

20. (3) any person who, on the 4th September, 1951, held a valid and subsisting **location ticket** ...shall be deemed to hold a **Certificate of Possession** with respect thereto.
(4) Where possession of land in a reserve has been allotted to an Indian by the council of the band, the Minister may, in his discretion, withhold his approval and may authorize the Indian to occupy the land temporarily and **may prescribe the conditions as to use and settlement** that are to be fulfilled by the Indian before the Minister approves of the allotment.

51. All jurisdiction and authority in relation to the property of **mentally incompetent Indians** is vested exclusively in the Minister.
(k) "**mentally incompetent Indian**" means an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally incompetent persons;

"Mentally incompetent Indian" defined by provinces.

The Minister may take control of and dispose of that living person's properties.

87. Subject to the terms of any treaty and any other Act of the Parliament of Canada, **all laws of general application** from time to time in force **in any province are applicable to and in respect of Indians** in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.

Provincial laws of general application apply to Indians and on Indian reserves.

1970

The Indian Act 1970

This *Act* advanced the goals of the 1969 White Paper.
Mechanisms were streamlined for:
- lands to be removed from reserves as fee simple lots;
- bands to take out loans;
- the Minister to compel development on-reserve to repay loans;
- votes to surrender reserves;
- provincial laws, courts, and police to have jurisdiction;
and
- the corporate character of bands and band powers.

This is the most current statute which is titled "The Indian Act..." and not, "An Act to amend."

An Indian is a person entitled to be registered as an Indian

Eskimos excluded

Indians who are not members of an Indian Band are registered on a General List

2. (1) "Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;
"member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List;
"reserve" means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;
"surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in Her Majesty, that has been released or surrendered by the band for whose use and benefit it was set apart.

3. (1) This Act shall be administered by the **Minister of Indian Affairs and Northern Development,** who shall be the superintendent general of Indian affairs.

4. (1) A reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as **Eskimos**.

6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the **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.**

8. The band lists in existence in the Department on the 4th day of September 1951 shall constitute the Indian Register,

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 a Band List or a General List… [the band or person 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.**
(4) …the decision of the judge is final and conclusive.

18. (2) The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian burial grounds, Indian health projects or, with the consent of the council of the band, for **any other purpose** for the general welfare of the band, and may take any lands in a reserve required for such purposes

19. The Minister may… *(b)* divide the whole or any portion of a reserve into lots or subdivisions,
(c) determine the location and direct the construction of roads in a reserve.

Procedure for contesting the removal of a name from the Indian Register.

Lawful removal of an Indian from his reserve and compensation.

Transfer of the removed Indian's properties

Minister may authorize any person to live on a reserve

The Crown may take or use land in a reserve without the consent of the Band.

Terms of Indian surrender

23. An **Indian who is lawfully removed from lands** in a reserve upon which he has made permanent improvements may, if the Minister so directs, be paid compensation… in an amount to be determined by the Minister, either from the person who goes into possession or from the funds of the band, at the discretion of the Minister.

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 member of the band the right to possession of any lands in the reserve of which he was lawfully in possession.
(2) Where an Indian does not dispose of his right of possession in accordance with ss.(1), the right to possession of the land **reverts to the band**,…

28. (2) The **Minister may authorize any person** for a period not exceeding one year, or with the consent of the council of the band for any longer period, **to occupy or use** a reserve or to reside or otherwise **exercise rights on a reserve**.

35. (1) Where by an Act of the Parliament of Canada or a provincial legislature, Her Majesty in right of **a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest therein without the consent of the owner,** the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands **in a reserve** or any interest therein.
(3) …the **Governor in Council may**, in lieu of the province, authority or corporation taking or using the lands **without the consent of the owner, authorize a transfer or grant of such lands**…

37. Except where **this Act otherwise provides**, lands in a reserve shall not be sold, alienated, leased or otherwise disposed of until **they have been surrendered to Her Majesty by the band** for whose use and benefit in common the reserve was set apart.

39. (1) A surrender is void unless
(2) Where **a majority of the electors of a band did not vote** at a meeting or referendum called pursuant to ss. (1) of this section or pursuant to section 51 of the *Indian Act,* 1927, the Minister may, if the proposed surrender was assented to by **a majority of the electors who did vote**, call another meeting by giving thirty days notice thereof or another referendum as provided in the regulations.
(3) Where a meeting is called pursuant to subsection (2) and the proposed surrender is assented to at the meeting or referendum by **a majority of the electors voting**, **the surrender shall be deemed to have been assented to by a majority of the electors of the band**.
(4) The **Minister may**, at the request of the council of the band or whenever he considers it advisable, **order that a vote** at any meeting under this section **shall be by secret ballot**.
(5) **Every meeting** shall be held in **the presence of the superintendent** or some **other officer of the Department**...

Surrender of reserve land to the crown

41. A **surrender** shall be deemed to **confer all rights** that are necessary **to enable Her Majesty** to carry out the terms of the surrender.

Proncial courts empowered to handle wills and conveyancing on reserve

44. (1) The court that would have **jurisdiction if the deceased were not an Indian may**, with the consent of the Minister, **exercise the jurisdiction and authority** conferred upon the Minister by this Act in relation to testamentary matters and causes and any other powers, jurisdiction and authority **ordinarily vested in that court**.

Widows may not inherit on reserve from a deceased husband - property on reserves is not "personal property"

48. (12) **No widow is entitled** to dower in the land of her **deceased husband dying intestate** …and **there is no community of real or personal property situated on a reserve**.

Minister controls properties of Indians deemed mentally incompetent

51. (2) the Minister may (b) order that any property of a mentally incompetent Indian shall be sold, leased, alienated, mortgaged, disposed of or otherwise dealt with…

The Minister manages surrendered lands for the benefit of the band

53. (1) The Minister or a person appointed by him for the purpose **may manage, sell, lease or otherwise dispose of surrendered lands** in accordance with this Act and the terms of the surrender.

Residence on reserve required to vote for Council

58. (4) Notwithstanding anything in this Act, **the Minister may, without a surrender**
(a) dispose of wild grass or dead or fallen timber, and
(б) with the consent of the council of the band, dispose of sand, gravel, clay and other non-metallic substances upon or under lands in a reserve, or, where such consent cannot be obtained without undue **difficulty or delay, may issue** temporary permits for the taking of sand, gravel, clay and other non-metallic substances upon or under lands in a reserve…

Powers of the Council

74. (1) Whenever he deems it advisable for the good government 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.**

76. (1) The Governor in Council may make **orders and regulations** with respect to band elections … with respect to
(a) meetings to nominate candidates;
(б) the appointment and duties of electoral officers;
(c) the manner in which voting shall be carried out;
***(d)* election appeals; and**
***(e)* the definition of residence for the purpose of determining the eligibility of voters.**

77. (1) A 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.

POWERS OF THE COUNCIL extended:
81. The council of a band may make **bylaws** not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for…
(b) the regulation of traffic;
(*k*) the regulation of bee-keeping

and poultry raising ;
(*l*) the construction and regulation of the use of public wells, cisterns, reservoirs and **water supplies;**

Band Councils empowered to make bylaws for hunting and fishing

(m) the control and prohibition of public **games, sports, races, athletic contests** and other amusements;
(o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;

Governor may allow an "advanced" Council to manage some its own affairs

83. (1) ...where the Governor in Council declares that a band has reached an advanced stage of development, the council of the band may, subject to the approval of the Minister, make by-laws for any or all of the following purposes, namely

Intoxicants legalized for Indians off reserve, or on-reserve if Band so declares

(a) the raising of **money** by
(i) the assessment and **taxation** of interests in land in the reserve of persons lawfully in possession thereof, and
(ii) the **licensing** of businesses, callings, trades and occupations;
(b) the appropriation and expenditure of moneys of the band to defray **band expenses;**
(c) the appointment of officials to conduct the **business of the council,** prescribing their duties and providing for their remuneration out of any moneys raised pursuant to paragraph (a);
(d) **the payment of remuneration,** in such amount as maybe approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a);

Evidence provided by unverified absentee witnesses may be used to prosecute offenses under this Act

(e) **the imposition of a penalty for nonpayment of taxes** imposed pursuant to this section, recoverable on summary conviction, not exceeding the amount of the tax;
(f) the raising of money from band members to support **band projects**

90. (2) Every **transaction purporting to pass title to any property** that is by this section deemed to be situated **on a reserve,** or any interest in such property, **is void unless** the transaction is entered into **with the consent of the Minister** or is entered into between members of a band or between the band and a member thereof.

96. (3) No offence is committed… if intoxicants are sold to or had in possession by an Indian in accordance with the law of the province where the sale takes place or the possession is had.

97. A person who is found
(a) **with intoxicants** in possession, *or (b)* intoxicated,
on a reserve, is guilty of an offence and is liable on summary conviction to a fine of not less than **ten dollars and not more than fifty dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.**

98. (1) only **if a proclamation** declaring it to be in force in the reserve, is issued by the Governor in Council.
(2) No offence is committed if intoxicants are had in possession by any person **in accordance with the law of the province** where the possession is had.

101. In every prosecution under this Act a certificate of analysis furnished by an analyst employed by the Government of Canada or by a province shall be accepted as **evidence of the facts** stated therein and of the authority of the person giving or issuing the certificate, **without proof** of the signature of

the person appearing to have signed the certificate **or his official character**, and without further proof thereof**.**

Minimum sentencing for offenses not otherwise specified is a fine of $200 or less, or up to three months in prison, or both.

102. Every person who is guilty of an offence against any provision of this Act or any regulation made by the Governor in Council or the Minister for which a penalty is not provided elsewhere in this Act or the regulations, **is liable on summary conviction to a fine** not exceeding **two hundred dollars or to imprisonment** for a term not exceeding **three months**, or to **both.**

Seizure of goods and chattels by Indian Agent or other deputee.

103. (1) Whenever a peace officer or a superintendent or a person authorized by the Minister believes on **reasonable grounds that an offence** against section 33, 90, 93, 94, 95 or 97 **has been committed, he may seize all goods and chattels** by means of or in relation to which he reasonably believes the offence was committed.

Provincial police magistrate empowered to enforce Indian Act.

106. A police magistrate or a stipendiary magistrate has and may exercise, with respect to matters arising under this Act, jurisdiction over the whole county, union of counties or judicial district in which the city, town or other place for which he is appointed or in which he has jurisdiction under provincial laws is situated.

Lands of enfranchised person cease to be Indian reserve lands.

111. (2) When an order of **enfranchisement** issues or has issued, the Governor in Council may, with the consent of the council of the band, by order declare that any lands within a reserve of which the enfranchised Indian had formerly been in lawful possession shall **cease to be Indian reserve lands**.

Penalties increased for parents who do not send a child to school.

115. The Minister may
(c) enter into **agreements with religious organizations** for the support and maintenance of children who are being educated **in schools operated by those organizations;**

119. (1) …a truant officer has the powers of a peace officer.

(2) Without restricting the generality of ss. 1, a truant officer may
(a) **enter any place where he believes,** on reasonable grounds, that **there are Indian children** who are between the ages of seven and sixteen years of age, or **who are required by the Minister to attend school;**
(b) **investigate** any case of truancy;
(c) **serve written notice upon the parent,** guardian or other person having the care or legal custody of a child to cause the child to attend school regularly thereafter.

(3) Where a notice has been served in accordance with para. (2)(c) with respect to a child who is required by this Act to attend school, and **the child does not within three days after the service of notice attend school** and continue to attend school regularly thereafter, the person upon whom the notice was served is **guilty of an offence** and is liable on summary conviction to a fine of not more than **five dollars or to imprisonment for a term not exceeding ten days, or to both.**

(6) A truant officer may take into custody a child whom he believes on reasonable grounds to be absent from school contrary to this Act and may convey the child to school, **using as much force as**

the circumstances require.

Use of force authorized to convey an Indian child to school.

120. An Indian child who is **expelled or suspended** from school, or refuses or fails to attend school regularly, shall be deemed to be a **juvenile delinquent** within the meaning of the *Juvenile Delinquent Act.*

Children detained as delinquents for expulsion from school.

124. Where, **prior to** the 4th day of **September 1951, a reserve** or portion of a reserve was **released or surrendered …** pursuant to the provisions of the statutes relating to the release or surrender of reserves in force at the time of the release or surrender, and

This version of the Act brings previous sales of Indian reserve lands into compliance by force of the legislation.

(a) **prior to that date Letters Patent** under the Great Seal were issued purporting **to grant a reserve** or portion of a reserve so released or surrendered, or any interest therein, **to any person,** and the Letters Patent have not been declared void or inoperative by any Court of competent jurisdiction, or

(b) **prior to that date a reserve or portion of a reserve so released or surrendered,** or any interest therein, was sold or agreed to be sold by the Crown to any person, and the sale or agreement for sale has not been cancelled or by any Court of competent jurisdiction declared void or inoperative,

the Letters Patent or the sale or agreement for sale, shall be deemed to have been issued or made at the date thereof under the direction of the Governor in Council.

1971 - 2025 Amendments,

major litigation, Commissions, international observers, and "alternative" legislation

to date

Over the last 55 years, the *Indian Act* has not seen a new version.

It is still the active law regulating and administering "Indians and lands reserved for Indians," while most "Indian Bands'' are now called First Nations, and "Indians" called Aboriginal peoples of Canada.

Alarms were raised by British Parliamentarians in 1982, at the time of Canada's new *Constitution Act* - the first since 1867.

They recommended an Aboriginal Rights Commission as a condition of the *Canada Bill*, to review what they called the "disaster" of the *Indian Act*.

Major amendments to entitlement to Indian Status were made in 1985; entitlements to vote in Band elections in 1999; on-reserve marital property rights in 2013; - all as a result of individual Indian plaintiffs suing for human rights in Canadian and international courts.

1970
The Queen v. Joseph Drybones

Section 94(b) of the *Indian Act* 1952, made it an offence for an Indian to be intoxicated off a reserve.

Mr. Drybones was convicted of this offence in the Northwest Territories. There is no Indian reserve in the Northwest Territories. The law was such that Mr. Drybones would not have been guilty of the offence if he had not been an Indian.

Did the law offend the Bill of Rights? *Yes.* The court made a ruling which came to be known as the *Drybones principle,* which is:
"since section 94(b) of the Indian Act is a law of Canada, and does infringe on a fundamental freedom of the accused and is not declared by the Parliament of Canada to be operative *in spite of* the Canadian Bill of Rights, it must be considered suspended in so far as it is incompatible with the terms of the Canadian Bill of Rights."

The 1970 Indian Act had decriminalized intoxication for Indians, off a reserve, providing for provincial laws to regulate that activity. It also provided for an Indian band to hold a vote to allow intoxication on their reserve.

1970 Royal Commission on the Status of Women.

Recommendation 106: "that the Indian Act be amended to allow an Indian woman upon marriage to a non-Indian to
(a) retain her Indian status, and
(b) transmit her Indian status to her children."

1971 Native Council of Canada (NCC) established to represent the interests of Métis and Non-Status Indians: about 750,000 people who had been removed from the Indian Register.

The NCC was a Canada-wide organization made up of the provincial and territorial organizations that had formed largely in response to the 1969 White Paper Policy.

1971 *Lavell v The Registrar*

In 1970, Jeanette Corbiere Lavell had lost her Indian Status because she married a non-native man. She appealed the Registrar's decision at Federal Court – with written support from the chief and council of her Indian Band, Wikwemikong – but the Registrar's decision was upheld.

Lavell went back to court, and in 1972, the Federal Court of Appeal ruled that section 12(1)b of the

Indian Act was discriminatory, because it made women, but not men, lose status by marriage.

Yvonne Bedard won an appeal on the same basis of Lavell's 1972 victory. The Attorney General of Canada, along with the Department of Indian Affairs, appealed both Lavell and Bedard's decisions to the Supreme Court of Canada. The decisions in favour of their equality – of reinstating their Indian Status – were overturned in 1974 by the Supreme Court of Canada.

1972-73
The automatic loss of Indian Status for Native women who married non-status men was inoperative since the 1971 ruling in *Lavell*, because it was found to offend the Bill of Rights equality provisions.

It was Lavell's position that Parliament, in defining Indian status so as to exclude women of Indian birth who have married non-Indians, enacted a law which cannot be sensibly construed without abrogating or infringing the rights of women before the law.

1974 *Attorney-General of Canada v. Lavell*

In a five-to-four decision, the government's appeal was allowed and section 12(1)(b) of the Indian Act was upheld, denying Indian Status to women who have married non-Indians.

Mrs. Lavell and Ms. Bedard's Indian Status was taken away again.
The judge remarked,

"The Canadian Bill of Rights does not have the effect of making s.12 of the *Indian Act* inoperative. The Bill of Rights does not affect the Crown's legislative authority with regard to Indians.

"… Accepting argument that the Bill of Rights rendered the provision inoperative would mean that the whole Indian Act should be declared inoperative because it establishes different statuses for people living in Canada based on their race (Indian or non-Indian). It was never the intention of the Bill of Rights to suppress all federal legislation concerning Indians."

A dissenting judge, however, gave the opinion that Section 12(1)b of the Indian Act effected "statutory excommunication or statutory banishment of Indian women and their children," from their homes.

Section 12(1)b of the *Indian Act* effected "statutory excommunication or statutory banishment of Indian women and their children," from their homes.

1975 *Lovelace v. Canada*.

Following the Supreme Court of Canada's dismissal of the *Lavell* case, Sandra Lovelace, a Maliseet person who lost her Indian Status upon marriage to a non-Aboriginal man, challenged the marrying out provision of the *Indian Act* under Article 27 of the International Convention on Civil and Political Rights, UN 1966. The Committee accepted her Petition, although Canada was not yet a signatory to the ICCPR and had not been at the time of Lovelace's loss of Status.

1975 Barber Commission - comments at the meeting of the Native Council of Canada.

"Indian claims commissioner Dr. Lloyd Barber startled and delighted delegates to the annual meeting of the Native Council of Canada on Tuesday when he told them he believes Metis and non-status Indians possess aboriginal and land rights.

"'And I will do everything in my power to see that they are recognized,' Barber told the Council, the national organization for an estimated 750,000 Metis and non-status Indians."
From "Commissioner lauded," Daily Colonist, Victoria, BC, June 11, 1975. Canadian Press

Barber's statement that aboriginal and land rights of Metis and non-status Indians "are well established in Canadian law" was the first time anyone with authority in Ottawa had backed Native people outside the *Indian Act.*

1976, May 19, Canada acceded to the United Nations
International Covenant on Civil and Political Rights (ICCPR)

Article 1). All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

1977 *Canadian Human Rights Act* This legislation provides the basis for appeal from denial of universal human rights.

