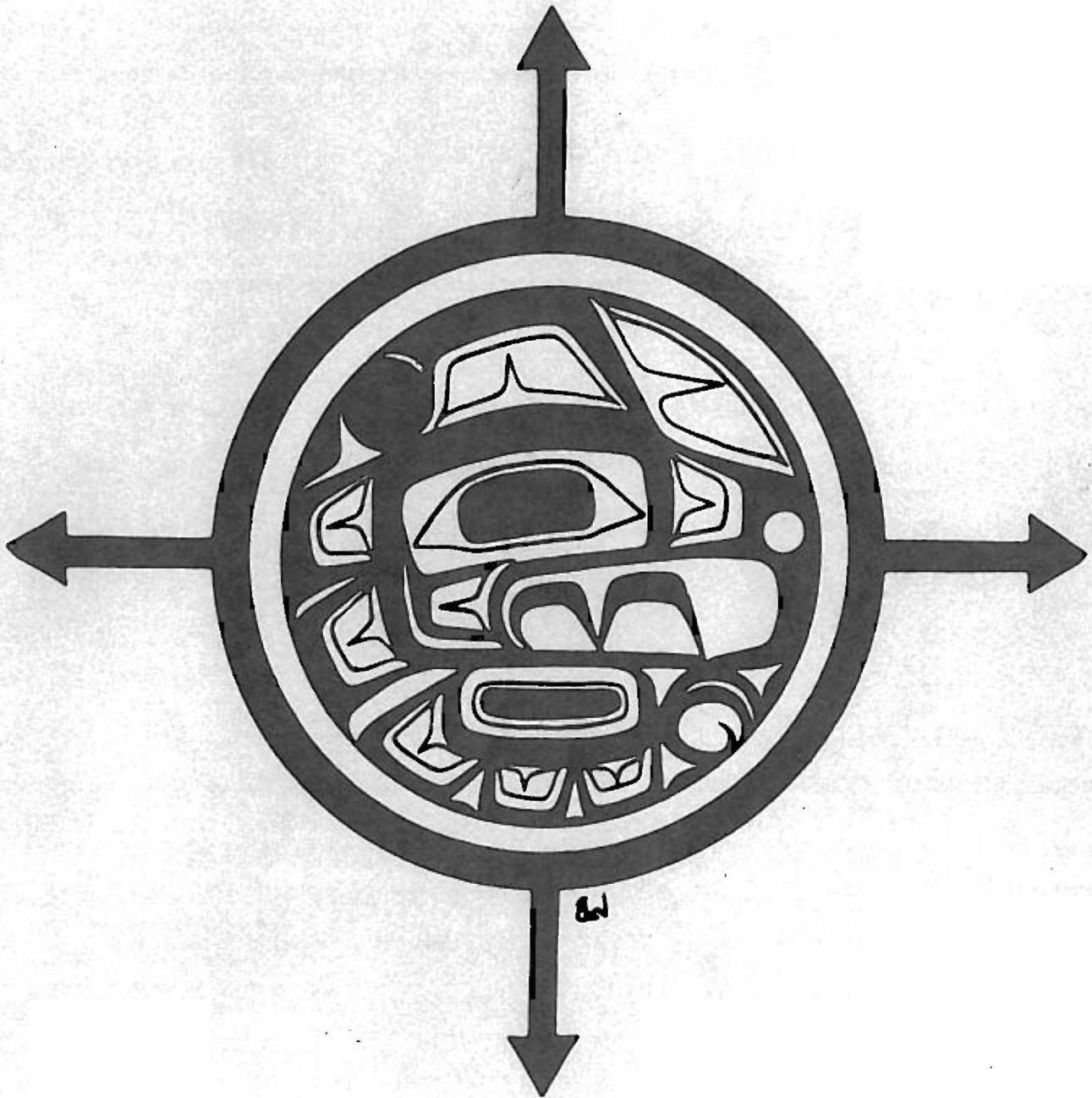


# INDIAN ACT AND WHAT IT MEANS



**UNION OF BRITISH COLUMBIA INDIAN CHIEFS**

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THE INDIAN ACT AND WHAT IT MEANS

