

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.

temporary permits for the taking of sand, gravel, clay and other non-metallic substances upon or under lands in a reserve...

Provincial 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**.

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**.

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.

76. (1) The Governor in Council may make **orders and regulations** with respect to band elections ... with respect to

(a) meetings to nominate candidates;
(b) 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.

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.

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.

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

(b) 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**

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

Powers of the Council

*Band Councils empowered to
make bylaws for hunting and
fishing*

*Governor may allow an
“advanced” Council to
manage some its own affairs*

*Intoxicants legalized for
Indians off reserve, or
on-reserve if Band so declares*

*Evidence provided by
unverified absentee witnesses
may be used to prosecute
offenses under this Act*

and poultry raising ;

(l) the construction and regulation of the use of public wells, cisterns, reservoirs and **water supplies;**

(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;**

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

(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);

(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

Minimum sentencing for offenses not otherwise specified is a fine of \$200 or less, or up to three months in prison, or both.

Seizure of goods and chattels by Indian Agent or other depute.

Provincial police magistrate empowered to enforce Indian Act.

Lands of enfranchised person cease to be Indian reserve lands.

Penalties increased for parents who do not send a child to school.

the person appearing to have signed the certificate **or his official character**, and without further proof thereof.

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**.

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.

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.

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**.

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**

*Use of force authorized
to convey an Indian child
to school.*

*Children detained as
delinquents for expulsion
from school.*

*This version of the Act brings
previous sales of Indian
reserve lands into
compliance by force of the
legislation.*

the circumstances require.

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*.

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

(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.