Section 67 excludes the operation of the *Indian Act* from its application.

August 1978 "*Indian Act Discrimination Against Sex*" was prepared for the Department of Indian Affairs and Northern Development (DIAND). It proposed the critera for Indian Status to be that a person must have one parent with two Status Indian parents.

1980 DIA Minister announces change to 12(1)(b)

"Due to mounting pressure to amend the ***Indian Act***, and despite an inability to gain consensus on what amendments should be made, Minister of Indian Affairs John Munro announced on July 24, 1980, that he was going to use a provision of the *Indian Act* to suspend the effect of s. 12(1)(b) when requested to do so by Band Councils, pending further legislative amendments. Section 4(2) of the *Indian Act* then in force allowed the Governor in Council to declare, by proclamation, that any portion of the *Indian Act* did not apply to any Indians or group or band of Indians. *Press Release, "Government Ready to Lift Discrimination," July 24, 1980*.

1981 Canada census - discrepancies reveal two million missing Native people

The Native Council of Canada and its member organizations marshalled their approach to the impending constitutional process.

Since Non-Status Indians had no representation with the National Indian Brotherhood (now the AFN) and no formal recognition by Ottawa, they had formed their own organizations to advocate for the restoration of Indian Status and, most importantly, the restoration and recognition of Indigenous Peoples' rights to their own land and governance – which would bring the question of status and membership back to the Peoples themselves.

As part of their work to identify and represent themselves, a major review of population surveys was commissioned by NCC in 1983. The Government of Canada's 1981 Census had reported unbelievably low numbers for Metis and Non-Status Indians. They compared the census report with numbers from other sources:

1981 Canada Census:
292,700 Status Indians;
75,110 Non-Status Indians; and
98,260 Metis.
DIAND 1982:
324,376 Status Indians
(no information for Non-Status and Metis)
Canada Mortgage and Housing Corporation 1972:
3,000,000 Native people (Status, Non-Status, Inuit, and Metis)
Secretary of State 1977:
22,170 Inuit;
295,898 Status Indians;
447,144 Non-Status and Metis.
Secretary of State 1982:
Total Native people: 614,800
(no disaggregation)
Department of Regional Economic Expansion 1976:
282,762 Status Indians;
305,000 Non-Status Indians;
426,060 Metis.
Statistics Canada 1971:
17,550 Inuit;
295,215 Status Indians;
(no information for non-Status or Metis)
Employment and Immigration Canada 1978:
17,877 Inuit;
282,762 Status Indians;
300,000 Non-Status and Metis.

1982 The *Canada Act*

Prime Minister Trudeau's second attempt to "repeal the Indian Act" – and all Aboriginal rights with it, came with the *Canada Bill 1981*. The Canadian government wrote its own constitution, removed any mention of the Indigenous Peoples or their treaties and rights, and petitioned the British government to approve it.

Many members of the UK Parliament spoke extensively on their objections. For example:

"The Indian nations are justified in questioning the *bona fides* of the Canadian Prime Minister. I say that with great regret. As long ago as 1969, he spoke in Vancouver about the need to bring to an end the historic treaty rights of the Indian peoples and spoke of how in due course those rights must be extinguished. He refuses even now to sit at the conference table to discuss and define what those rights are. He will not do so until the new constitution of Canada is established, and at that stage he will have the power to override the Indians.

"That is our dilemma. We do not wish to offend Canada, but if we pass the Bill in its present form we shall infringe two international agreements and at the same time disregard the rights of the Indian nations given under 83 treaties between them and the British Sovereign. For that reason, I shall find it difficult to support the Bill."

- Mr. Richard Body, Member of Parliament for Holland-Boston
February 17, 1982, in UK, HC, "Canada Bill", vol 18 (1982), cols 292-373.

The *Canadian Constitution Act 1982* was passed as written by the Canadian government, over the objections of Indigenous Peoples coast-to-coast-to-coast.

The UK House of Commons members had proposed a sweeping Aboriginal Rights Commission with respect to the *Canada Bill*, but only one additional requirement survived their political process: that the Canadian government hold a series of Constitutional Conferences to amend the constitution and entrench certain Aboriginal rights, including the right to self-government.

In Section 35, the *Constitution Act* affirmed "existing Aboriginal and treaty rights" – but these were not defined or even identified. To this day, the Canadian courts have taken the position that "aboriginal rights will be defined on a case-by-case basis." Only such rights as have been defined by the courts, or defined in agreements with the government, are constitutionally protected as "existing" Aboriginal rights.

Of all the extensive civil, political, economic, social, cultural, and land rights which Indigenous Peoples possess under their own and international laws, the Government of Canada considers these "undefined aboriginal rights" and does not recognize them: not until they are defined by Canadian courts or Canadian-made agreements.

Canada recognizes the provisions of the Indian Act – while racing to replace each section of that unilateral, illegal legislation with piecemeal agreements and "accommodation legislation" that Indigenous Peoples consent to, usually in funding agreements, thereby legitimizing governance by Canada and entrenching "rights" defined by Canada as s.35 rights.

1982 *Lovelace v. Canada*

The United Nations Committee on Human Rights found Canada was in breach of section 27 of the International Covenant on Civil and Political Rights, citing the following paragraph:

"In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied in their community, with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) (1981)

The Committee noted several other violations of the Convention.

1982 Standing Committee on Indian Affairs hears submissions from Indigenous organizations on the impacts of the Indian Act, and proposed changes.

Mary Two-Axe Earley, President of Quebec Equal Rights for Indian Women, gave the following on September 13, 1982:

"We are stripped naked of any legal protection and raped by those who would take advantage of the inequities afforded by the Indian Act. We are raped because we cannot be buried beside the mothers who bore us and the fathers who begot us, although dogs from neighbouring towns are buried on

our reserve land: because we are subject to eviction from the domiciles of our families and expulsion from the tribal roles; because we must forfeit any inheritance or ownership of property; because we are divested of the right to vote; because we are unable to pass our Indian-ness and the Indian culture that is engendered by a woman in her children: because we live in a country acclaimed to be one of the greatest cradles for democracy on earth, offering asylum to refugees while, within its borders, its native sisters are experiencing the same suppression that has caused these people to seek refuge by the great mother known as Canada."

1983 *Martin v Chapman*
John Martin, born out of wedlock to a Status Indian father, went to the Supreme Court of Canada to challenge the Registrar, who was H.H. Chapman, and be recognized as entitled to Indian Status.

The written ruling exposed the judges' candid interpretation of the purpose of the Indian Act:

"to preserve control of reserve lands by male Indians."

It also revealed the discretionary power of a Band Registrar, and the progressive detail in which further amendments to the Indian Act denied status to as many eligible people as possible.

1983 Committee hearings on Aboriginal self-government
Following the First Ministers Conference on the Constitution, this Committee held meetings with Indigenous representatives across Canada. Indigenous representatives explained to Committee members that the Indian Act does not provide a legal framework by which native communities can control their own affairs.

The Minister of Indian Affairs himself testified before the Committee and told them that the exercise of band powers is by approval of the Minister; the land tenure system on reserves is arbitrary and limiting; the Bands have few, if any, legislative powers in social and economic development; and the legal status of Indian Bands to enter contracts with *any other entity* is "unclear."

1983 Special Committee on Indian Self-Government in Canada, "Penner Report."
The Committee encountered almost unanimous rejection of the government's 1982 proposals for legislative change which they said provided greater local control and exercise of authority by band governments. Opposition to these proposals was on the basis that they involved a delegation of power to "inferior" Indian "municipal" governments, rather than a recognition of self-determination of Indian First Nations, and would radically alter the special trust relationship, relieving the federal government of its fiduciary and special responsibilities.

The Committee recognized the need for a "new relationship" based on constitutional recognition of Indian First Nations governments as a distinct order of government in Canada. The Committee supported full jurisdictional authority for First Nations determining their own membership, recommended full First Nations authority over lands and resources and establishment of a First Nations land registry, an adequate land and resource base, the settlement of claims, the correction of deficiencies in community infrastructure, and phasing out the programs of the department of Indian Affairs within five years. None of these were acted on in the spirit in which they were recommended.

1984 *An Act to amend the Indian Act*: Bill C-47 and Bill C-31.
C-47 was an amendment to the *Indian Act* that died on the order paper. Among many, the representative of the Indian Association of Alberta expressed vehement opposition to the proposed bill, stating that "in attempting to bring about sexual equality, it will instead bring about cultural genocide."
- *Minutes of Proceedings and Evidence of the Standing Committee, June 28, 1984*.

In late 1984, the government of Canada tabled Bill C-31, *An Act to Amend the Indian Act.* The bill was aimed, according to Ministers, at ending discrimination and restoring justice to those denied Status.

Witness testimony to the Standing Committee, respecting C-31, illuminated the impacts of being stripped of Indian Status. Witnesses also explained clearly how the bill did not achieve the stated goals, and actually worsened some injustices.

C-31 was passed in June of 1985, but the Indian Act was not amended in accordance with the recommendations provided by

Indigenous organizations - not for another 32 years - and only then after many Supreme Court rulings brought by Indigenous individuals.

1985 Nielsen Report.
Deputy Prime Minister Erik Nielsen, tasked with reducing the federal deficit, produces a Cabinet document titled "The Buffalo Jump of the 80s." It is leaked to the press.

Of 19 federal spending areas, Nielsen identifies the Department of Indian Affairs as the target for budget cuts to balance the books, proposing to reassign 3,500 of 5,000 DIA staff and cut almost $200 million in annual spending. Although great criticism of this plan arose, and the Mulroney government publicly retreated from the budget proposed by Nielsen, the plan – and budget cuts to Aboriginal groups and organizations – was carried out anyway. A cap on budget increase of 2% was applied and stayed in place for almost 30 years.

1985 *Charter of Rights and Freedoms*, is enacted as part of Canada's constitution.

Section 15(1) of the ***Charter*** provides: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

1985 Indian Act amendment,
Bill C-31 was introduced for First Reading on February 28, 1985; for Second Reading on March 1, 1985.

At the point of making the amendments in 1985, there were three days of hurried consultations with non-Status Indians before a new Joint Committee, and several days of consultations with Indian Band representatives. These consultations also continued from testimony given in 1982 to the Standing Committee, and in last-minute consultations with the 1984 proposed amendment.

Some of the recommendations given were reflected in Bill C-31, but not to the extent that was discussed by the Committee and Minister of Indian Affairs David Crombie, who later resigned.

The *1985 Act* was proclaimed on June 28, 1985, but made retroactive to April 17, 1985, the date when s. 15 of the *Charter* came into effect. The *1985 Act* preserved all of the registration entitlements that existed prior to April 17, 1985, and established a new scheme of registration for those not previously entitled to be registered.

It read:
Persons entitled to be registered:
6. (1) Subject to section 7, a person is entitled to be registered if

(a) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

(f) 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 section.

(2) Subject to section 7, a person is entitled to be registered if that person 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);

(3) For the purposes of paragraph (1)(f) and subsection (2),

(a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(a); and

(b) a person described in paragraph (1)(c), (d), (e) or (f) or subsection (2) and who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that provision."

The result was a long list of distinctions related to Indian Status, what people came to call "Alphabet Indians." A person was entitled to be registered under fourteen sections: 6(1) (a) to (f), 6(2), 3(a) (i) to (iv), 3(b), and 3(c) (i) to (ii), all of which provided for different abilities to transmit Status to children.

On April 17, 1985, the Canadian Charter came into effect. Subsequent reinstatements relied on this date under the Bill C-31 Act to amend the Indian Act.

At that time, there were 48 claims of wrongful appropriation being launched against the government by enfranchised Status Indians (people who lost Status), and people whose names had been removed from the Indian Register for other reasons. They sought restoration and compensation. These individual claims were shaping into class actions when Bill C-31 was passed into law. The court actions did not progress: reinstatement was facilitated by the Bill, and a specific clause in the C-31 *Act to Amend* asserts, in Section 21,

"For greater certainty, no claim lies against Her Majesty in right of Canada, the Minister, 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… ."

1985, April 2-3, First Ministers Conference on the Constitution. First Nations, Inuit and Metis leaders were invited to participate, but they had no official role in the proceedings.

This was the second Conference to amend the constitution and entrench the Aboriginal right of self-government, as required in the conditions of the 1982 *Canada Act.* The stated goal was not achieved, but the *Canada Act* only required the government to hold these meetings – not to produce results.

1985 *July 8, July 12*
BC claims Indian Reserves extinguished title.
In reply to both Moses Martin and his claim to Nuu-chah-nulth title at Meares Island, Clayoquot; and to *Delgam Uukw v. The Queen* and claims to title throughout Gitksan and Wet'suwet'en, the defendant crown in right of the Province of BC responded:

"That *if the Plaintiffs or their ancestors*, or the Indian Tribes or Indian Nations which they allegedly represent, *ever had aboriginal title or rights* over any part or parts of Meares Island / the Province of British Columbia, which is not admitted, *the same was voluntarily given up* to the Crown in right of one or both of the Colony of British Columbia and the Province of British Columbia *by requesting that, out of lands in the territory outside those already set aside as Indian reserves, additional lands be set aside as Indian reserves and accepting the lands that were set aside*." (Emphasis added.)

1985 Self-government Agreement completed under the 1974 Comprehensive Claims Policy. The Sechelt Indian Band initialled the first ever deal to remove itself from the Indian Act by agreement. The *Sechelt Self Government Act* was passed in 1986.

The transition actually follows the directive first enabled in the *Indian Advancement Act 1874,* including a quit-claim to the lands and resources outside the Agreement area.

1987-1993 Alternatives to the Indian Act are developed by working groups, independently of the Assembly of First Nations, to propose Canadian legislation that First Nations would consent to be governed by. The major focus of these would concern forestry, land tenure, and taxation.

1988 "Designated" reserve lands
An amendment to the *Indian Act* introduced designated lands; instead of surrendering land, First Nations can "designate" it for development. First Nations must follow the same procedure as for a

surrender, but once the land is designated, it is still considered to be part of the reserve for many important purposes.

1992 Charlottetown Accord.
The Aboriginal right to self-government was elaborated and mechanized by an amendment to the *Constitution Act 1982*. The amendment was written by a coalition of federal and provincial governments, the Native Council of Canada, the Assembly of First Nations, the Inuit Tapirisat, and the Metis National Assembly. The formula for constitutional amendment was changed at the last minute – allowing new weight to provinces in the vote; the amendment was put to a referendum, and Canadians voted against it.

The constitutional amendment process has not been revisited since.

1992 BC Treaty process
proposes to replace *Indian Act* with agreements by First Nations to be governed as municipalities with local bylaws, while surrendering title and rights to 95-99% of traditional territories. It is a combination of the *Indian Advancement Act 1874*, the Comprehensive Claims Policy 1974, and policies being developed around land tenure, taxation, and governance.

1992 draft *First Nations' Chartered Lands Act*
Developed with key Indigenous individuals who were notable proponents of Indian reserve assimilation to BC land laws, this legislation would have enabled all First Nations to opt into a new land management regime.

However, the bill produced strong demonstrations of opposition from many Indigenous leadership organizations. The opt-in would require surrender and exclusion of traditional forms of land ownership, traditional lands authorities and governance, and would have the effect of releasing and indemnifying the governments for past harms concerning land fraud, sale, and destruction in traditional territories.

It also appeared to replace sections of the *Indian Act* arbitrarily, including for First Nations which did not approve it, and was irreversible.

1993 Native Council of Canada becomes Congress of Aboriginal Peoples.
CAP now extended its constituency to include all off-reserve Status Indians and Non-Status Indians, Métis and Southern Inuit Aboriginal Peoples, and serves as the national voice for its provincial and territorial affiliate organizations.

CAP also holds consultative status with the United Nations Economic and Social Council, which facilitates its participation in international issues of importance to Indigenous Peoples.

1995 Inherent Rights Policy
With the procedural exercise of the constitutional amendment out of the way, after Charlottetown, the Canadian Minister of Indian Affairs passed a policy that simply defined what rights of Aboriginal self-government Canada recognizes under its constitution, in section 35.

It said that the, "inherent right of Aboriginal people to self-government is a constitutional right."

By this time, "self-government" for First Nations was fairly narrowly defined: in the *Indian Act,* and in the Sechelt Self-Government model, and in the BC treaty process template-agreement where "X First Nation hereby cedes, releases and surrenders its Aboriginal rights in favour of the rights in the Agreement."

The 1995 policy is quickly clarified by the BC Treaty Commission in its Annual Report:

"The inherent right of self-government does not include a right of sovereignty as it is understood in international law. All First Nations exercising self-government will remain part of Canada, contributing to the Canadian federation….

"In BC, the government is negotiating self-government agreements as part of the BC Treaty Commission process. These agreements will result in practical arrangements which will meet the interests of all parties at the negotiating table. … while ensuring that First Nations governments are firmly within the Canadian legal and constitutional fabric."

1996 Royal Commission on Aboriginal Peoples – Report.
After five years of investigations, research, and interviews, the Commission issued over one thousand recommendations for justice for Aboriginal Peoples in Canada. In dozens of specific recommendations, the Indian Act was identified section-by-section for amendment and repeal.

The Report was so long that the Commission published a one-hundred page "Guide to Principle Findings." In this Guide, the Commission prefaced its findings on the *Indian Act:*

"Without consultation with those affected, Canada fundamentally altered the treaty relationships between autonomous Aboriginal peoples and the Crown at the time of Confederation with section 91(24) of the *Constitution Act (1867)* making Aboriginal people and their lands the object of unilateral federal legislation, and followed that in 1876 with the first of various versions of the *Indian Act* . These actions , over time, transformed
independent Aboriginal nations into bands and individuals who were clients of a government department and wards of the state.

"Canada's policy for many of the intervening years sought to undermine Aboriginal institutions and life patterns and to assimilate Aboriginal people as individuals into mainstream society.

"The instruments to achieve that were:
- The Indian Act
- The removal of jurisdiction from traditional Aboriginal governments
- The break-up of historic Aboriginal nations through the creation of "band" and "settlement" governments
- Government control over who is recognized as an "Indian"
- Forced attendance by several generations of Aboriginal children at residential schools
- Relocation of scores of Aboriginal communities
- Adoption of Aboriginal children into non-Aboriginal homes
- Loss of two-thirds of the land set aside in treaties
- Exclusion of Aboriginal culture from processes related to education, justice, health, and family services
- Substitution of welfare for an effective economic base."