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The Indian Act and What it means was interpreted by Nancy Sandy, UBC Native Law Student on contract by the Union of B.C. Indian Chiefs

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# THE INDIAN ACT AND WHAT IT MEANS

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UNION OF B.C. INDIAN CHIEFS  
INDIAN ACT AND WHAT IT MEANS

1

Chapter 1 - 6

An Act Respecting Indians

Short Title

Section 1

This Act may be cited as the  
Indian Act.

Section 1

This Act can be called the  
Indian Act.

INTERPRETATION

Section 2 (1)

In this Act,

"band" means a body of  
Indians

(a) for whose use and  
benefit in common, lands,  
the legal title to which is  
vested in Her Majesty, have  
been set apart before, on or  
after the 4th day of  
September 1951,

(b) for whose use and  
benefit in common, moneys  
are held by Her Majesty, or

(c) declared by the Governor  
in Council to be a band for  
the purposes of this Act;

"Band List" means a list of  
persons that is maintained  
under Section 8 by a band or  
in the Department;

Section 2 (1)

In this Act the following  
words have the meanings that  
are given them in this  
section,

"band" means a group of  
Indians

(a) who share the use and  
benefit of reserve lands,

(b) who share moneys held by  
the Department of Indian  
Affairs and Northern Develop-  
ment (the Department), or

(c) a group of Indians which  
the federal cabinet has said  
is a band;

"Band List" means a list of  
persons kept by a band or in  
the Department pursuant to  
Section 8 (Band Lists);

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

"council of the band" means

(a) in the case of a band to which Section 74 applies, the council established pursuant to that section,

(b) in the case of a band to which Section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

See, "Indian Bands Election Regulations", C.R.C. 1978, c. 952: and "Indian Band Election Order", C.R.C. 1978, c. 951.

"Department" means the Department of Indian Affairs and Northern Development;

"elector" means a person who

(a) is registered on the Band List,

(b) is of the full age of eighteen years and

(c) is not disqualified from voting at band elections;

"estate" includes real and personal property and any interest in land;

"child" includes a child born in or out of wedlock, an Indian or non-Indian child legally adopted and an Indian or a non-Indian child adopted in accordance with Indian custom.

"council of the band" means

(a) either a council elected under the election provisions in Sections 74 to 80, or

(b) a council, or chief chosen according to band custom;

"Department" means the Department of Indian Affairs and Northern Development;

"elector" means a person who is

(a) registered on a Band List,

(b) aged 18 or more; and

(c) can vote in band elections (that is, somebody who usually lives on reserve);

"estate" means everything a person owns--land, leases, money, car, house, furniture, television, clothes and so on;



"Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;

"Indian moneys" means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands;

"Indian Register" means the register of persons that is maintained under Section 5;

"intoxicant" includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating;

"Indian" means a person who is registered as an Indian, or a person who is entitled to be registered as an Indian on the Indian register kept by the Department (Definition and Registration of Indians -- Section 5 through 14);

"Indian moneys" means any money collected, received or held by the federal government for the use and benefit of individual Indians or Indian bands;

"Indian Register" means the list of persons that is maintained by the Department under Section 5 where the name of every person who is entitled can be registered as an Indian;

"intoxicant" means anything that people can drink which will make them drunk, and it includes such things as methylated spirits and vanilla extract;

"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;

"member of a band" means ; person whose name is on a Band List kept by a band who has control of their Band Lists/Membership, or if a band does not have control of their Band Lists/Membership, then on the Band List kept by the Department, or who is entitled to have his name on those lists (see, Section 8 - Band Lists);

"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 defective or incompetent persons;

"mentally incompetent Indian" means an Indian, who because of the state of his mind, cannot look after his own business and according to provincial law the Court declares the person to be incapable;