1996, December 10, First Nations Lands Management Framework Agreement.
Thirteen Bands enter an experimental application of the new Land Code system, where chapters of the *Indian Act* dealing with land tenures are suspended. This Framework creates the basis for the *First Nations Land Management Act,* 1999, the first **sectoral approach to replacing the Indian Act** with Canadian legislation that is consented to by a First Nation.

1996, December 12,***Optional Modification Act.*** Indian Affairs Minister Ron Irwin tabled a general amendment to the Indian Act, which included a new way to eliminate the *Indian Act*: by Indigenous consent to be governed by other Canadian legislation.

Bill C-79, *the Indian Act Optional Modification Act*, proposed amendments to numerous sections of the *Indian Act.* There were new paragraphs to require a Chief to be a voting member of the Band; to give Bands additional authority over natural resources "such as hay, wild grass, wild rice and shrubs, thus expanding First Nations management of natural resources;" an increase of fines under Band by-laws from $1,000 to $5,000.

But the new section of consequence was that Indian Bands would have the same rights as natural persons, for instance to sue and be sued, which would in effect give Indian Act Bands a corporate character. The corporate structure was being pursued through several ways at once, including the simultaneous Land Management Framework Agreement.

The Assembly of First Nations called an emergency meeting about Bill C-79 for December 19, identifying the problem that community ratification would not be necessary in order to "opt-in" to the optional legislation and make this change of legal character.

Note that it is an early and continuing piece of the *Indian Act* legislation that an elected Chief and Council can pass any motion with a Band Council Resolution, which does not even require notice to the membership. The AFN pointed to the facts that there would be no "opt-out" procedure following the Minister's "optional" paragraphs.

Meanwhile, the first experimental voyage in the Sectoral Agreement Strategy was launched with the *Framework Agreement*.

1999 *Corbiere v. Canada, Minister of Indian and Northern Affairs.*
For the first time, members of Indian Bands who lived off-reserve won the right to vote for Band Chief and Council.

1999 UN Human Rights Committee, which monitors State

Party compliance with the ICCPR, expresses concern about ongoing discrimination against Aboriginal women, and in particular that the *1985 Act* Bill C-31 amendments continued to deny Indian Status to descendants of Aboriginal women. *Concluding Observations of the Human Rights Committee*: Canada (April 7, 1999).

1999 *First Nations Land Management Act*

This legislation allows participating First Nations to opt out of the 34 land-related sections of the *Indian Act* and manage their reserve land, resources and environment under their own land codes, following a prescribed template.

This Act provided the formal "accommodation legislation" to ratify the 1996 Framework Agreement on First Nation Land Management. The Framework Agreement requires that First Nations develop a land code setting out the basic rules for the new land regime, including environmental assessment and protection and matrimonial real property laws on reserves. This lays the groundwork for expanded economic development on reserves and business partnerships with the private sector.

With 14 original signatory First Nations in 1996, there are now over 30 First Nations operating under the Act and more than 70 that have expressed interest in opting into the new regime.

In 2011, Canada allocated $20 million in funding over two years to allow for new entrants "opting-in" to the accommodation legislation.

The FNLMA effected the distinction between "lands reserved for Indians," in S.91 / 24 of the *British North America Act*, and "First Nation Lands" which can be registered in a provincial Torrens system of fee-simple land registry. The process relies on the existing *Indian Act* surrender provisions, duplicated and re-named in the 1988 "designated lands" amendment to the *Indian Act*.

2002 *First Nations Governance Act*

The federal government again initiated a major overhaul of the *Indian Act*.

Bill C-7 was aimed at addressing fundamental aspects of Band governance and would have provided Band Councils with: expanded authorities to develop their own corporate-style laws (codes) in respect of leadership selection; the administration of government and financial management and accountability; and bylaw making authorities in several areas currently identified as "Powers of Chief and Council on reserve" in the *Indian Act.*

A consultation process was led by the Minister for First Nations across Canada to participate in making the Bill. The draft Act was met with opposition from Chiefs, the AFN, and Aboriginal organizations across the country. Bill C-7 died on the Order Paper with the prorogation of Parliament in November 2003.

2004 report of the UN Human Rights Committee

"22. The Committee notes with concern that the Canadian Human Rights Act cannot affect any provision of the *Indian Act* or any provision made under or pursuant to that Act, thus allowing discrimination to be practised as long as it can be justified under the Indian Act.

"The State party should repeal section 67 of the Canadian Human Rights Act without further delay."

2005 *First Nations Oil and Gas and Moneys Management Act*

This is an optional legislation that allows First Nations to opt out of the Indian Act provisions that moneys from development on-reserve are paid to the Receiver General – and receive and manage the moneys from oil and gas themselves. First Nations opt to be governed under provincial and federal regulations on their reserves, and manage and regulate on-reserve oil and gas activities.

The Act was developed in partnership with the White Bear First Nation in Saskatchewan, and the Blood Tribe and Siksika First Nation in Alberta.

2006 *First Nations Commercial and Industrial Development Act*

This Act addresses regulatory gaps for First Nation commercial and industrial development on-reserve, when a First Nation consents to be governed by federal and provincial legislation. This integrates the on-reserve works with the provincial regime for specific commercial and industrial development projects on reserve lands.

The Act was developed by the federal government and five

partnering First Nations: Squamish Nation, Fort McKay First Nation, Tssu T'ina Nation, Kettle First Nation and Fort William First Nation.

2006 *First Nations Fiscal and Statistical Management Act*

A new piece of "optional" legislation to enable, and then prescribe and control Band monies. It provides for Band control of its finances, and, if unsuccessful, third-party management of Band finances. Without opting into this regime, a Band's finances continue to be managed by the Minister.

The Act established the **First Nations Tax Commission**, which "regulates, supports and advances" taxation on-reserve, and the First Nations Finance Authority, which mobilizes loan funding to First Nations and creates a legal and institutional framework mirroring the financial structures of other levels of government.

A band can opt-in to this legislation, replacing sections of the *Indian Act* relating to monies.

2007 Canada-BC First Nations Education Jurisdiction Agreement

Under this and accompanying BC legislation, the First Nations Education Steering Committee was formed.

2007 Jordan's Principle

The federal government was found to be responsible in the death of an Aboriginal child who was denied urgent care: the hospital refused service on the basis that neither the federal nor provincial government would accept responsibility for the medical bill.

The court ordered a new principle of care, which is that a child must be provided with urgent essential services first, and billing decided second.

2007 *Tsilhqot'in Nation*

In BC Supreme Court, Justice Vickers wrote in his decision, "British Columbia has been violating Aboriginal title in an unconstitutional and therefore illegal fashion since it joined confederation."

2009 *First Nation Property Ownership Act*

This Act allows First Nations to opt out of the reserve land system of the *Indian Act* by transferring their "lands reserved for Indians" into a provincial Torrens land title system.

2010 *First Nations Certainty of Land Title Act*

Canada amended an earlier version, the the 2006 FNCIDA, to permit the registration of on-reserve commercial real estate developments in a system that replicates the provincial land titles or registry system. This allows First Nations to opt-out of the *Indian Act* structure when they consent to be governed by provincial land law.

2010 *An Act to promote gender equity* *in Indian registration by responding to the Court of Appeal for British Columbia decision in McIvor v. Canada (Registrar of Indian and Northern Affairs),*
"The Gender Equity in Indian Registration Act

Sharon McIver appealed on the issue that she could not transmit Indian Status to her son, in the 1985 Bill C-31 *Indian Act* amendments. This was one of the problems identified by witnesses to the Standing Committee at the time.

The new Act continued a new set of distinctions:

(2) Paragraph 6(1)(a) of the Act is replaced by the following:

(a) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(3) Paragraph 6(1)(c) of the Act is replaced by the following: (c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under sub paragraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(c.1) that person

(i) is a person whose mother's name was, as a result of the mother's marriage, omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under paragraph 12(1)(b) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions,

(ii) is a person whose other parent is not entitled to be registered or, if no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred prior to September 4, 1951,

(iii) was born on or after the day on which the marriage referred to in subparagraph (i) occurred and, unless the person's parents married each other prior to April 17, 1985, was born prior to that date, and

(iv) had or adopted a child, on or after September 4, 1951, with a person who was not entitled to be registered on the day on which the child was born or adopted;

(4) Subsection 6(3) of the Act is amended by striking out "and" at the end of para graph (a), by adding "and" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) a person described in paragraph (1)(c.1) and who was no longer living on the day on which that paragraph comes into force is deemed to be entitled to be registered under that paragraph.

3. Section 11 of the Act is amended by adding the following after subsection (3):

(3.1) A person is entitled to have the person's name entered in a Band List maintained in the Department for a band if the person is entitled to be registered under paragraph 6(1)(c.1) and the person's mother ceased to be a member of that band by reason of the circumstances set out in subparagraph 6(1)(c.1)(i).

RELATED PROVISIONS

4. In sections 5 to 8, "band", "Band List", "council of a band", "registered" and "Registrar" have the same meaning as in subsection 2(1) of the Indian Act.

5. For greater certainty, subject to any deletions made by the Registrar under subsection 5(3) of the Indian Act, any person who was, immediately before the day on which this Act comes into force, registered and entitled to be registered under paragraph 6(1)(a) or (c) of the Indian Act continues to be registered.

6. For greater certainty, for the purposes of paragraph 6(1)(f) and subsection 6(2) of the Indian Act, the Registrar must recognize any entitlements to be registered that existed under paragraph 6(1)(a) or (c) of that Act immediately before the day on which this Act comes into force.

7. For greater certainty, subject to any membership rules established by a band, any person who, immediately before the day on which this Act comes into force, was entitled to be registered under paragraph 6(1)(a) or (c) of the Indian Act and had the right to have their name entered in the Band List maintained by that band continues to have that right.

8. For greater certainty, subject to any membership rules established by a band on or after the day on which this Act comes into force, any person who is entitled to be registered under paragraph 6(1)(c.1) of the Indian Act, as enacted by subsection 2(3), and who had, immediately before that day, the right to have their name entered in the Band List maintained by that band continues to have that right.

9. For greater certainty, no person or body has a right to claim or receive any compensation, damages or indemnity from Her Majesty in right of Canada, any employee or agent of Her Majesty, or a council of a band, for anything done or omitted to be done in good faith in the exercise of their powers or the performance of their duties, only because

(a) a person was not registered, or did not have their name entered in a Band List, immediately before the day on which this Act comes into force; and

(b) one of the person's parents is entitled to be registered under paragraph 6(1)(c.1) of the Indian Act, as enacted by subsection 2(3).

2011 *Canadian Human Rights Act* amended

Section 67 was repealed. It had made this Act inapplicable to people who are subject to the *Indian Act.*

2011 *Family Homes on Reserves and Matrimonial Interests or Rights Act*

This Bill addresses a legislative gap in the *Indian Act*, it is not a part of *Indian Act* reform but a stand alone piece of legislation. The Bill is intended to provide basic rights and protections to individuals on reserves during the relationship, in

the event of a relationship breakdown, and upon the death of a spouse or common-law partner when it comes to the family home and other matrimonial interests or rights.

Bill S-2 was introduced in the Senate on September 28, 2011 and builds on the previous version that died on the Order Paper with the dissolution of Parliament in March 2011.

The following changes were made to address some concerns expressed by First Nations and further support them in developing their own laws:

- Elimination of the provisions related to the verification process, including the role of the verification officer.
- Lower ratification threshold for the approval of First Nation matrimonial real property laws to a single majority with a set participation rate of at least 25 per cent of the eligible voters.
- A 12-month transition period before the federal provisional rules come into force.

2012 *Jobs and Growth Act*

The omnibus Bill included several pieces of "accommodation legislation" which mechanized transitions from the *Indian Act* to municipal governance. It also included the *First Nations Fiscal Accountability Act*, which requires First Nations to post their financial statements online. While this was not titled as *an Act to Amend the Indian Act*, the measures applied to every Indian Band.

The legislation affected over 60 acts, including the *Indian Act, Navigable Waters Protection Act* and *Environmental Assessment Act*.

Idle No More began in November 2012 as a protest against the introduction of this Bill C-45. Activists argued that the Act's changes diminished the rights and authority of Indigenous communities while making it easier for governments and businesses to push through projects without strict environmental assessment.

"We are very concerned. Changes are being made to legislation affecting matters such as reserve lands, waterways, the environment, the fishery and the Indian Act. They are matters that go to the heart of aboriginal and treaty rights," said the director of Intergovernmental Affairs, Mi'kmaq Confederacy.

"They tie in land and resource use as well as the *Indian Act*. And the government is pushing these through. They are effectively ramming it through parliament very quickly, without proper debate and discussion and without hearing the voice of the First Nations."

2012 First Nations Infrastructure Institute is created by the new *First Nations Fiscal Management Act.* This new organization is not an agency of the crown, but constituted by the crown – to regulate infrastructure on-reserve. Specifically: "the planning, developing, procuring, owning, managing, operating and maintaining infrastructure; asset management; and the certification and review of infrastructure projects."

The Institute is connected to the provision of and payment for Services on-reserve, described in another paragraph of the Act.

2013 Failed "First Nations Education Act"

After some consultations, the federal government proposed this sweeping change to federal regulation of Indigenous schools, teachers, curriculum, and educational structures to replace *Indian Act* sections.

The legislation would have affected dozens of existing Indigenous-run schools.

2013 British Columbia Tripartite Framework Agreement on First Nation Health Governance

BC, Canada, and the newly constituted First Nations Health Society created a plan, by agreement, to "transfer the Government of Canada's role in designing and delivering health programs and services to First Nations in BC to a new First Nations Health Authority.

2014 *An Act to amend the Indian Act* – Bill C-428

The result of a Private Member's Bill introduced by Rob Clarke, M.P. for Desnethé-Missinippi-Churchill River, in 2012, Bill C-428 amends the *Indian Act* by repealing clauses. These included specific references to "residential schools," provisions allowing for forcible removal of children from homes to attend school; and the rights of on-reserve religious majorities and minorities - Protestant and Catholic.

It repealed a dozen more section of the Indian Act:

S. 32 and 33, which related to the sale or barter of produce.

S. 36, which brought lands held by churches or charitable organizations on reserve under the *Indian Act.*

S. 92, which prohibited an officer or employee of Aboriginal Affairs Canada, a missionary, or a school teacher from trading for profit or selling to an Indian goods or chattels without a license issued by the Minister.

S. 105, describing procedures for identifying and naming an Indian or other person in legal proceedings launched under the Indian Act.

S. 85.1(3) which gave the Minister oversight of procedural requirements for an intoxicant by-law to come into force.

S. 103(1) which extends search and seizure powers when there is reasonable grounds to believe that an offence has been committed against a by-law made under subsection 81(1) of the *Indian Act*.

Clause 9 of Bill C-428 introduces two new requirements under the Indian Act:

1. band councils must publish their by-laws on an Internet site, in the *First Nations Gazette* or in a newspaper that has general circulation on the reserve of the band. A by-law will come into force upon publication or on any later day specified in the by-law. The availability of a by-law, published on an Internet site, must be accessible during the period of time it is in force.

2. the council of the band must provide copies of their by-laws upon any person's request.

Any taxation or money by-laws are now processed through the First Nations Tax Commission – not the Minister of Aboriginal Affairs – but they must explicitly be approved by the Minister in order to come into effect.

Bill C-428 provided direct access to a fine imposed under a by-law made by the council of a band under the *Indian Act*. This means that by-law fines will no longer belong to "Her Majesty for the benefit of the band ...".

2015 *Descheneaux*

On August 3, the Superior Court of Quebec ruled in favour of the plaintiffs in *Descheneaux*, finding that paragraphs 6(1)(a), (c) and (f) and subsection 6(2) of the *Indian Act* – defining who is entitled to be registered – unjustifiably infringe section 15 of the *Charter of Rights and Freedoms*. The court declared the provisions to be of no force and effect but suspended its decision until December 2017 to allow transition.

2016 *Daniels v. the Queen*

Harry Daniels, and then his son, were pursuing three goals: for recognition that Métis and Non-Status Indian people come under section 91(24) of the British North America Act, 1867; that they have the right to be consulted and negotiated with, in good faith, as such; and recognition of the fiduciary obligation owed Métis and non-Status Indians on the part of Canada. In the reasons for judgment given by the Supreme Court of Canada in the 2016 *Daniels* ruling,

"Both federal and provincial governments have, alternately, denied having legislative authority over Non-Status Indians and Métis. This results in these Indigenous communities being in a jurisdictional wasteland with significant and obvious disadvantaging consequences."

The court found that Métis and non-Status Indians are "Indians" under 91(24) and therefore the federal government is responsible for their welfare.

The failure of the 1982 constitution was involved. The judge wrote, at 55 and 56:

"The claim is that the First Ministers' conferences anticipated by ss. 37 and 37.1 of the Constitution Act, 19829 did not yield the hoped-for results in identifying and defining Aboriginal rights. The subsequent lack of progress implies that the federal government has not fulfilled its constitutional obligations."

Daniels won the first question, but not the second two – the judge ruled them to be repetitive and unnecessary, and referred to court rulings in *Haida*, 2004, and *Tsihqotin*, 2014, and the "context-specific duty to negotiate when Aboriginal rights are engaged" mentioned therein.

2017 *Descheneaux* legislation

An Act to amend the Indian Act in response to the Superior Court of Quebec decision, Bill S-3.

The Indian Act is amended in accordance with the 2015 court ruling, and the sections describing "who is an Indian" are amended.

The list of criteria for registration

in different circumstances is now *seven pages long*; there are *fifty-one paragraphs* each describing a different fulfilment of the requirement to be registered as a Status Indian.

A preliminary paragraph guiding interpretation is added:

"Section 5 of the Indian Act is amended by adding the following:

"Unknown or unstated parentage

(6) If a parent, grandparent or other ancestor of a person in respect of whom an application is made is unknown — or is unstated on a birth certificate that, if the parent, grandparent or other ancestor were named on it, would help to establish the person's entitlement to be registered — the Registrar shall, without being required to establish the identity of that parent, grandparent or other ancestor, determine, after considering all of the relevant evidence, whether that parent, grandparent or other ancestor is, was or would have been entitled to be registered. In making the determination, the Registrar shall rely on any credible evidence that is presented by the applicant in support of the application or that the Registrar other wise has knowledge of and shall draw from it every reasonable inference in favour of the person in respect of whom the application is made.

(7) For greater certainty, if the identity of a parent, grandparent or other ancestor of an applicant is unknown or unstated on a birth certificate, there is no presumption that this parent, grandparent or other ancestor is not, was not or would not have been entitled to be registered."