"Minister" means the Minister of Indian Affairs and Northern Development;

"Minister" means the Minister of Indian Affairs and Northern Development;

"registered" means registered as an Indian in the Indian Register;

"registered" means registered as an Indian in the Indian Register kept by the Department;

"Registrar" means the officer of the Department who is in charge of the Indian Register and the Band List maintained in the Department;

"Registrar" means the Department official in charge of the Indian Register and the Departmental Band Lists;

"reserve" means a tract of land, the legal title of which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;

"reserve" means a piece of land legally held by the federal government, but which has been set aside for the use and benefit of an Indian band;

"superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent and any other person declared by the Minister to be a superintendent for the purposes of this Act, and with reference to a band or a reserve, means the superintendent for that band or reserve;

"superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent, and any other person the Minister says is a superintendent;

"surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title of which remains vested in Her Majesty, that has been released or surrendered by the band for whose use and benefit it was set apart.

"surrendered lands" means any piece of reserve land (including, for example, minerals) that has been surrendered by the band that had the use and benefit of it, but to which the federal government still retains legal title.

## Section 2 (2)

The expression "band" with reference to a reserve or surrendered lands means the band for whose use and benefit the reserve or the surrendered lands were set apart.

## Section 2 (2)

When the word "band" is used in connection with a reserve or surrendered lands it then means the band for whose use and benefit the reserve or surrendered lands were set apart.

**Section 3**

Unless the context otherwise requires or this Act otherwise provides

(a) a power conferred upon a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band; and

(b) a power conferred upon the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.

**Section 3**

(a) Generally speaking, when a band is given the power to do something it cannot act unless a majority of the band electors have agreed; and

(b) Generally speaking, when a band council is given the power to do something it cannot act unless the majority of the band councillors have agreed at a properly called band council meeting.

**ADMINISTRATION****Section 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.

**Section 3 (1)**

This Act shall be administered by the Minister of the Department who is also the superintendent general of Indian affairs.

## Section 3 (2)

The Minister may authorize the Deputy Minister of Indian Affairs and Northern Development or the chief officer in charge of the branch of the Department relating to Indian affairs to perform and exercise any of the duties powers and functions that may be or are required to be performed or exercised by the Minister under this Act or any other Act of the Parliament of Canada relating to Indian affairs.

## Section 3 (2)

The Minister can give the Deputy Minister or the head of the Indian affairs section authority to exercise the Ministers powers under this Act.

See, the Department of Indian Affairs and Northern Development Act, R.S. c.1 - 7.

## APPLICATION OF THIS ACT

## Section 4 (1)

A reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as Inuit.

## Section 4 (1)

The Inuit (Eskimo) do not come under the Indian Act.

## Section 4 (2)

The Governor in Council may by proclamation declare that this Act or any portion thereof, except Sections 5 to 14.3 or Sections 37 to 41, shall not apply to:

(a) any Indian or any group or band of Indians,

(b) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration.

## Section 4 (2.1)

For greater certainty, and without restricting the generality of subsection (2), the Governor in Council shall be deemed to have had the authority to make any declaration under subsection (2) that he has made in respect of section 11, 12, or 14, or any provision thereof, as each section or provision read immediately prior to April 17, 1985.

## Section 4 (2)

The federal cabinet can make a proclamation (actually an Order in Council which is a recorded decision of the federal cabinet that will normally be printed in the Canada Gazette) saying that the Indian Act or any part of it doesn't apply to some Indians or some band or a reserve or part of a reserve. However, the federal cabinet cannot say that Sections 5 to 14.3 (Definition and Registration of Indians) or Sections 37 to 41 (Surrenders) don't apply. The federal cabinet can also cancel any proclamation it has made.

## Section 4 (2.1)

The federal cabinet shall be deemed to have the authority to make any declaration with respect to Sections 11, 12, or 14 as immediately prior to April 17, 1985. For example, where before Bill C-31 there was a declaration that Section 12(1)(b) did not apply to a Band, that declaration is valid

### Section 4 (3)

Sections 114 to 123 and, unless the Minister otherwise orders, Sections 42 to 52 do not apply to or in respect of any Indian who does not ordinarily reside on a reserve or on lands belonging to Her Majesty in right of Canada or a province.

### Section 4.1

A reference to an Indian in the definitions "band" "Indian moneys" and "mentally incompetent" in Section 2 or a reference to an Indian in Subsection 4(2) or (3), 31(1) or (3), Subsection 35(4), Section 51, Section 52, Subsection 58(3), Subsection 61(1), Section 63, Section 65, Subsection 66(2), Subsection 70(1) or (4), Section 71, Paragraph 73(g) or (h), Subsection 74(4), Section 84, Paragraph 87(a), Section 88, Subsection 89(1) or Paragraph 107(b) shall be deemed to include a reference to any person who is entitled to have his name entered in a Band List and whose name has been entered therein.

### Section 4 (3)

Sections 114 to 123 (Schools) and unless the Minister says otherwise Sections 42 to 52 (Descent of Property) do not apply to an Indian who normally doesn't live on a reserve or on lands belonging to the federal or provincial governments.

### Section 4.1

A reference to an Indian shall be deemed to include a reference to any person who is entitled to have his name entered in a Band List and whose name has been entered therein in each of the following sections:

Section 2 Interpretations - in the definition of "band" "Indian moneys" and "mentally incompetent Indian".

Subsection 4(2) or (3)  
Application of Act.

Section 18 (2) Reserves -  
Use of for schools.

Section 20 Possession of  
Lands in reserves.

Sections 22 to 25  
Improvements on lands;  
Compensation for  
improvements; Transfer of  
possession, and Indian  
ceasing to reside on reserve.

(Section 4.1 cont'd)

Section 31(1) or (3) Trespass on Reserves - Information by Attorney General or Existing remedies preserved.

Section 35(4) Lands Taken for Public Purposes - Payment.

Section 51 Mentally Incompetent Indians.

Section 52 Guardianship.

Section 58(3) Management of Reserves and Surrendered Lands - Lease at the request of occupant.

Section 61(1) Management of Indian Moneys - Indian moneys to be held for use and benefit.

Section 63 Payments to Indians.

Section 65 Expenditure of capital.

Section 66(2) Minister may direct expenditure.

Section 70(1) or (4) Loans to Indians or Repayment.

Section 71 Farms.

Section 73(g) or (h) Regulations - to provide medical treatment and health services for Indians or to provide compulsory hospitalization and treatment for infectious diseases among Indians.



(section 4.1 cont'd)

Section 74(4) Elections of  
Chiefs and Band Councils -  
Electoral sections.

Section 84 Powers of the  
Council - recovery of taxes.

Section 87(a) Taxation -  
Property exempt from  
taxation.

Section 88 Legal Rights -  
General provincial laws  
applicable to Indians.

Section 89(1) Property on  
reserve not subject to  
alienation.

Section 107(b) Forfeiture  
and Penalties - Appointment  
of justices shall refer to  
any person who is entitled to  
have his name on a Band List.

## DEFINITION AND REGISTRATION OF INDIANS

## Indian Register

## Section 5 (1)

There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.

## Section 5 (2)

The names in the Indian Register immediately prior to April 17, 1985 shall constitute the Indian Register on April 17, 1985.

## Section 5 (3)

The Registrar may at any time add to or delete from the Indian Register, the name of any person who, in accordance with this Act, is entitled or not entitled as the case may be, to have his name included in the Indian Register.

## Section 5 (4)

The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom.

## Section 5 (1)

The Department shall keep an Indian Register which lists the name of every person who is entitled to be registered as an Indian under this Act.

## Section 5 (2)

The names of all Indians in the Indian Register prior to April 17, 1985 shall be in the Indian Register on April 17, 1985.

## Section 5 (3)

The Registrar can add or remove the name of any person who is entitled or not entitled according to the rules in the Indian Act to have his name included in the Indian Register.