2019 *Act respecting First Nations, Inuit and Metis children and families*

The Canadian government's purpose for writing this *Act* was to legislate the outcomes – the orders – of the Canadian Human Rights Tribunal's decision, 2019, in the case brought by the First Nations Child and Family Caring Society. The Tribunal found an *institutional-level of discrimination* throughout Canada and the Provinces' Child and Family Services.

The *Act* provides for a First Nation to enter a Co-ordination Agreement with a province, in order to receive government funding to carry out its own service for child welfare, in a manner prescribed in the agreement.

2021 British Columbia's *United Nations Declaration on the Rights of Indigenous Peoples Act*

Politicians explained this *Act* as a mechanism to bring provincial laws into compliance with Indigenous Peoples' rights. The Province's lawyers, however, told the court in *Gitxaala v. British Columbia, Chief Gold Commissioner,* "the *Act* was

The forcible removal of Indigenous children from their families continues. 51% of children in Ministry care in Canada are Indigenous, as of 2025.

Canadians do not understand the details and impacts of the Indian Act.

manifestly not intended to implement UNDRIP in British Columbia law immediately."

The judge in *Gitxaala* decided that the provincial *DRIPA* made no difference to the case against the BC Gold Commissioner selling mining rights without consulting Aboriginal peoples, and gave no relief. That decision was set aside in the BC Court of Appeal and the Gitxaala appeal allowed.

2023 *First Nations Child and Family Services, Jordan's Principle and Trout Class Settlement Agreement*

The Settlement includes $20 billion in compensation for First Nations children on-reserve and in the Yukon, who were removed from their homes, and for their parents and caregivers; and for those impacted by the government's narrow definition of Jordan's Principle, as well as for children who did not receive or were delayed an essential public service or product.

2023 Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act.*

While the *Act* amounts to little more than a workplan to create a plan, it defines "Indigenous Peoples" as "the Aboriginal peoples of Canada." In redefining the Subjects of the *Act*, the question appears whether "Indigenous Peoples" in Canada have the rights recognized in international law, or whether they have the rights of "Aboriginal people" as set out in Canadian legal standards, including under the *Indian Act.*

The *CanDRIPA* has been proposed as a way, in development, to replace the *Indian Act*.

2024 *Indian Act* Sex Discrimination Working Group

Submission to the UN Committee for the Elimination of Discrimination against Women, Review of Canada, October 16, 2024:

"In 2019, Canada brought into force a provision of Bill S-3 (its 2017 amendment to the *Indian Act*) that eliminated the core of sex discrimination that was in place from 1869 to 1985, reflecting the finding of the UN Human Rights Committee in *McIvor and Grismer v. Canada*.

"At the time, the Government of Canada estimated this change would make 270,000 to 450,000 women and their descendants eligible for Indian status. However, in June 2024, 5 years later, only 55,804 individuals have been registered. Until the women and their descendants are actually registered, they do not have status or enjoy its benefits."

2025 *Cowichan Tribes* decision in BC Supreme Court

A village site which was supposed to be protected as an Indian Reserve by at least 1875 was sold off by the province's own Commissioner for Lands and Works in 1885. The judge found the area to be Aboriginal title land. Are Indian reserves Aboriginal title lands?

2025 Canada files suit against the First Nations Child and Family Caring Services, the Canadian Human Rights Commission, and others to peal back court orders in regard to Indigenous child and family services.

~

The 2012 federal omnibus legislation, the Jobs and Growth Act, slashed environmental and water protections while furthering the ttransformation of Indian reserve bands to integrated municipal entities. The fast-tracked Act sparked the Idle No More movement across Canada.

Let's review:

The original *Indian Acts* prevented trespass and sale of "lands reserved for Indians."

The 1876 *Act* prescribed every activity on-reserve: from powers of Council to road maintenance, licensing timber and grass cutting, the form of elections and who could vote, the sale of Indian land and the use of moneys arising, and fines and imprisonment for violations.

All this was to be paid for out of remittance monies, collected by the Superintendent General to the "Indian Fund" whenever he sells, leases, or licenses the Indian lands, reserve lands, ungranted or unsurrenderd lands, with the consent of the band, for the benefit of the band or tribe.

The Minister would act as agent for the Indians, preventing frauds and abuses by cunning settlers, and assuming the role of fiduciary to ensure basic standards of fairness.

But it didn't work that way.

The Indian Act was imposed; it was cruelly weaponized.

Consent to the sale of land was no longer required.

The Ministry itself committed the frauds and abuses - it legislated them - even denying that the land itself was Indian land, that it was unsurrendered.

Now the Peoples have been hurt by this - for 150 years.

Irreparable harms have been caused, with intent to destroy the groups.

Now all the good unsurrendered land has been sold and settled. Now the trees, salmon and game are gone; the mountains plundered.

Where is the money from the Indian land?

Now BC and Canada are making bands sign waivers and surrenders of "undefined Aboriginal rights" to get the same *Indian Act* rights prescribed under "jurisdiction agreements" or "self-government" or "reconciliation agreements."

Why must they sign?
To get the money.

What do they sign?
Consent to be governed by BC and Canada.

“**WHEREAS** it is desirable to encourage **the gradual removal of all legal distinctions between the Indian Tribes and Her Majesty's other Canadian Subjects,**

An Act to Encourage the gradual Civilization of Indian Tribes in the Province and to amend the Laws respecting Indians 1857

As soon as the colonies of Upper and Lower Canada, Newfoundland and New Brunswick were confederated in the *British North America Act, 1867,* the first thing Canada did was transfer the British Indian Commission under its own Department of the Interior - using section 91-24 of the *Act.*

The first *Indian Act* 1876, consolidated laws relating to protection of Indian land, enfranchisement, and a criminal code specific to Indigenous People.

Canada applied the Act to Peoples who were treaty partners;
to Peoples who had no treaty, no reserves, no annuities, and no agreement with Britain or Canada;
on lands reserved for Indians *and* on “lands to which title may not be in the crown.”

150 years later, Indigenous Peoples remain in a state of wardship under these all-defining rules: *unless and until* they surrender to the prescriptive terms of incorporation and municipalization, and consent to be governed *by agreement:*

Indian Act sections:

Originally it was applied without consultation or consent. Since 1946, consultations have been held but the recommendations provided have never been accommodated. No Indian band has ever consented to the application of the Indian Act.
Amendments to the Indian Act which favour Indigenous individuals, always at the expense of Indigenous self-determination, have been made in response to court rulings.

KEY FEATURES:

Construction, location of reserve lands, and membership of the band is informed and defined and approved by the Superintendent-General (1850; 1851 - current)

"Reserve lands" – whether surrendered, ungranted, non-treaty, or unsurrendered are held and in possession of the crown for the use and benefit of the band or tribe (1850), whether or not title is in the crown. (1876 - current)

Powers of the Chief and Council are prescribed by the Minister, as amended from time to time. (1869 - current)

Any action or bylaw proposed by the Chief or Council of a band must be approved by the Superintendent-General / Minister / Governor (1876. Repealed 2014)

Forms of governance by elected chief and council are imposed and defined by the Minister, including: voters, electors, election time and place and criteria for ratification or election (1869 - current)

"Alternatives" to the Indian Act:

These are the only alternatives to governance by the Indian Act that Canada will allow:
"Indian Advancement" Acts, Comprehensive Claims, Final Agreements, Framework Agreements, court-ordered Accommodation Legislation – including "Jurisdiction Agreements," "Delegated Authorities," and the "Act Respecting First Nations, Metis and Inuit Children and Families" – and the related Implementation Agreements; and Enfranchisement provisions (1874).

Some of these Acts, Policies, and legislated accommodation agreements were constructed in consultation with individual Indigenous experts in administration. Two were the result of court orders, and two are the result of multi-party task force reports.

None were informed by the report of the Royal Commission on Aboriginal Peoples 1996.

KEY FEATURES:

1. Voting procedure and ratification criteria prescribed by Canada, including: eligible voters and electors.

2. Construction of the band, its reserve lands, and its membership are confirmed in the ratification vote by eligible members of the band

2. Constitution of the band (First Nation) is approved and in accordance with and legally empowered by corporate charter law of Canada and/or BC; ratified by vote of the membership electors.

Indian Act sections:

Exclusion of traditional or "life" Chiefs from power on reserve, unless elected by the imposed formula. (1869 - current)

Recourse by the band for trespass on reserve lands are by information to His Majesty. (1868 - current)

His Majesty will assign the Indian band's lawyer; oversee the proceedings; determine the cost of the trespass; and receive the fines owing to the Receiver General for the use and benefit of the band, as decided by Him. (1869, 1876, 1951)

The Governor will manage the sale, lease, or other use of reserve land; collect monies for such sales to the Indian Fund – to be dispersed at the pleasure of the Governor; decide the rate of payment for such uses; and collect monies paid for fines under the Indian Act to the Receiver General, for the use and benefit of the band; decide how to spend such revenues (1868 - current; "Indian Fund" ceases to be mentioned as of the *Indian Act* 1951)

Reserve lands are held to be in the possession of the crown (Governor / Superintendent General / Minister), for the use and benefit of the tribe or band (1857 - current)

An Indian band cannot enter into a legally binding contract. Ministry approval and guarantee required. (1876 - current)

"Alternatives" to the Indian Act:

3. the Minister's permission is in the terms of the agreement

4. eligible voters of the band vote in favour of the Agreement / opt-in / legislative accommodation of the unsurrendered Aboriginal right / final agreement / framework agreement / claims settlement / implementation agreement, etc.,

In effect surrendering reserve lands and "undefined aboriginal rights" in favour of the rights in the Agreement and simultaneously giving consent to the terms of the Agreement / Framework / Implementation Agreement / Enfranchisement agreement / - to be governed, implemented, and funded by BC and Canada;

the band now to be governed by all Acts of Canadian Parliament and to uphold the Canadian Charter of Rights and Freedoms, any discrepancies or actions arising to be adjudged by BC courts.

English language version of any constitution or agreement will be definitive

5. The incorporated First Nation – formerly the Indian band – now owns its "reserve land" as a corporate legal entity defined and constituted under Canadian or BC law – with the "rights of a natural person" – capable of suing and being sued, and entering into contracts

5.5 "First Nation Lands" are defined by Canada and BC in the legislation

Indian Act sections:

No Indian shall be held to be in possession of lands on reserve, unless they are enfranchised or hold a location ticket / certificate of possession. In which case, the land may be removed from the reserve and sold in fee simple or leased as directed by the Minister, ie, to pay back loans, guarantees, mortgages, etc. (1876, 1880 - current)

The Minister may decide in every case who has the right to reside on reserve (1850 - current)

An Indian band or person may sue for obligations not met, regarding unsurrendered lands and rights, and/or surrendered lands leased by the Minister, and/or ungranted lands, mineral leases, timber licenses, etc. (the duty is in the crown) (1869 - current)

"Alternatives" to the Indian Act:

6. related sections of the Indian Act are removed from application to the band, as long as the band is compliant with the terms of the surrender or agreement;

7. First Nation Lands are registered under the Torrens system of BC governing private land; the First Nation – by vote of 50% + 1 – consents to be governed by all Acts of Canadian Parliament and the Canadian Charter of Rights and Freedoms, any discrepancies within to be adjudged by BC courts – English language version of any Band laws will be definitive

8. the new constitution excludes any traditional or life-chief or any other legal regime from power, by popular vote. The powers of the incorporated First Nation are exclusive, whereas the Indian band was not a power over its membership.

9. members of the First Nation may sue the First Nation for obligations owing. (the duty is in the band)

"Alternatives" to the *Indian Act* amount to little more than a band or First Nation accepting fees for contract to carry out *Indian Act* provisions themselves, without the consent of the Minister.

For this privilege - of self-administration - a First Nation must incorporate as the band is constructed, promise not to assert its international right of self-determination, and implicitly release past harms.

Indigenous Peoples and the *CanDRIPA*

"Act for the implementation of the UN Declaration on the Rights of Indigenous Peoples" 2023

The definition of "Indigenous Peoples" in the Act is given as "the Aboriginal peoples of Canada."

In the UNDRIP, 2007, Indigenous Peoples are defined as "peoples" - with the same rights as all other peoples. These include the right to self-determination, and not to be dispossessed of their own subsistence economies, the right to dispose of their own natural wealth, and the right not to be coerced.

The rights of Aboriginal peoples in Canada are in their historical rights as Indians - under the *Indian Act*; and in such court remedies as an individual band or person may win, on a case-by-case basis.

This includes the right to "consultation" and "accommodation" - both of which procedures are already extensively defined and controlled by Canada. These two processes favour the rights of the "broader public" significantly.

This Canadian legislation appears to subvert its stated purpose by changing the definition of the peoples to whom it applies.

Recourse to international tribunals for relief against Canada is an active pursuit by many nations.

40 years before the UNDRIP,

The International Convention on Civil and Political Rights was ratified by Canada in 1976.

Canada's state report to the UN treaty body, the Committee on Civil and Political Rights, 2004, explained:

"186. In recent years, new approaches to achieving certainty have been developed as a result of comprehensive land claims negotiations. These include the "modified rights model" pioneered in the Nisga'a negotiations, and the "non-assertion model". **Under the modified rights model, aboriginal rights are not released, but are modified into the rights articulated and defined in the treaty.** Under the **non-assertion model**, Aboriginal rights are not released, and the Aboriginal group agrees to exercise only those rights articulated and defined in the treaty and to assert no other Aboriginal rights."

The Committee replied in its Concluding Observations:
8. The Committee, while noting with interest Canada's undertakings towards the establishment of alternative policies to extinguishment of inherent aboriginal rights in modern treaties, remains concerned that these alternatives may in practice amount to extinguishment of aboriginal rights (arts. 1 and 27).

The State party should re-examine its policy and practices to ensure they do not result in extinguishment of inherent aboriginal rights.

Canada's approach to extinguishment of Aboriginal rights hasn't changed since the ICCPR observed that the "modified rights" and "non-assertion" models have the same result as "cede, release and surrender."

This language continues in present day Agreements.

The Sectoral Agreement Strategy

replacing the "modern day BC treaty process" is a set of stand-alone agreements which, together, achieve the same results as the single Final Agreement: extinguishment of "undefined Aboriginal rights" by vote to accept the rights in the agreement instead, and implementation within the provincial system.

The BC treaty process is now so infamous, and internationally condemned, that the Peoples have all but abandoned it.

Today's sectoral agreements resemble the individual chapters of the template Final Agreements available under the BC Treaty Commission. That's because the options for Indigenous Peoples "within the body politic of Canada" haven't changed since 1857. The BCTC replaced the 1974 Office of Native Claims, which replaced the *Indian Advancement Act* of 1884, which replaced the original British *Act for the gradual civilization of the Indian Tribes*, 1857, providing for enfranchisement. In the absence of Indigenous consent to be governed this way, Canada imposed the *Indian Act* in 1876.

When a First Nation ratifies any of these chapters, they provide consent to be governed by all Acts of Canada's Parliament: a historical first. Furthermore, they give provincial courts jurisdiction over disputes arising from the implementation of First Nations laws, in the Agreement.

When a First Nation ratifies a few of these chapters, they will have no jurisdiction left. A set of agreements becomes a *status quo* acceptance by the Indigenous Nation, or one of its First Nation communities, and Canada argues internationally that it has accommodated the aboriginal right in these consensual "constructive arrangements" which are basically the equivalent of treaties. Because a First Nation has a vote to ratify it, and that means consent.

With a "jurisdiction agreement," a First Nation has essentially the same powers they would have if the band had enfranchised under the terms provided in the *Indian Act* : the powers of an incorporated municipality.

The signal difference today is the amount of money being offered at the initial stages of "negotiating" and implementing these agreements. One-time payments are ten-times what has been offered (and accepted) in Final Agreements made in the BC treaty process - for each individual sector.

There is not much to negotiate, however, as the Canadian legislation which enables First Nations transitioning to municipal corporations, and describes the delegated powers available under it, has already been written and enacted by the time Indigenous communities "opt-in."

Twenty years ago, this approach was conceived by Canada in the "Aboriginal Horizontal Framework." It uses seven major areas of municipal-level interest to divide and treat Indigenous rights: Lands and resources, Education, Children and Families, Taxation and Finance, Housing and Infrastructure, Governance, and Health.

In spite of enticing names, like "Reconciliation Agreement" and "Jurisdiction Agreement" and "Framework Agreement," the legislated accommodation agreements rely exclusively on Canadian and BC law. There is no reference whatsoever to existing, traditional laws, and the existing jurisdiction for the Indigenous Nation to act on their own laws without interference, nor to require that settlers respect their laws - in fact, quite the reverse.

Each Agreement specifically mentions a First Nation's obligations to people who are either non-Native or are not members of the Band or First Nation, and those individuals rights will be upheld according to the Canadian *Charter of Rights and Freedoms*.

When certain traditional laws are added into the terms of the agreement, they become empowered by

Canadian jurisdiction, and the Canadian courts and judges become the arbitrator in case of a dispute. Only the English version of the Agreement, or First Nation Laws made under it, are definitive.

Canadian law is not well understood by many Indigenous communities, perhaps a little less than it is understood by Canadians themselves, so it makes little sense to import a foreign system of governance, with the foreign courts being the judge of how the Agreements are implemented, with foreign non-Indigenous values, and control over disputes in the interpretation or implementation of the agreement is given to the courts.

Interpretation of the Agreement holds the new incorporated First Nation to account: it can sue and be sued, as the hallmark of incorporation insists, and any dispute goes to the BC court.

Members of First Nations are not being informed of the way they are relinquishing their own jurisdiction when they recognize BC and Canada as the source of power and law in these Agreements. The Agreements use sophisticated legal language and clauses to mask the overt surrender of Indigenous jurisdiction in favour of the "jurisdiction" that is delegated (and controlled and defined) by Canada.

These are extinguishment agreements, relying on the "modified rights model" and the "non-assertion of rights model" that Canada identified to the United Nations Human Rights Committee in its obligatory state report in 2004. The Committee was not convinced; it suggested the result was the same.

Canada reported these "alternative" models as an improvement on human rights abuses that the Committee had asked Canada to answer for, concerning the written-in "extinguishment" result of agreements ratified under the BC Treaty Commission. In the definitions of terms provided by the BCTC at that time, "certainty" was explained by "extinguishment of aboriginal rights. Canada's reliance of the new *modified rights* and *non-assertion* requirements, questioned by the Committe, have not changed since they were singled out in 2004.

Each sectoral agreement replaces sections of the *Indian Act* with municipal powers of service and regulation.

Provincial funding formulas are budgeted for First Nations, as with other municipal governments.

The same approach to assimilation was enacted in 1857, 1874, and 1969 - but was never accepted.

By about 2009, many of the First Nations had borrowed and spent about the same amount of money in the negotiating process as they would receive in their final settlement. At that point, after an appeal by several Chiefs at the UN Human Rights Council on this subject, the negotiating loans were forgiven. By 2010, the total cost of negotiations reached about $1billion.

The BC treaty process achieves transformation of First Nations into corporate entities in the early stages. In order for the crown to negotiate with a Band whose entire lands, monies, and rights are said to be owned and controlled by the crown, the First Nation forms a society, under the BC Societies Act, and writes a constitution - as required by registered Societies.

This step is supposed to relieve the conflicted situation where the crown is representing Canadians while negotiating with a group of people that the crown represents in all formal and legal matters, under the *Indian Act*.

The signal difference today is the amount of money being offered at the initial stages of "negotiating" and implementing these agreements.

These payments are ten-times what has been offered (and accepted) in Final Agreements made in the BC treaty process - for each individual sector.

Sectoral Agreements with names like "Jurisdiction," "Reconciliation," "Framework" and "Delegated Authority"

are enabled by federal legislation and signed with provincial governments to transfer *Indian Act* powers to First Nations.

Here follow the main indemnification and consent Agreements, replacing the *Indian Act:*

Governance

Any Agreement made with the Province or Canada further entrenches acceptance of the *Indian Act* chief and council system of governance – simply by using it.

Furthering this substantially, each sectoral agreement involves at least a partial assignment of the People's powers and traditional authorities to newly constructed, provincially recognized authorities or processes – such as a Lands Advisory Board, Education Committee, or "community consultation process" defined in the Agreement.

With new governance mechanisms in each of these areas voted in by the membership, traditional authorities are gradually excluded. The provincial and federal governments will undoubtedly rely on these new bodies, designed to produce a corporate or municipal structure, to deny in future the legitimacy of traditional authorities and the otherwise unsurrendered jurisdiction of the Peoples.

Canadian courts favour *Indian Act* and elected representatives over Hereditary Chiefs, Potlatch and Feast Hall titles, and Family Head systems – saying the latter do not have standing.

The "right of self-government" is now a phrase that is heavily codified, defined, and construed under many federal policies and accommodation statutes. For instance, the 1995 *Inherent Right Policy* is entirely devoted to defining "self-government." Canada created this definition without meaningful consultation with any Indigenous Peoples. The phrase must be distinguished from the internationally recognized right of self-determination of all Peoples. Self-determination cannot be arbitrarily defined by Canada, the way self-government is already constitutionally defined in regard to Quebec.

"First Nations Governance Act" 2003

This Bill was proposed by INAC (DIA) Minister Robert Nault, who is famous for explaining to the press that the BC Treaty Commission "is not a rights-based process." Nault explained the *Governance Act* as an "overhaul" of the *Indian Act.*

It significantly included a section to force Bands to create election codes - adopting the *Indian Act* governance structure by vote.

With a change of Prime Minister, from Jean Chretien to Paul Martin, the *Act* was scrapped among widespread criticism.

However, most aspects of this legislation have been passed in other statutes, and are achieved piece-meal in the terms of separate agreements.

First Nation Constitutions

Incorporation and municipalization

One of the main ways that communities are being coerced into forming corporations is by developing "constitutions" – written in English. These are little more than a "vision statement" used to register non-profit societies, because it doesn't matter what the "constitution" actually says: it matters that this document is used as the basis of incorporating the First Nation as a corporate entity under BC legislation.

It is also used, for example in a recent BC Framework Agreement, to exclude traditional forms of government. In this example, the elected chiefs ratified a constitution that does not even mention the role of the matriarchs and their traditional part in the nation's decision making.

So, if the people wish to rely on their own laws in future, Canada can hold them to the black-and-white contents of that constitution, in English, as the legal charter of their nation.

"Self-government is not a machine to be turned on or off.

It is an organic process, growing out of the people as a tree grows from the earth, shaped by their circumstances and responsive to their needs.

Like a tree growing, it cannot be rushed or twisted to fit a particular mold."

- Rosie Mosquito and Konrad Sioui

To the Source: First Nations Circle on the Constitution. Commissioners' Report. Assembly of First Nations, 1992. Royal Commission on Aboriginal Peoples.

Framework Agreements

In these political accords, a First Nation is required to have first written and ratified a constitution, as per the requirements of provincial law concerning corporate entities.

Explicit recognition of crown jurisdiction in the traditional territory and on the reserve, or First Nation lands, is given. It is usually the first time the Indigenous community has provided this recognition of crown jurisdiction on their land or over themselves: the majority of Indigenous peoples west of the Rocky Mountains have categorically denied crown jurisdiction, and written riders to any forced funding agreements indicating that they are "without prejudice" to that issue.

Self-government Agreements

Providing scarcely more powers than were enabled by enfranchisement of bands in the 1874 *Indian Advancement Act* (see legislation earlier in this issue), few of these have been ratified in BC. In 1985, Sechelt voted for it; a few years

later the Westbank First Nation ratified a stand-alone self-government agreement that allowed them to lease and develop reserve land; the Nisga'a Final Agreement, 2000, concluded under the terms of the original Office of Native Claims, 1974, included a chapter on Governance; and each Final Agreement reached under the BC Treaty Commission provides similar powers. These powers are: making and enforcing bylaws on First Nations Lands (so constituted and changed from "lands reserved for Indians" as a function of the Agreement); taxing its own members and other licensed businesses on First Nations Lands; authorizing individuals to perform marriage ceremonies; and having corporate status with the rights of a person – to sue or be sued – and therefore capable of entering contracts with service providers, investors, and businesses.

"Jobs and Growth Act" 2012

This omnibus legislation affected over 60 Acts, including the *Indian Act, Navigable Waters Act,* and *Environmental Assessment Act*.

The Idle No More began as a protest of this Bill C-45.

Idle No More activists argued that the Act's changes diminished the rights and authority of Indigenous communities while making it easier for governments and businesses to push through projects without strict environmental assessment.

Taxation and Finance

"First Nations Fiscal and Statistical Management Act" 2006

This Act is an elaborate financial code, providing for a First Nation's management – and the Minister's management – of all band monies coming in, held, or spent.

The Act established the First Nations Tax Commission, which "regulates, supports and advances" taxation on-reserve, and the First Nations Finance Authority, which mobilizes loan funding to First Nations and creates a legal and institutional framework mirroring the financial structures of other levels of government.

A band can opt-in to this legislation, replacing sections of the *Indian Act* relating to monies.

In 2012, in the *Jobs and Growth Act,* **the title was changed to:**
"An Act to provide for powers of First Nations respecting taxation, financial administration and the provision of services on reserve lands, to facilitate First Nations' access to financing secured by local revenues or other revenues, to establish a First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Infrastructure Institute and to make consequential amendments to other Acts"

It has paragraphs like this:
"4 The council of a First Nation may not make a law under paragraph 5(1)(d) or 8.1(1)(a) until the council has made a law respecting the financial administration of the First Nation under paragraph 9(1)(a) and that law has been approved by the First Nations Financial Management Board."
And,
(3) If, after conducting a review, the Commission considers that a First Nation has not complied with a regulation...
(4) (b) …may, if the First Nation does not remedy the situation within the time set out in the order, by notice in writing, … impose a co-management arrangement on the First Nation or assume third-party management to remedy the situation."

This Act provided for itself to override existing First Nation or Band bylaws:
"Conflict with other laws
138 (1) In the event of a conflict between a local revenue law or a law made under subsection 97(1) ... or a code made by a First Nation under another Act of Parliament, the Act, regulations or code prevails to the extent of the conflict."

Education

"Canada - First Nations Jurisdiction over Education in British Columbia Act" 2007

The Act provides for a First Nation to enter a "BRITISH COLUMBIA – [NAME OF FIRST NATION] EDUCATION JURISDICTION AGREEMENT."

According to the terms, the First Nation agrees not to assert their rights, in exchange for the funding in the agreement.

It specifies,

"11.9 - If the Participating First Nation initiates the implementation of the inherent right to self-government on its own initiative… the Parties will meet to discuss whether this Agreement [i.e., the funding and school operations] will need to be amended, replaced or terminated".

In the definitions, we find that "*jurisdiction* means the Participating First Nation's law-making authority, described in this Agreement." The "right to establish their educational systems and institutions" is now defined by and limited to the agreement.

The First Nation's school is now completely integrated within the provincial system.

"The Participating First Nation will provide Education to Students who are:

a) not Ordinarily Resident on First Nation Land or Another First Nation's Reserve; or

b) Ordinarily Resident on First Nation Land or Another First Nation's Reserve on lands developed primarily for commercial purposes...and not registered as Indians."

The school must "make provision for Education that supports the successful transfer of Students to or from another school within the school system of BC."

Once in attendance, "Non-Members who receive Education, or have their children receive Education, provided by the Participating First Nation on First Nation land will be provided with mechanisms through which they may have input into *any decision* with respect to a program or service where that decision directly and significantly affects the rights of Students who are Non-Members or their parents."

The Education service will respect the *Canadian Charter* rights of all students, and the BC courts will be the ultimate arbitrator of disputes. The definitive version of First Nation education laws will be in English.

The first term of the Education Jurisdiction Agreement will be ten years.

The Participating First Nation must sign an "Education Co-management Agreement" with the First Nations Education Authority, a BC organization. Here, the PFN "agrees to incorporate by reference into its own education law the process, standards and requirements of the FNEA rules," concerning: certifica-

The *Canada Gazette*, which records all federal legislative enactments, describes only two outcomes as indicators of success for the Education agreements. They are:

1) the number of *treaties* and final agreements being signed by First Nations in BC; and

2) the number of *communities* which have concluded treaties.

~

tion and regulation of teachers; certification of schools; graduation requirements; and approving courses that are required for graduation from the First Nation's school."

The FNEA consults directly with the Ministry on these standards.

The PFN further delegates additional law-making powers; authorities; the right to sub-delegate any of those powers and authorities; data collection; to the FNEA.

"Schedule A" to the Agreement between the participating First Nation and BC is the "Education Jurisdiction Implementation Plan." It includes a 39-point plan which prescribes how this First Nation's "jurisdiction" is to be exercised in establishing its Education.

The ratification procedure is defined in the Agreement as a duly convened meeting of the membership, where a vote of 50% + 1 will succeed. However, at least one Education Agreement has already been passed by Band Council Resolution, without a single public meeting having been held, or literature being presented, or notice of the plan to the Membership.

Upon ratification,
"Sections 114 to 122 of the *Indian Act* will no longer apply to the Participating First Nation after it has passed a First Nations Education Law."

Children

"Act respecting First Nations, Inuit and Metis children and families" 2019

The Canadian government's purpose for writing this *Act* was to legislate the outcomes – the orders – of the Canadian Human Rights Tribunal's decision, 2019, in the case brought by the First Nations Child and Family Caring Society.

The Tribunal found an *institutional-level of discrimination* throughout Canada and the Provinces' Child and Family Services. This included less funding for Indigenous children and families; disregard for cultural values and the importance of maintaining family connections; and it found that many basic services for children were *only available to Indigenous children if they were in state care.*

The legislation therefore includes the purpose statement,
"And whereas the Government of Canada acknowledges the ongoing call for funding for child and family services that is predictable, stable, sustainable, needs-based and consistent with the principle of substantive equality in order to secure long-term positive outcomes for Indigenous children, families and communities."

Bill C-92 also states:
"Parliament affirms the right to self-determination of Indigenous peoples, including the inherent right of self-government, which includes jurisdiction in relation to child and family services," and therefore this legislation is purported to be enacted to accommodate that right. It would be safe to say that the legislation is enacted to mechanize the extinguishment of that right by the terms of its ensuing Coordination Agreements.

Note that "the inherent right of self-government" is defined in other legislation by Canada.

The *Act* provides for a First Nation to enter a Co-ordination Agreement with a province, in order to receive government funding to carry out the rights acknowledged above.
"The Indigenous governing body may also request that the Minister and the government of each of those provinces enter into a coordination agreement with the Indigenous governing body in relation to the exercise of the legislative authority, respecting, among other things,
(a) the provision of emergency services to ensure the safety, security and well-being of Indigenous children;
(b) support measures to enable Indigenous children to exercise their rights effectively;
(c) fiscal arrangements, relating to the provision of child and family services by the Indigenous governing body, that are sustainable, needs-based and consistent with the principle of substantive equality in order to secure long-term positive outcomes for Indigenous children, families and communities and to support the capacity of the Indigen-

ous group, community or people to exercise the legislative authority effectively; and
(d) any other coordination measure related to the effective exercise of the legislative authority."

The co-ordination agreement enables First Nations laws to come into effect. At the same time, it imposes extensive limitations on those laws.

Bill C-92 emphasizes early on that "the best interests of the child" ultimately governs interpretation of the Agreement. That phrase is already heavily defined in Canada and BC, and it can be brought to bear in areas such as medical procedures, home schooling, diet, traditional training, housing, et cetera. The provincial courts become the authority over the First Nation's compliance with its own laws to protect "the best interests of the child."

In the Coordination Agreement, a First Nation warrants to be bound by the *Charter* and "all Acts of Canadian parliament."

In order for this to be effective,
"The Minister may gather information respecting the child and family services that are provided in relation to Indigenous children and information about individuals in relation to whom those services are provided and facilitate the disclosure of that information to affected families and communities."

In the Definitions, "*Indigenous Peoples* has the meaning assigned by the definition *aboriginal peoples of Canada* in s. 35(2) of the *Constitution Act 1982*."

Also, "*Indigenous governing body* means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by s.35 of the *Constitution Act 1982*." What this means is that the only *governing body* Canada will recognize is an *Indian Act* council or an incorporated First Nation.

This is relied on in s. 32, where the claimed rights of the Canadian government afforded by "consultation" and "accommodation" are enlisted:
"(1) If affected Indigenous governing bodies were afforded a meaningful opportunity to collaborate in the policy development leading to the making of the regulations, the Governor in Council may make regulations providing for any matter relating to the application of this Act or respecting the provision of child and family services in relation to Indigenous children.
"(2) For greater certainty, subsection (1) does not prevent provincial governments from collaborating in the policy development referred to in that subsection."

Note that the only way to determine whether that opportunity to collaborate was "meaningful" would be to go to court.

There are no sections in the *Indian Act* about child welfare, except for the support of an illegitimate child; attendance at school; and appropriating treaty monies from a man who abandons his family.

What did happen: the *Indian Act 1951* s. 87 (later s. 88) made provincial laws apply to Indians.

Provincial Ministrys seized and removed Indigenous children to foster care, starting with the "60s Scoop," and continuing to date.

As of 2025, 51% of children in Ministry care are Indigenous, in Canada.

Lands

In the first legislation that Canada passed concerning its new powers under the *BNA Act 1867*, in s. 91.24, the Dominion gave power over "lands reserved for Indians" to its own Ministry of the Interior.

This arbitrary appropriation was couched in the guise of retaining a buffer between the Peoples and "unscrupulous settlers." Only the crown could buy Indian land. But it didn't buy it; it sold and annexed and leased the lands without consent.

Since that was indefensible, the crown's focus since 1874 and through today is to coerce Indigenous Peoples to abandon their protected independent status and their legitimate claims; to become modern organizations made of Canadian law, and thereby consent to the process.

The *Indian Act* is the main tool of that coercion: all rights are denied – administrated by the crown, and meanly – until the Nations and Peoples surrender.

Indigenous Peoples' refusal to surrender is what creates "uncertainty" today for Canada and the Provinces. In other words, Canada must be held accountable for stolen lands until Indigenous Peoples release them.

Since 1857, the names of enfranchisement legislation have changed - but the purpose and effect remains the same today.

"First Nations Land Management Act" 1999

This Act enables participating First Nations to "opt-out" of land management sections of the *Indian Act* and to establish their own land codes to manage reserve land and resources.

In order to achieve this, the membership must vote the Chief and Council – meaning, the *Indian Act* governing structure – full powers of authority over its lands. This action of consent to be governed, and consent to the governing structure, legitimizes the arbitrary system and can be interpreted to surrender and exclude traditional forms of governance and land ownership.

A First Nation develops a "Land Code" establishing its laws in regard to land management. An Agreement under the *Act* transfers authority to the First Nation council to pass laws for the development, protection, use and possession of its "First Nation Lands," and to issue leases, licences and regulations.

A separate Agreement with Canada provides operational funding for land management and transition from the *Indian Act*.

A community approval process of the Land Code, funding, and transition agreements creates consent to the assimilated regime. A "Lands Advisory Board" is constituted as the elected authority to lead this and future lands processes.

Canada is indemnified by the First Nation for any resulting land loss.

Voting the Land Code in, membership surrender and exclude traditional forms of governance and land ownership.

This procedure appears to transform the Band's "lands reserved for Indians" into "First Nation Lands," which are now held as per the new Agreement.

Regarding the liability of Canada regarding acts or omissions in relation to First Nation land, Canada is indemnified by the First Nation for any resulting loss.

Ottawa describes these Agreements as "operational documents," not a treaty, without constitutional protection under section 35 of the *Constitution Act, 1982*. While the ratification procedure surrenders traditional controls over land to the new First Nation authority, the Minister remains paramount.

Land codes must include a legal description of the land involved; the rules and procedures that apply to the use and occupancy of First Nation Lands: for example, under licences and leases, under interests held pursuant to allotments under subsection 20(1) of the *Indian Act*, or pursuant to custom; rules prescribing the method of transfer of any interest in land; rules regarding revenues from natural resources; reporting and accountability to First Nation members for the management of land and moneys derived from First Nation Lands; provisions for law-making, dispute resolution, expropriation, delegation of management authority, amending the land code, community consultation, and for the division of interests in land in cases of divorce.

With a Land Code, a First Nation can borrow against its interests in the lands described in the Agreement.

Health

"British Columbia Tripartite Framework Agreement on First Nation Health Governance" 2013

By this agreement, the Government of Canada transferred its role in the design, management, and delivery of First Nations health programming in British Columbia to the newly constituted First Nations Health Authority (FNHA).

The Authority is complemented by a First Nations Health Council, to provide political leadership, and a Tripartite Committee on First Nations Health to support integration with local and regional health services.

During the first "Transition" phase, the First Nations Health Governance Structure "will enable First Nations in BC to participate fully in the design and delivery" of health services - workiing in cooperation with the BC Health department. In the second of the two phases, "Transformation," "the existing federal programs and services will be upgraded and reoriented to meet our needs and First Nations philosophies of a wellness system" - FNHA.