## Section 5 (4)

The Indian Register shall show the date when each was entered or removed.

## Section 5 (5)

The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

## Section 6 (1)

Subject to Section 7, a person 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;

## Section 5 (5)

The name of a person entitled to be registered in the Indian Register isn't required to register unless an application of registration is made to the Registrar.

## Section 6 (1)

Subject to Section 7 (persons not entitled to be registered), a person can be registered if

(a) that person had been registered before April 17, 1985;

(b) that person is a member of a band the federal cabinet has declared as a band for the purposes of this Act.

## (Section 6(1) cont'd)

(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;

## (Section 6(1) cont'd)

(c) the name of that person had been taken off the Indian Register or band list and lost Indian status because of the double mother rule (Subparagraph 12 (1) (a) (iv)), marriage by an Indian woman to a non-Indian male (Paragraph 12 (1) (b)), a successful protest because of illegitimacy (Subsection 12 (2)) or by enfranchisement (Subparagraph 12 (1) (a) (iii)) pursuant to an order made under Subsection 109 (2).

(d) the name of that person had been taken off the Indian Register or band list a lost Indian status because he became enfranchised (Subparagraph 12 (1) (a) (iii)) pursuant to an order made where an Indian has applied for enfranchisement (Subsection 109 (1)).

**(Section 6 (1) cont'd)**

(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.

**Section 6 (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).

**(Section 6 (1) cont'd)**

(e) the name of that person had been taken off the Indian Register or band list.

(i) because that person lived outside of Canada for 5 years without the Minister's permission, or

(ii) because that person acquired enfranchisement by obtaining a university degree (i.e., degree in medicine or law)

(f) that person's parents are both entitled to registration, or if no longer living, at the time of their death, were entitled to registration.

**Section 6 (2)**

Subject to Section 7 (persons not entitled to be registered) a person is entitled to registration if one of that person's parents, or if no longer living, was at the time of death, entitled to registration under Subsection 6(1).

## Section 6 (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) or (e) who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that paragraph.

## Section 7 (1)

The following persons are not entitled to be registered:

(a) a person who was registered under Paragraph 11(1) (f), as read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and whose name was subsequently omitted or deleted from the Indian Register under this Act; or

## Section 6 (3)

(a) For the purposes of Paragraph (1) (f) and Subsection (2) a person who died prior to April 17, 1985, but at the time of his death was entitled to registration shall be entitled to be registered under Paragraph (1) (a); and

(b) a person described in Paragraph (1) (c), (d) or (e) (the reinstatement sections), but who died before April 17, 1985 shall be entitled to registration under those paragraphs.

## Section 7 (1)

The following persons are not entitled to registration:

(a) a person who was the wife or widow of a male Indian and thus acquired status and had been registered as an Indian (Paragraph 11 (1) (f)), but whose name was subsequently taken off the Indian register; or

(Section 7 (1) cont'd)

(b) a person who is the child of a person who was registered or entitled to be registered under Paragraph 11 (1) (f), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and is also the child of a person who is not entitled to be registered.

Section 7 (2)

Paragraph (1) (a) does not apply in respect of a female person who was, at any time prior to being registered under Paragraph 11 (1) (f), entitled to be registered under any other provision of this Act.

Section 7 (3)

Paragraph (1) (b) does not apply in respect of the child of a female person who was, at any time prior to being registered under Paragraph 11 (1) (f), entitled to be registered under any other provision of this Act.

(Section 7 (1) cont'd)

(b) a person who is the child of the wife or widow of a male Indian, and thus acquired status and had been registered (Paragraph 11 (1) (f)), and is also the child of a non-Indian male.

Section 7 (2)

Disentitlement under Paragraph (1) (a) doesn't apply to a female person, who before being registered as the spouse of a registered male Indian (Paragraph 11 (1) (f)) was entitled to registration in her own right under any other provision of this Act.