The Agreement provides for a "complete transfer of Federal Health Programs," and for itself to be terminated, and services included under its provisions to be reassigned without undue inconvenience or disruption to any of the Parties.

The First Nations Leadership Council signed an MOU in November 2006, as part of the Transformative Change Accord.

The Tripartite Framework is the legal agreement between the FNLC, BC, and Canada, that transfers Canada's role in First Nations health in BC.

That role will transfer to the BC-wide First Nations Health Authority.

Infrastructure

"First Nations Infrastructure Institute" 2012

The *Jobs and Growth Act*, 2012, created this Institute to put management, financing, and control of on-reserve housing and water at arm's-length from the crown.

Specifically: "the planning, developing, procuring, owning, managing, operating and maintaining infrastructure;
(c) asset management; and
(d) the certification and review of infrastructure projects.

The Institute is connected to the provision of Services on-reserve, which is elaborated in another section of the Act.

First Nations Powers Respecting Services

"In this Part, *"service"* means a service provided on reserve lands by or on behalf of a First Nation, including in relation to the provision of water, wastewater management, drainage, waste management, animal control, recreation, transportation, telecommunications and energy."

Laws respecting the provision of services

97 (1) The council of a First Nation may make laws respecting the provision of services and respecting infrastructure located on the First Nation's reserve lands that is used in the provision of those services, including laws

(a) regulating or prohibiting the provision of services;

(b) imposing requirements and prohibitions with respect to infrastructure; and

(c) respecting, subject to any conditions and procedures prescribed by regulation, the enforcement of laws made under this subsection, including by providing for measures to

(i) require any person or entity to refrain from doing anything that constitutes or is directed toward the contravention of those laws,

(ii) require any person or entity to do anything that may prevent or remedy the contravention of those laws,

(iii) recover costs incurred by the First Nation in enforcing those laws and impose and recover interest and penalties with respect to those costs,

(iv) create liens … on reserve lands and on interests or rights in reserve lands, and

(v) discontinue services.

So far, these powers have led to circumstances where First Nations councils have had to evict people and families from their homes when they could not afford to pay utility bills or arrears. Housing on-reserve is the major lifeline affected by this Act.

Once bestowed with the powers in the Act, the Council must comply with the prescriptions of how to use those powers – to enforce payment for services – or risk punitive measures under the Institute and *Finance Act*, such as third-party remedial management.

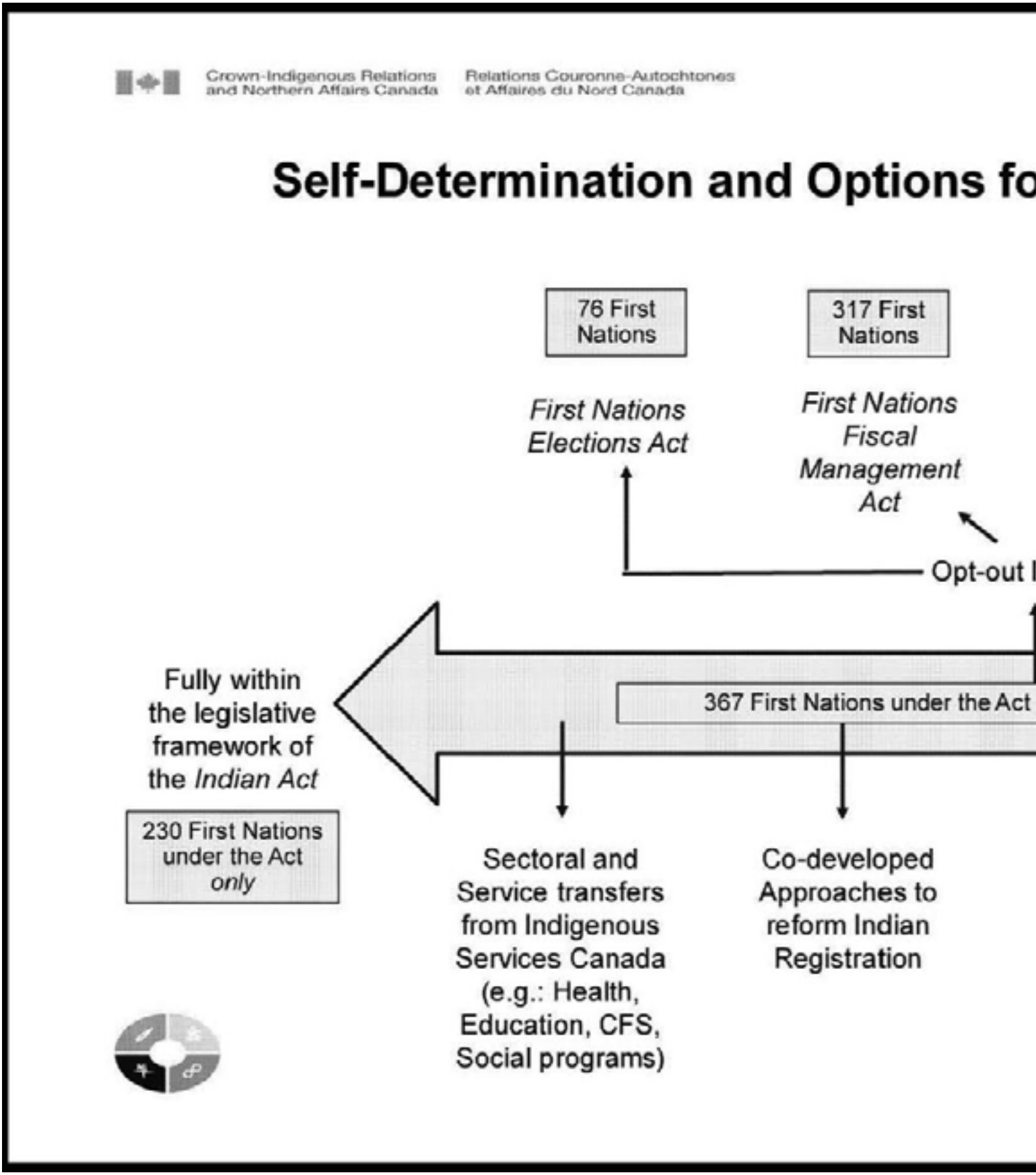
The "Services" provisions in the Act have led to First Nation councils evicting people and families from their homes for unpaid utilities.

The Council must pay for service but has no leaway in its budget to cover families' bills.

It complies or risks punitive measures under the Institute and *Finance Act,* such as third-party management.

"The Governor in Council may, on the recommendation of the Minister …make regulations prescribing anything that is to be prescribed under paragraph (1)(c) [enforcement of contracts]."

Crown-Indigenous Relations and Northern Affairs Canada



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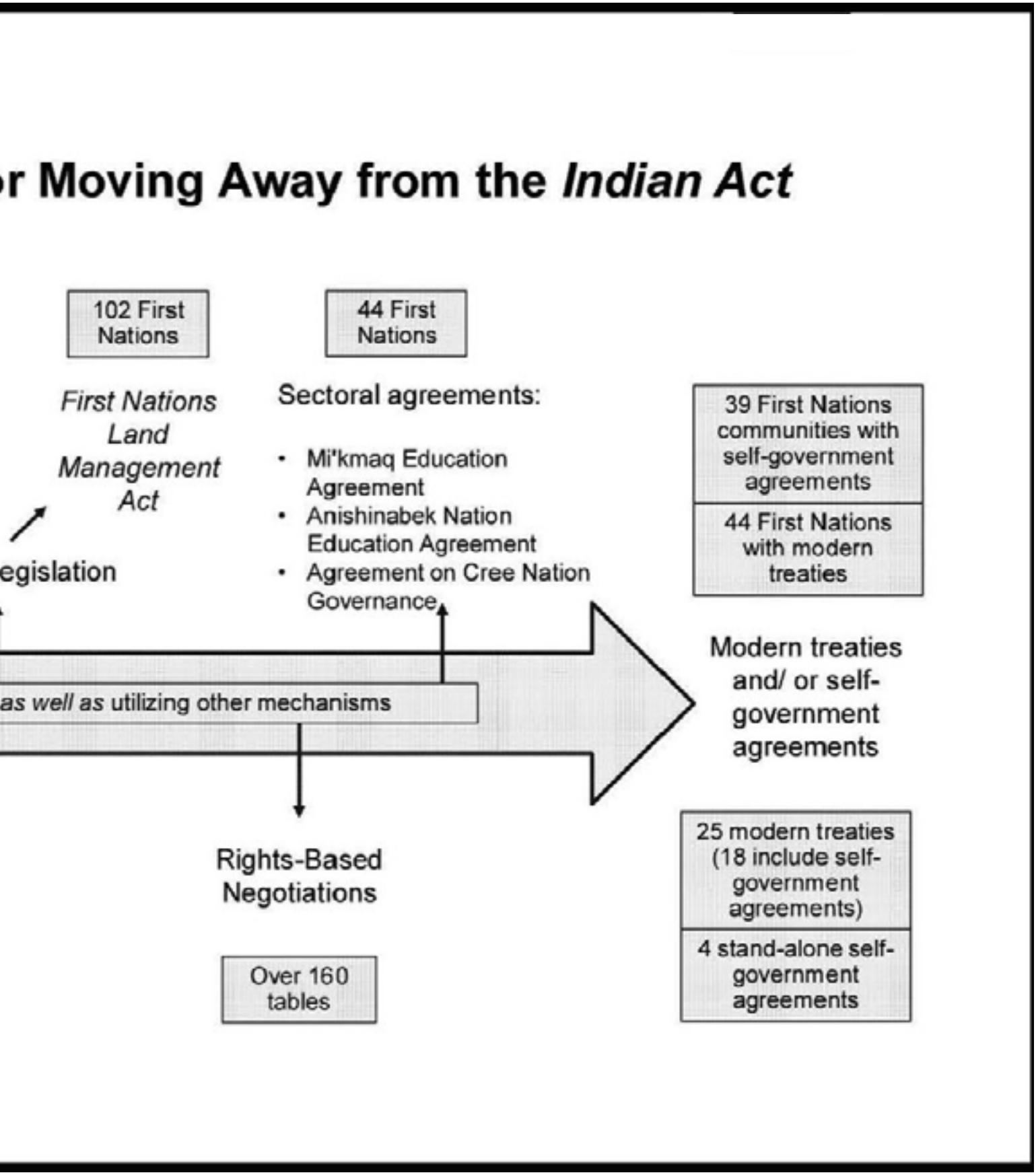
r Moving Away from the *Indian Act*
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as well as utilizing other mechanisms
Rights-Based Negotiations
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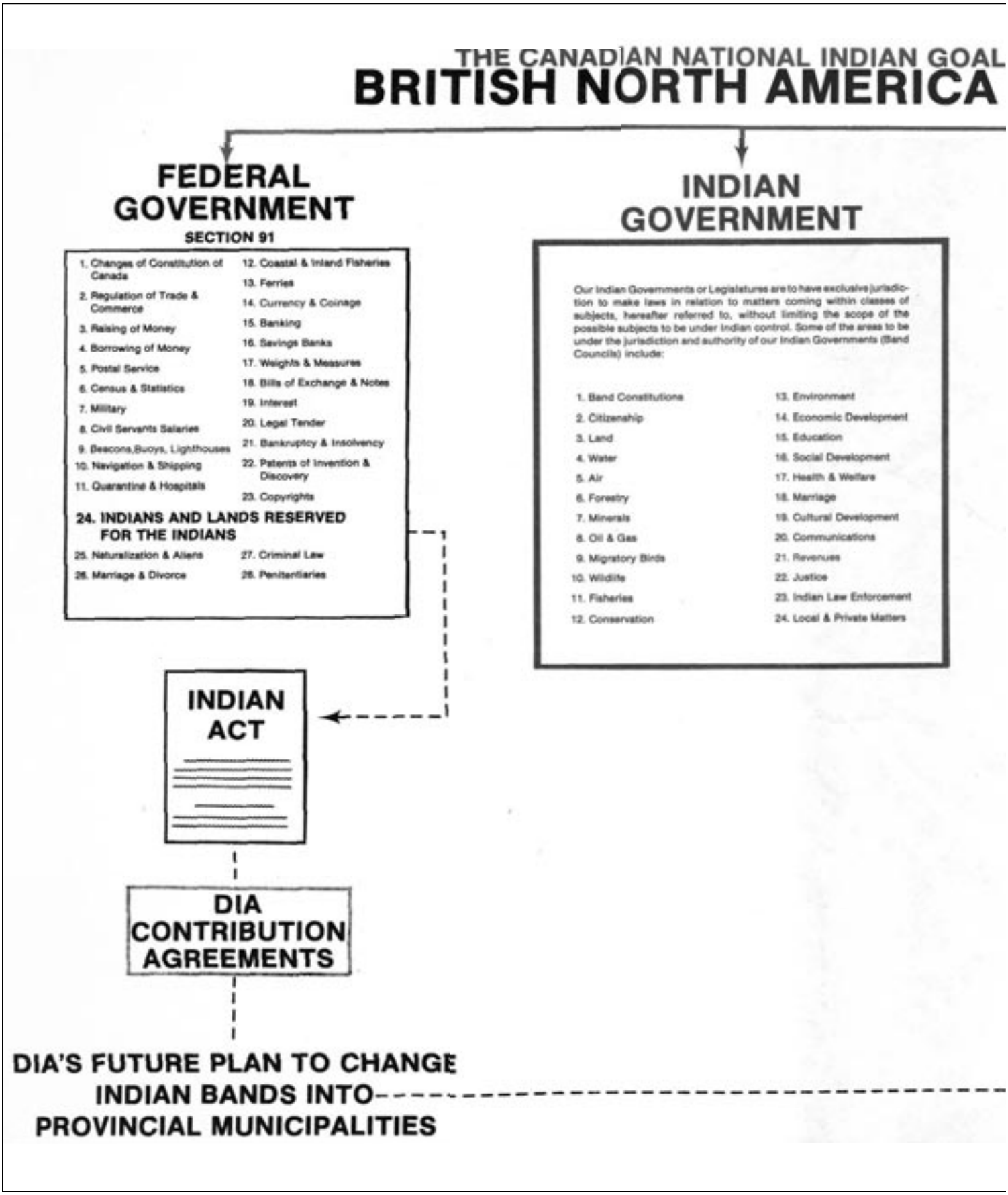
THE CANADIAN NATIONAL INDIAN GOAL
BRITISH NORTH AMERICA
FEDERAL GOVERNMENT
SECTION 91
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24. INDIANS AND LANDS RESERVED FOR THE INDIANS
25. Naturalization & Aliens
26. Marriage & Divorce
27. Criminal Law
28. Penitentiaries
INDIAN GOVERNMENT
Our Indian Governments or Legislatures are to have exclusive jurisdiction to make laws in relation to matters coming within classes of subjects, hereafter referred to, without limiting the scope of the possible subjects to be under Indian control. Some of the areas to be under the jurisdiction and authority of our Indian Governments (Band Councils) include:
1. Band Constitutions
2. Citizenship
3. Land
4. Water
5. Air
6. Forestry
7. Minerals
8. Oil & Gas
9. Migratory Birds
10. Wildlife
11. Fisheries
12. Conservation
13. Environment
14. Economic Development
15. Education
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19. Cultural Development
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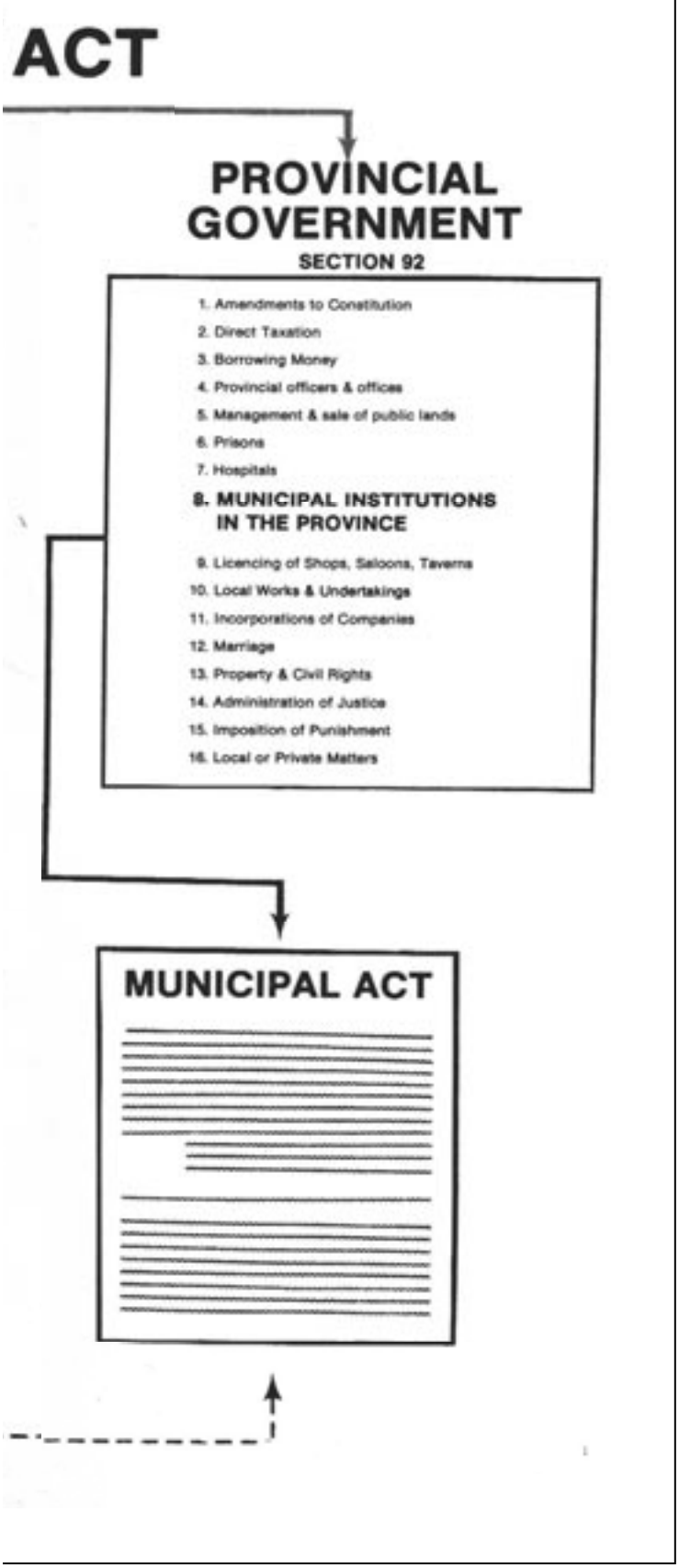
DIA'S FUTURE PLAN TO CHANGE INDIAN BANDS INTO PROVINCIAL MUNICIPALITIES



Union of British Columbia Indian Chiefs

1979

Our Indian Governments or Legislatures are to have exclusive jurisdiction to make laws in relation to matters coming within classes of subjects, hereafter referred to, without limiting the scope of the possible subjects to be under Indian control.

Some of the areas to be under the jurisdiction and authority of our Indian Governments include:

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8. Oil & Gas
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10. Wildlife
11. Fisheries
12. Conservation
13. Environment
14. Economic Development
15. Education
16. Social Development
17. Health & Welfare
18. Marriage
19. Cultural Development
20. Communications
21. Revenues
22. Justice
23. Indian Law Enforcement
24. Local & Private Matters

Helpful Quotes for understanding the *Indian Act*

The Indian Act doesn't just affect *some* people. It affects every Indigenous People and Nation, and individuals, in many ways.

The following are a few brief comments to begin to put the situation in perspective.

"Well, the Indian Agent controlled the world."

- Chief David Walkem, Cook's Ferry, Nlaka'pamux, describing the context of his father's work in the founding of the Union of BC Indian Chiefs, 1969. *The St'at'imc Runner newspaper, November 2009. Photo: Chief Forrest Walkem, c. 1975.*

Indian Act 1886

117. Every **Indian agent shall be *ex officio* a justice of the peace for the purposes of this Act, and shall have the power and authority of two justices of the peace**, with jurisdiction wheresoever any violation of the provisions of this Act occurs, and in all cases of infraction, by Indians, of any of the provisions of chapter one hundred and fifty-seven of the Revised Statutes, intituled *"An Act respecting Offences against Public Morals and Public Convenience*," or wheresoever it is considered by him most conducive to the ends of justice that any violation aforesaid shall be tried.

Mr. Don Ursaki was a long time Councilor and Administrator at Cook's Ferry Indian Band. He worked with Forrest Walkem.

"Forrest and I built the hotel complex at Spences Bridge. And that was really against the trend, but it was successful. It was against the Indian Act.

We asked for part of the loan that Indian Affairs had for the Bands, a $500,000 fund, and we asked for $100,000. They said, "No, that's too big for you people. They said they would give us $1,500 to build a fruit stand.

We went to two banks and, when they saw our plans, they did stick their necks out and lend us the money. We used a Surrender Agreement under Forrest's name for collateral. We built a really good motel and we were successful, we got a lot of attention from the Vancouver newspapers.

So DIA put out a brochure with Forrest's picture on it that read, "Can you do what Forrest Walkem and Cook's Ferry Band did?" But when people called Indian Affairs for guidance or support, they had no idea what to do and they would refer them to me.

My experience with Indian Affairs was that they were a total loss. They were a write-off.

Indian Affairs was basically a dumping ground for ex-RCMP and ex-army personnel. They had nothing else to do with these people. They weren't trained, they had no experience. Indian Affairs was an organization basically to keep the Indians at bay, keep them out of the

"The Policemen fine my people for doing wrong; make Indian pay. Now what we want to know is, do you get the money?"

His Majesty replied,

"Yes. I do. And thank you very much."

Photo: Chief Capilano Joe is leaving for London to see King Edward VII, 1906. North Vancouver Ferry wharf, Wallace Shipyard in left background, McRae's Sawmill next.

Chief Joe, robe on right arm, fifth from left. The story as told, is that Chief Joe proceeded to Buckingham Palace arrayed in formal Indian attire. He spoke of Indian grievances to King Edward VII, who attentively listened. The Chief then continued, "There is another matter too. The Policemen fine my people for doing wrong, (i.e. in the King's name); make Indian pay. Now what we want to know is, do you get the money?" His Majesty replied, "Yes. I do. And thank you very much."

Image 216A, "Conversations with Khahtsahlano 1932-1954"
The City Archivist, Vancouver, British Columbia.
Compiled by Major J.S. Matthews, V.D., City Archivist, City Hall, Vancouver. 1955

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way, keep them economically indigent and out of mainstream society.

So when we showed them our project with the hotel, they basically tried to talk us out of it. In the end we were very successful, we paid off the bank loans on time and had a good business."

Interview from The St'at'imc Runner *newspaper, November 2009.*

Occupying DIA

About sixty people took over the Vancouver DIA office on a Thursday afternoon, July 23, 1981.

They were organized by the Concerned Aboriginal Women, who were demanding that the Minister come to British Columbia and take a tour of Indian reserves to see the state of housing on reserves and the common absence of a drinking water supply, or sewage treatment facilities.

What the people found in the office was bottles of gin and brandy in the top drawers of desks; receipts amounting to thousands of dollars of liquor purchases; and a poster on the wall that said:

"Booze is the Answer.
Does Anybody
Remember the Question?"

DIA Vancouver office occupation. "Sheriffs give Indians order to leave," by Suzanne Fournier; photo, Rick Loughran. The Province, *July 24, 1981.*

Mr. Chairman,
I could not vote at the band council, as I was an Indian on a General List.
I could not vote at the provincial or federal level, because I was an Indian.
I was a nobody really, without a country.

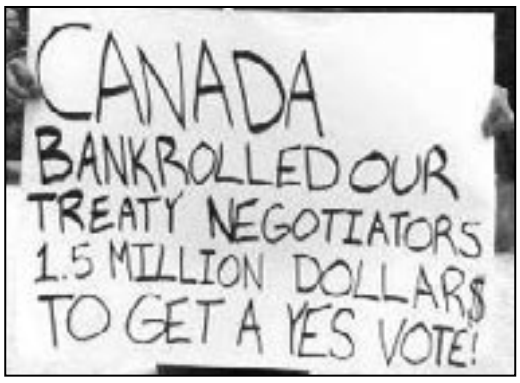
- Ms Elizabeth McCoy,
to the Standing Committee on Indian Affairs, March 19, 1985

Band monies

The annuity payments provided by Ottawa for the welfare of Indian Bands are renewable annually. If a Band or First Nation does not demonstrate they are in compliance with Indian Act regulations on their spending, program funding is suspended or canceled without notice.

Every budget item is approved - usually prescribed - by the Ministry.

Bands may not - typically - expend funds for the support of their members who live off-reserve. For a hundred years, they could not do so *at all.* This induces duress.
- AQ note.



Denial of title produces poverty, creating duress.

Soldier Settlement Act

"the returning Indian soldiers were treated as second-class citizens. their own community was forced to surrender Indian reserve lands."

"The next wave of Indian political protest resulted on the return of the Indian soldiers who had volunteered to protect the British Crown in the First World War. We should never forget how many Indians fought with us not only in the First Word War but also in the Second World War. After the First World War, the Soldiers Settlement Act of Canada gave returning soldiers land in reward for their services. But the returning Indian soldiers were not given land or even the cash compensation. They were treated as second-class citizens. Instead, their own Indian community was forced to surrender Indian reserve lands."

- Mr. David Ennals, Member of Parliament for Norwich-North, UK House of Commons
1982-02-23
Citation: UK, HC, "*Aboriginal Rights Commission*", vol 18 (1982), cols 770-831.

Blackjack Benny gets locked in the outhouse

Chief Ruby Dunstan of Lytton, Nlaka'pamux, gave these remarks in a 2019 interview:

"Whenever we went out and played on the street, well we couldn't do that. We had to have a purpose to go through town – you couldn't stay in town. If you stayed in town, you got picked up.

We all had to be in our homes, lights out, by eight o 'clock. There was a cop – they called him Blackjack Benny – he was a big cop and he had a big German Shepherd. He always carried one of those big sticks. The blackjack. He would walk up and down the reserve, whistling, checking that everyone was in.

Nobody on our reserve had an indoor toilet. Some of the families were really big, so there would be a lineup at their outhouse at night - they had to go before eight o' clock. If Blackjack Benny saw anybody at the outhouse, he would let his dog go – and that dog would attack. He did that to my sisters.

The toilet was quite a ways up there, from our house. One sister was in the outhouse, and one sister was out, holding the door. So that dog came and attacked my sister. She started screaming and we all ran out. My dad went out there and he had a shovel, and he started clubbing the dog. Then the cop started clubbing him. But my dad wouldn't stop - he said, "that dog hurt my daughter!"

We were all outside on the back porch, watching. Blackjack Benny went into the outhouse, my sister was still in there, screaming her head off, and he went in there to get her out.

My dad pushed that door and he turned the wooden lock that they used to keep the door closed: he locked it. Blackjack Benny was swearing away! My dad opened the door and pulled my sister out, and he pushed Blackjack Benny right into the hole. He was hollering for help and nobody would help him. All the people were mad at him. And we just left him there.

We thought it was mean, but it was a good payback for all he did.

After that, he always watched for my mum and dad.

We weren't allowed past this line: the reserve was here, and the town was there, and you can't pass that if you have no business in town.

A bunch of us kids were hanging around town on a Saturday. It was a nice day, we were goofing around, just playing and singing, and Blackjack Benny came and told us to get home. He said we were drinking. We weren't drinking. So I got picked up, three of us girls and some boys, and we got thrown in jail. We were thirteen or fourteen years old.

Then he wanted to take us to court."

When the UK Parliament debated the *Canada Bill*, 1982

"I now turn to the text of section 35 of schedule B. This is of central importance. It asserts in the Canadian constitution that there are special rights which a particular group of Canadians should have reserved to them, unlike other Canadian citizens. The section thus concedes that the native peoples of Canada are ethnically and culturally distinct peoples who deserve a separate status within Canada.

There is today an international yardstick by which legislation which affects human rights can be judged. It is the International Covenant on Civil and Political Rights. … The international covenant entered into force on 23 March 1976. It has been ratified by the United Kingdom and by the Government of Canada. It is binding on our two countries.

Article I of the covenant expressly states: "that all peoples have the right of self-determination; that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development." Admittedly, claims to self-determination in different conditions around the world have often given rise to problems. There are usually two principal problems. The first problem is the definition of "people." What constitutes a people who, in the terms of the covenant, should have the right to determine their own destiny?

… The first problem—whether we are dealing with a distinguishable people—does not arise. The native peoples of Canada are distinct from the majority of the Canadian population of European origin. The Indian and Inuit communities have their own languages, cultures, customs and religions.

The *Royal Proclamation* emphatically described them as separate peoples. Indeed, it described them as nations. The *British North America Act* gives them a separate status in Section 91. That separate status is reinforced by the *Indian Acts*. It is recognised by the very amendment to which I am speaking. It cannot be disputed that the native communities of Canada are peoples in the fullest meaning of the covenant.

… Their right to continue to flourish as Indian, Métis and Inuit peoples is fully recognised by the covenant.

… The Committee must consider how the Bill, which I repeat it is our responsibility to enact, succeeds in safeguarding these basic human rights which we have a solemn obligation to protect under the covenant. What does section 35, that seeks to affirm these rights, say? It states that "the existing rights of the Indian peoples of Canada are recognised and affirmed." What are these "existing rights"? Do they merely amount to the right of these people to continue to live in future in their existing state of deprivation? Is the right of the native peoples to suffer continuing erosion of their land, their land titles and their treaty rights under the Acts of the Canadian Parliament? Is it their right to stand still and meekly accept the discriminatory provisions of the *Indian Acts*, the *Territorial Land Act* and other measures which have so gravely prejudiced them?

What does section 35 say? It states that "the existing rights of the Indian peoples of Canada are recognised and affirmed." What are these "existing rights"?

Is it the right of native peoples to suffer erosion of their land, titles and treaty rights? Is it their right to stand still and meekly accept the discriminatory provisions of the *Indian Acts* and other measures which prejudiced them?

Is it the right of the Indian peoples to continue to live with

existing discriminations against native education, languages, cultures and customs? Is it their right to continue with an existing employment rate of 68 per cent? Is it their right to continue with their existing life expectancy, which is 20 years lower than that of the average Canadian? Is it their right to continue to suffer the existing suicide rate, that most cruel measure of any community's despair, which is out of all proportion to the national average? Is it their right to continue to receive their existing derisory share of federal expenditure, which over the past 14 years has increased by a mere 14 per cent. in real terms, compared with 129 per cent. in other federal programmes?

Will the affirmation of existing rights under the Bill mean a continuation of the Canadian Government's transparent failure in the past to pay any real compensation for acquisition of native interests in land and resources?

I am not inventing this because I am quoting from the rulings of Canadian courts and statements by Canadian Ministers. The facts are there for all who wish to see them.

- Sir Bernard Braine, Member of Parliament for Essex- South East
1982-02-23
By: UK (House of Commons)
Citation: UK, HC, "*Aboriginal Rights Commission*", vol 18 (1982), cols 770-831.

Attorney-General of Canada v. Lavell, 1974

The deciding judge remarked,

"The Canadian Bill of Rights does not have the effect of making s.12 of the *Indian Act* inoperative. The Bill of Rights does not affect the Crown's legislative authority with regard to Indians.
"… Accepting argument that the Bill of Rights rendered the provision inoperative would mean that the whole *Indian Act* should be declared inoperative... It was never the intention of the Bill of Rights to suppress all federal legislation concerning Indians."

A dissenting judge, however, gave the opinion that s.12(1)b effected

"statutory excommunication or statutory banishment of Indian women and their children"

Martin v. Chapman, 1983

John Martin, born out of wedlock to a Status Indian father, went to the Supreme Court of Canada to challenge the Registrar, who was a Mr. H.H. Chapman, and be recognized as entitled to Indian Status.

The written ruling exposed the judges' candid interpretation:

the purpose of the Indian Act is
"to preserve control of reserve lands
by male Indians."

Defendant BC claims Indian Reserves extinguished title.

July 8, July 12 1985

In reply to both Moses Martin and his claim to Nuu-chah-nulth title at Meares Island, and to *Delgam Uukw v. The Queen* and claims to title throughout Gitksan and Wet'suwet'en, the defendant crown in right of the Province of BC responded in its factum:

"That if the Plaintiffs or their ancestors, or the Indian Tribes or Indian Nations which they allegedly represent, ever had aboriginal title or rights over any part or parts of Meares Island / the Province of British Columbia, which is not admitted, the same was voluntarily given up to the Crown in right of one or both of the Colony of British Columbia and the Province of British Columbia by requesting that, out of lands in the territory outside those already set aside as Indian reserves, additional lands be set aside as Indian reserves and accepting the lands that were set aside."

"if the Plaintiffs ever had title to land, it was voluntarily given up by accepting Indian reserves"

Forcible relocation

The following examples are typical of transactions made at meetings of the 1912-14 Indian Reserve Commission.

At the Williams Lake Agency:

Mr. McKenna (Commissioner):

This place is described as four miles up the Halfway Ranch, half way between the Reserve where we held the meeting and the reserve. The wife had died and he had a brother living with him as well as his wife's family, and his brother had 17 or 20 head of horses. … he had a plow, harrow and a wagon there. Then he says he was working on the upper place until a white man came and threw him out of there, and now this white man is there. …What would you recommend?

Mr. C. H. Gibbons (Secretary):

I would recommend that they should get 80 acres, in such a way as not to interfere with what the white man has taken up.

On the north shore of Burrard Inlet:

The old Reserves, however, in the immediate vicinity of the Sawmills, are so hemmed in by the settlements, that it was seldom in our power to increase them in any way to useful purpose.

Relocations continued long after the *McKenna-McBride Commission.*

In Treaty 8, the Fort St. John Beaver Band (now Blueberry River and Doig River First Nations) reserve was set aside in 1916 - the Montney Reserve: "the place where happiness dwells." In the 1940s, it was 'surrendered to the Crown,' and the land distributed to veterans for settlement.

"The Indian Act
is a model
of assimilation;
it's a model of
appropriation of
lands; and it's a
model of how to kill
people off and kill
off their way of life.

It's right there for
everyone to see –
and still we have
Canadian
professors saying
it isn't genocide.
Well I don't know
what their idea of
genocide is,
but genocide is what
happened to us.

They deliberately
altered our way of
life. They developed
the Indian Act
system
and gave everyone
numbers."

- Ron George

Hereditary Chief Tsaskiy, Ron George, speaking in Lil'wat. July 1, 2019.

Speaking at the launch of Bruce Clark's book, "Ongoing Genocide caused by judicial suppression of the "Existing" Aboriginal right," Ron George presented:

"They immediately instituted the enfranchisement process, that would take away the Indian Status that the Indian Act gave. Why did they do this? Because if the people were not Status Indians, the government would not have to pay money to support them.

I was brought up by my uncles from the Father Clan, Tsaybaysa's clan. My grandfather was the same clan as we are, Gitimden.

He arranged in the Feast Hall that his sons from the Grouse Clan and Killer Whale Clan would train his grandchildren in the Gitimden Clan. They would teach us all the boundaries of everyone's territories. How to respect the land, how to respect the wildlife. We were trained, boots-on-the-ground training, walking our territory from the time we were knee-high.

Back when they started registering us, he refused to go. He was a hereditary chief living on his territory. He asked the Indian Agent, "Why would I move on to an Indian Reserve when I have all this here?" All around me is my supermarket, I get everything I need from the Creator. If you can reproduce that on the Reserve, come back and talk to me and maybe I'll go." The Indian Agent came back later and said, "Thomas, I can't provide that on the Reserve. So I'm going to take your Indian Status away from you."

The only reason
they have
Indian Reserves
is so they can
control us.

Indian Act or *CanDRIPA*

Chiefs Call on Canada to Halt Repealing the *Indian Act* and Meet with Treaty Nations About Unfinished Treaty Business
June 20, 2023
Treaty 4, 6, 7 and 8 Territory
PRESS RELEASE

Treaty Chiefs have been following the development of Canada's *United Nations Declaration on the Rights of Indigenous Peoples* Action Plan (UNDA). At no point has Canada met with our Treaty Nations to discuss either the goals or the methods within the UNDA Plan – a plan which we know will impact us for generations. We have reliable information of the federal government's intention to repeal the Indian Act as part of this "Plan."

"As a Treaty Nation, we are disappointed that Canada has moved ahead to develop a termination action plan – a reboot of the failed 1969 white paper," said Okimaw Lewis, Onion Lake Cree Nation.

"For example, Treaty citizens were transformed into statutory Indians in 1951 – there have been no discussions about the impacts of this, if the *Indian Act* was repealed."