Section 7 (3)

Disentitlement under Paragraph (1) (b) doesn't apply to a child of a female person who before being registered as the spouse of a registered male Indian (Paragraph 11 (1) (f)) was entitled to be registered in her own right under any other provision of this Act.

## BAND LISTS

## Section 8

There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

## Section 9 (1)

Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.

## Section 9 (2)

The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.

## Section 9 (3)

The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be to have his name included in that List.

## Section 9 (4)

A Band List maintained in the Department shall indicate the date on which each name was added thereto or deleted therefrom.

## Section 8

Following the rules of this Act a Band List shall be kept for each band listing the name of every person who is a member of that band.

## Section 9 (1)

Until a band takes control of its Band List the Band List will be kept in the Department by the Registrar.

## Section 9 (2)

The names in a Band List before April 17, 1985 shall be the Band List as of April 17, 1985.

## Section 9 (3)

The Registrar can at any time add to or remove from a Band List which is kept by the Department the name of any person entitled to or not entitled to have his name on a Band List.

## Section 9 (4)

At band List kept by the Department shall show the date when each name had been entered or removed.



## Section 9 (5)

The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry therein is made to the Registrar.

## Section 10 (1)

A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.

## Section 10 (2)

A band may, pursuant to the consent of a majority of the electors of the band,

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

(b) provide for a mechanism for reviewing decisions on membership

## Section 9 (5)

The name of a person entitled to have his name on a Band List doesn't have to be entered unless he makes an application to the Registrar.

## Section 10 (1)

A band can take control of its own membership if the band establishes membership rules in writing and if, after giving appropriate notice of its intention to assume control of its membership, a majority of the band electors (age 18 and over) give their consent to such control.

## Section 10 (2)

A band can with the consent of a majority of the band electors,

(a) after it has given appropriate notice of its intention to do so, make membership rules for itself; and

(b) provide a means of reviewing decisions on band membership.

## Section 10 (3)

Where the council of a band makes a by-law under Paragraph 81 (1) (p.4) bringing this subsection into effect in respect of the band, the consents required under Subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.

## Section 10 (4)

Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

## Section 10 (5)

For greater certainty, Subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under Paragraph 11 (1) (c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

## Section 10 (3)

When a band council makes a by-law (Paragraph 81 (1) (p.4)) to bring this Subsection (10(3)) into effect the consents required under Subsection (1) and (2) has to be by a majority of the band members (rather than band electors) who are 18 years and over.

## Section 10 (4)

If a person had the right to have his name entered on a band's Band List before the membership rules were made, then those membership rules cannot deny that person the right to have his name entered on the Band List because of a situation that existed or an action taken before the rules came into effect (see Subsection 5).

## Section 10 (5)

For example, band membership rules cannot disentitle a person to membership who was entitled to have his name entered on a Departmental Band List (Subsection 11 (1) (c)) prior to a band assuming control of its Band List, if that person was entitled to reinstatement because that person lost Indian status because of the double mother rule, marriage to a non-Indian male, illegitimacy or enfranchisement (Paragraph 6 (1) (c)).

## Section 10 (6)

Where the conditions set out in Subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.

## Section 10 (7)

On receipt of a notice from the council of a band under Subsection (6), the Minister shall, if the conditions set out in Subsection (1) have been complied with, forthwith

(a) give notice to the band that it has control of its own membership; and

(b) direct the Registrar to provide the band with a copy of the Band List maintained by the Department.

## Section 10 (6)

After a band has given appropriate notice to its band members of its intention to assume control of its own membership, and has the consent of a majority of the band electors to assume control, and after the band has established written membership rules the band council must immediately give written notice to the Minister of its intent to assume control of band membership, and has to give the Minister a copy of the band's membership rules

## Section 10 (7)

After the Minister has received notice from a band council of its intent to assume control of membership and has received a copy of the band's membership rules, and the band has met all the conditions necessary to assume control of its own membership then the Minister must give notice to the band that it has control over its own membership, and must direct the Registrar to give the band a copy of its Band List kept by the Department.