"Abolishing the Indian Act without returning to the path of Treaty continues to violate our right to free prior and informed consent. Repeal of the *Act* puts our land at risk and moves us into a municipal structure of land governance - in violation of our Treaty. We are sovereign Nations that made international Treaties" said Xakijii Roy Whitney from Tsuut'ina Nation.

The Gitxsan Proposal, 2009

"Every time we sit down with politicians at every level, I make a point of saying the Gitsxan don't want to be a burden on the Crown and we don't want the Crown to be a burden on us."
- Chief Derrick, a hereditary chief of the Gitsegukla, Gitxsan

Gitxsan Governance Act
November 2009
Excerpts:
C. The Gitxsan are not interested in the concept of treaty settlement lands.

Rather we wish to maintain a relationship with the entire 33,000 km of traditional territory. The economic value of our collective inherited interest (which is neither fee simple nor sovereign), is to be realized by the process of accommodation.

…effected by a combination of own investment, arrangements with external investors, and revenue sharing agreements with governments, especially the province, in the case of resources.

All Canadians have the right to inherit property. So do we.

Our inheritance is an interest in the lands making up our traditional territories. That interest entitles us to shared decision - making in the development of that territory and a share of the wealth it generates, as well as fair treatment by governments in all matters.

The detail of this is what we wish to negotiate.

The Ayookw (laws) that guide the Gitxsan people have a solid foundation of fairness, honour, respect, truth, openness, inclusiveness, accountability, and responsibility. The underlying principle of democracy, as espoused by JS Mill, Aristotle, Plato, and others from across the pond is the same as what Delgamuukw, Guxsan, Sakumhiigookw, Dinimget, Gitludaalth, and many other Gitxsan thinkers defend.

The Gitxsan Governance system is taught continually to all citizens. Every child is taught about their responsibility to themselves, to family and to community. As a child reaches certain stages they are expected to exercise their free will and either assume more responsibility or leave the responsibility to others. As they advance in the Gitxsan governance system they learn to leave their personal interests aside. People who become Simghiighet and assume the positions that hold title, no longer have personal interests.

~

The tribe petitioned Ottawa to remove its Indian status. Their proposal: that the 13,000 members of their tribe abandon their status as "Indians."

What might be a real alternative to the *Indian Act* ?

Perhaps an unprecedented action of solidarity by Canadian citizens with Indigenous Peoples, taking the form of declarations, committees, and direct actions of restitution. Canadian citizens have the rights and responsibilities required to initiate decolonization.

For instance:

ALBERT
Association for Land Back, Economies, Restoration and Taxation

This Association is formed in response to the progressing situation here described, and to achieve the goal of reversing it:

WHEREAS the British Columbia Land Question must begin to be resolved in favour of sustainable and self-determined Indigenous Peoples' futures; and

WHEREAS British Columbians and Canadians, with their courts and governments, are entrenched in continual, illegal denial of and interference with these futures; and

WHEREAS every existing government or popular policy towards the undefined "reconciliation" process is rooted in the illegal and internationally repugnant goal of assimilation and extinguishment of internationally recognized rights of Peoples;

THEREFORE the would be law-abiding inhabitants of these Indigenous Nations / British Columbia independently resolve to achieve the following goals as interim measures to reverse the Crown in Right of BC's 204-year program of total dispossession and assimilation of the Nations, ensuring their recovery, restitution, and self-determined futures,

BY DEMANDING THE GOVERNMENTS and CITIZENS of BRITISH COLUMBIA and CANADA UNDERTAKE:

1. An immediate freeze on development of urban sprawl and non-native communities within ten kilometers of Indian Reserves, pending review and approval of the Tribe, and restoration of underlying title to the nation.

2. Immediate quadrupling of the land boundaries of *every* Indian Reserve – village, fishing site, or graveyard – by incorporation of attached and adjacent lands within the Reserve boundaries. The lands will be of the associated community's choosing, fee-simple owners notwithstanding.

3. The adjustment made under #2 shall take place *after* all reserve lands cut-off by the McKenna McBride Indian Reserve Commission, 1912-1924, are restored within reserve boundaries.

4.Suspension of Indian Act provisions which define and limit Indigenous activity on their Indian Reserves and traditional territories, consistent with the International Convention for the Elimination of all forms of Racial Discrimination (UNCERD), eg. Section 87/88 re. "provincial laws of general application…".

5. Registration of Aboriginal title claims on "crown lands" as caveats applied in the Land Title Registry, as per *Paulette*, 1975.

6. 33% taxation of the provincial gross domestic product, payable to the nations on whose lands the businesses operate, as per the solemn compact made by Governor Seymour, 1864, at New Westminster.

7. Invitation by the State of Canada to the United Nations Treaty Bodies' Committees of Independent Experts and Rapporteurs for the CERD, CCPR, CESCR, UPR, and DRIP to examine Canadian compliance with the International Convention for the Elimination of all forms of Racial Discrimination; the International Convention on Civil and Political Rights; the International Convention on Economic, Social, and Cultural Rights; the Universal Periodic Review; and the

Special Rapporteur on the Rights of Indigenous Peoples; for official state visits and to cooperate fully with the remedies identified in their Concluding Observations. As per the Charter of the United Nations.

8. Full cooperation of BC and Canada with the InterAmerican Court of Human Rights in the cases of the Hul'qumi'num Treaty Group, 2009, and *Edmonds v. Canada*, Case #12-929. As per the terms of membership, Organization of American States.

9. Canadian endorsement and ratification of the Inter-American Declaration on the Rights and Duties of Man and the Inter-American Declaration on the Rights of Indigenous Peoples (Organization of American States).

10. An immediate and perpetual gift and trust to establish museums and archives for the duplication and preservation of histories of colonial contact held by Indigenous Peoples; and to provide for the repatriation of stolen and withheld cultural artifacts.

11. Establishment of a special investigations team, with police powers, legal and administrative support, and resources to hire additional detectives, to prosecute violent crimes against Indigenous individuals, including the murders and disappearances of Indigenous individuals.

12. The unconditional release of every surrender of rights coerced from Indigenous Peoples, and any of them, during financial settlement agreements for past harm or the negotiation of funding agreements, such as "modern day treaties," the Indian Residential Schools Survivors Settlement Agreement; compensation for hydroelectric development; the "Act Respecting First Nations Children and Families;" the "Canada-First Nations Education Jurisdiction Agreements," settlements under the Comprehensive and Land Claims Policies; etcetera.

13. The immediate fulfilment of the duty, under Section 47 of the *Canada Constitution Act, 1982,* of the constitutional entrenchment of the undefined right of Indigenous Peoples to self-government.

14. Immediate halt to development in critical habitats of salmon, ungulates, grizzly bear, and migratory birds, with critical areas to be determined by Indigenous Peoples.

15. Immediate cessation of the disposal of untreated municipal sewage, including settling ponds and Lift Stations, upstream and adjacent to Indian Reserves.

16. 10% ownership of the properties in every city, town and village, with 2% of the properties being among the most valuable, 2% of the properties being among the 60th-80th percentile in value, and so on to 2% of the least expensive properties; to be held by financial institutions and/or Indigenous institutions authorized or engaged by Indigenous Peoples, with accompanying representation on those city, town, and village Councils and Boards.

17. Immediate recognition of Indigenous law and jurisdiction within their territories, including the right to hold and dispose of natural wealth, according to their own laws; the right to act under their own governance; the right to license; etc.

18. Recognition of Indigenous courts of jurisdiction over legal matters within their territories, and joint-establishment of Commissions for Co-existence, to research and report on models for Settler-Indigenous legal-pluralism in *each* respective nation.

19. Immediate retraction of all federal - Aboriginal program requirements that force Indigenous Peoples to modify, cede, release, surrender, reconcile, or promise not to exert their undefined Indigenous rights as a condition of existing funding programs.

20. Creation of *An Act for the Prevention and Punishment of Coercive Actions*, directed at lawyers and consultants working for Indigenous Peoples, who give professional advice which harms the client's best interests with respect to undefined Indigenous rights.

21. A public education initiative explaining the full history, liabilities, and international human rights standards pertaining to British Col-

umbia, and its citizens, with respect to Indigenous Peoples.

22. Unconditional recognition of the full rights of Indigenous Peoples under the International Bill of Rights, ICCPR and ICESCR, 1967 and 1969, by legislative amendments.

23. An emergency restoration response to reverse the catastrophic decline of salmon, ungulates, grizzly bears, migratory birds, and any other culturally essential species of flora and fauna, with the response to be guided by Indigenous Peoples.

24. Legislative recognition and protection of Indigenous laws respecting intellectual property.

25. Protection of Indigenous economies and Inter-tribal agreements on regulation of resource access, management and restoration, from settler encroachment, as per the *Royal Proclamation 1763.*

26. Creation of *An Act to Comply with Article 2.b. of the Convention on the Prevention and Punishment of the Crime of Genocide, 1948,* designed to bring an end to "mental harm," as identified in the Convention, currently perpetrated by media and politicians.

27. Fulfilment of the promise of timely and effective access to health care, as per the Joint Committee's Report on the Claims of the Allied Tribes of British Columbia, 1927; as well as per other colonial compacts made with Indigenous Peoples.

28. Positive valuation of non-Native citizen contributions to these changes by proportionate tax break or minimum universal income.

29. A Commission to Mitigate BC Citizen Losses to Land Rights Restoration, including recommendations for and implementation of Aboriginal Title Insurance for property owners, and aid to those non-natives dispossessed or reassigned to Indigenous mortgage brokers by the restoration of Indian Reserve boundaries and recognition of Indigenous Land Title holdings.

30. Pardon and compensation to all Indigenous victims of judicial abuse, or their families, in regard to punishment of political actions, arising in regional, Provincial, or Federal courts, including fishing and hunting cases, roadblocks, righteous resistance to interference with children and families; etc.

31. A thorough review of Canada and BC international trade agreements which rely on unsurrendered Indigenous lands and resources required for the sustainability and repair of the Peoples and Nations, with suspension of any chapters of such agreements which violate the international conventions mentioned above.

32. An independent, expert legal review of the most racist, unconstitutional, and internationally repugnant findings of the Supreme Court of Canada, and failures of the Attorneys General of the Province and Canada, and wilful misreporting by Commissions of Inquiry, with a priority focus on, but not limited to:

- 1875 allowance of the unconstitutional *BC Lands Act*, by Canada's Attorney General, Blake, on the basis of "convenience" to settlers – at the one-sided and unending expense of Indigenous Peoples.

- 1876 allowance of the unconstitutional *Indian Act*, and its enforcement over non-Treaty Peoples who had then, and continue to have, every right of self-government; and Treaty Peoples who had not given permission to be governed.

- Refusal of the Supreme Court of Canada to consider the defense of Clifford White and David Bob, 1965, *White and Bob*, specifically the matters of urgent public importance raised and recognized by the lower courts in their Nanaimo hunting case.

- Refusal of the Attorney General, Canada, to mandate a full reference of the *Calder* case, 1973, to the Supreme Court of Canada (1987), following the Prime Minister's political interference to ensure the failure of a ruling on the question of unextinguished Native Title.

- Attorney General of Canada's interference and vengeful prosecution in the *Paulette* and *Morrows* cases, 1975 and 1977, concerning the registration of Aboriginal title as a caveat on crown lands.

- Judicial tampering with history, *Sparrow*, 1990, concerning the

(inferior) retroactive approval of the assumption of Crown sovereignty over unsurrendered Indigenous lands *and* simultaneous interpretation of that (inferior) approval to empower federal legislation over non-Treaty Peoples; coupled with the politically-motivated invention of a heretofore unknown legal principle of "justifiable infringement of Aboriginal rights."

- Failure of the BC Attorney General and Canadian Governor General to forward the January 3, 1995, *Petition of the Tribal Natives of the Sun-Dance, The Potlatch, and the Feast of the Dead Traditions on the Relation of Her Majesty the Queen*, to the Queen.

- Judicial invention of the capacity to "freeze" Aboriginal rights in 1846, CJ Lamer, the *Van derPeet* trilogy, 1996, denying the internationally protected right of development.

- Judicial declaration, by default, of the legal supremacy of the political objective of "reconciliation of Aboriginal societies with the sovereignty of the crown," *Van derPeet*, 1996, in the overwhelming context of inequality of arms at law.

- Arbitrary judicial displacement of the burden of proof from crown contenders to Indigenous defendants, *Van derPeet*, 1996.

- Unilateral assumption of Executive Power in court, *Delgamuukw*, 1997, stripping Gitxsan and Wet'suwet'en plaintiffs of their right to a fair trial by arbitrarily assigning them Canadian citizenship and sufferance of rights defined by Canada; and

the entrenchment of institutional bias by CJ Lamer in *Delgamuukw*, pronouncing that Aboriginal rights are positively and "justifiably infringed" by the "broader society's" "legitimate objectives" of development in logging, mining, and hydroelectric infrastructure, and the settlement of foreign populations.

- Allowance of the Province's strategic concession, in the BC Court of Appeal, *Delgamuukw*, 1993, that *undefined* "Aboriginal title" exists throughout the Province – without triggering a Commission of Inquiry to determine that title – but enabling the progress of unregulated "negotiations" for the extinguishment of Aboriginal title under the BC Treaty Commission (where there was no equality of arms nor legal pluralism), and forming instead an open legal field on the procedural "duty to consult" Aboriginal title holders.

- Unilateral assumption of the power of constitutional amendment by CJ McLachlin in *Tsilhqotin*, 2014, announcing the end of federal-provincial interjurisdictional immunity under Section 91-24 of the *Constitution Act /* the *British-North America Act* 1867.

- The judicial declaration of the "right to accommodation," under federal legislation (over non-Treaty Peoples), as confirmed case-by-case by crown courts, as the remedy to theft and invasion of Aboriginal property rights. *Haida* and *Taku*, 2004 SCC.

- Finding that a lack of capacity to be consulted on management plans, on the part of Indigenous Peoples, creates a waiver of the procedural right to be consulted, as in *Douglas*, 2007.

- Royal Commission on Aboriginal Peoples, 1996

- Commissions reporting on the decline of salmon in the Fraser River: Pearse; Toy; Cohen, etcetera. Frank Paul Inquiry, 2009

- Oppal Commission on Missing and Murdered Women, 2010

- Truth and Reconciliation Commission report and recommendations, 2016

Introducing *Archive Quarterly*

Journal of *the west wasn't won* archive project.

This publication is the unexpected result of an ongoing investigation into Indigenous "roadblocks" in British Columbia.

Asking the questions, "what led up to a "stand-off" position?" and, "what has happened since then? Court case? Resolution? Conflict? Change?", the answer is that so many events contribute to the situation, amid such extensive acts of colonialism, concerning 26 distinct nations, that the result would be too long for a book; even a series of books.

That's where AQ emerges. This journal accompanies the research process as an intermittent communication; a curated cluster of materials that should be read together.

In the meantime, the collection of archival material and interviews has taken on a life of its own, both by being sought out and retrieved from forgotten places, and by being donated to the Roadblock project. The collection asks for its own rightful place, where people can access the evidence and information.

AQ is here to promote the work of keeping that history, west of the Rocky Mountains, that it should serve the positions of Indigenous Peoples today in building a self-determing and viable future.

It is also here to bring attention and support to creating a comprehensive and focused archive, and help prevent further acts of genocide by promoting education, understanding, and memory among non-native people.

For the people of the land; for the generosity and grace of the tireless indigenous instructors at the University of the Kitchen Table; and in the hope you will benefit by and engage in this work,

Kerry Coast, editor.

what you'll find here:

Original sources
in Archival documents
Touchstone essays
for context
Related events
giving insight
Quotes
for the ages
Interviews
with the Elders
Book reviews
Maps
Timelines
That Day in Court
Fact check
Anniversaries
to remember

In print and digital copy: April, July, October, and January.

What can AQ do for you?

Online Collection

Digitization is ongoing work.
As stored materials are retrieved and digitized, they are uploaded to www.thewestwasntwon.com where they are free to download.

Deposit

The Archive Project is working to offer a safe repository for collections, original or copied.
We can work together to preserve materials.

Travelling Exhibits

Curated micro-exhibits give history on requested subjects. A binder full of roadblock news; a surround-display of timeline pieces showing cyclical processes; a collection of books and papers on the subject.

Research Assistance

The Archive is not publicly accessible - yet - but that's the goal!
Meantime, contact AQ for a docs pull and suggestions.

Special Issues

When today's news announces a change, or progress, it can be hard to put it in context. Providing detailed overviews, extra issues will follow down particular themes.

Take this to join in and find more archived resources:

Union of British Columbia Indian Chiefs

Declaration 1976

The *Indian Act* determined and defined every Indian Band and required these, as entities, to elect one Chief and a Council, by popular vote, as of 1935.

Many communities instead used traditional protocols to select and instruct their representatives, well into the 1980s.

Relying on the only structure of organization and leadership that Canada recognizes, Chiefs in BC formed a Union in 1969.

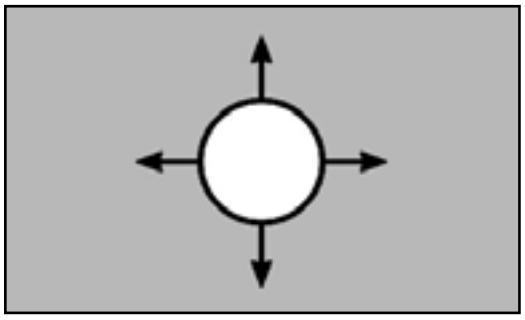
as adopted by the U.B.C.I.C. General Assembly in Courtenay, May 17, 1976:

We, the Native people of the tribes of British Columbia, openly and publicly declare and affirm to the people and governments of Canada and British Columbia:

That the Indian Tribes have held and still hold Native title, Aboriginal rights and ownership to all lands and resources of British Columbia, within our respective tribal territorial boundaries,

That the Indian tribes have held and still hold Aboriginal rights to hunt, fish, and trap and gather food, resources, and goods within our respective tribal territorial boundaries,

That the Indian tribes have held and still hold inalienable and Aboriginal rights to self-government within our respective tribal territorial boundaries, That we, the Native People of the Tribes of British Columbia, have never reached any agreement or treaty with the governments of Canada and British Columbia concerning the occupation, settlement, sovereignty, and jurisdiction over our native lands,



In 1980, the Union proposed a flag design for all its Indian Band members. Each Band could use this template and put their own crest in the center. The significance of the matching flags was total solidarity, inspired by the Constitution Express.

That such Native title and Aboriginal rights have never been extinguished, purchased, or acquired by treaty, agreement or by any other means by the government of Canada and the government of British Columbia,...

Read the whole Declaration on the Union's online archive!

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