## Section 10 (8)

Where a band assumes control of its own membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under Subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.

## Section 10 (9)

A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under Paragraph 7 (b), and, subject to Section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.

## Section 10 (10)

A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.

## Section 10 (8)

When a band assumes control of its membership their membership rules take effect on the day notice was given to the Minister. Any changes made to the Band List by the Registrar on or after that day are invalid unless the changes comply with the band's membership rules.

## Section 10 (9)

A band shall keep its own Band List on the day it receives a copy of the Band List from the Registrar and, unless the band later decides to leave control of its Band List to the Department (Section 13.2), and the Department won't have any further responsibility for that band's Band List.

## Section 10 (10)

According to its band membership rules a band can at any time add to or remove from its Band List the name of any person who is entitled or not entitled to have his name on that list.

## Section 10 (11)

A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

## Section 11 (1)

Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

(a) the name of that person was entered in the Band List for that band, or that person was entitled to have his name entered in the Band List for that band, immediately prior to April 17, 1985;

(b) that person is entitled to be registered under Paragraph 6 (1) (b) as a member of that band;

(c) that person is entitled to be registered under Paragraph 6 (1) (c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

## Section 10 (11)

A Band List kept by a band shall show the date each name had been added to or removed from the Band List.

## Section 11 (1)

Beginning April 17, 1985 a person is entitled to have his name entered in a Band List kept in the Department if

(a) that person's name had already been entered in that Band List, or that person was entitled to have his name on that Band List before April 17, 1985

(b) that person is entitled to registration because he is a member of a band declared to be a band by the federal cabinet (Paragraph 6 (1) (b));

(c) that person is entitled to registration if that person lost band membership because of the double mother rule, by marriage to a non-Indian male, under the protest section with respect to illegitimacy or by enfranchisement (Paragraph 6 (1) (c)); or

## (Section 11 (1) cont'd)

(d) that person was born on or after April 17, 1985 and is entitled to be registered under Paragraph 6 (1) (f) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

## Section 11 (2)

Commencing on the day that is two years after the day that an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under Section 13.1 where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

(a) if that person is entitled to be registered under Paragraph 6 (1) (d) or (e) and ceased to be a member of that band by reason of circumstances set out in that paragraph; or

(d) that person was born on or after April 17, 1985 and is entitled to registration because both parents were entitled to have their names entered in the Band List or, if no longer alive, they were both before death entitled to have their names entered in the Band List.

## Section 11 (2)

After June, 1987, or earlier if a band has decided to leave control of its Band List with the Department, a person is entitled to have his name entered in the Departmental Band List

(a) if that person is entitled to registration because that person lost band membership through enfranchisement (Paragraph 6 (1) (d) or (e)); or

(Section 11 (2) cont'd)

(b) if that person is entitled to be registered under Paragraph 6 (1) (f) or Subsection 6 (2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

(b) if that person is a person whose parents are entitled to registration, or if no longer living, were at their time of their death entitled to have their names entered in the Band List (Paragraph 6(1)(f); or if only one parent is entitled to have his name entered in the Band List, or if no longer living, was at the time of death entitled to have his name entered in the Band List (Subsection 6(2)).

Section 11 (3)

For the purposes of Paragraph (1) (d) and Subsection (2), a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in Paragraph 6 (1) (c), (d) or (e) who was no longer living on the first day on which he would otherwise be entitled to have his name entered in the Band List of the band of which he ceased to be a member shall be deemed to be entitled to have his name so entered.

Section 11 (3)

Where a person has lost band membership through enfranchisement and where a person's parents or parent was entitled to be entered in a Band List, and the parents or parent are no longer living, but were at the time of death entitled to be entered in a Band List; and where a person who lost Indian status because of the double mother rule, by marriage to a non-Indian male, under the protest section with respect to illegitimacy, or by enfranchisement, who was no longer living on the first day when he would have been entitled to have his name entered in the Band List of the band where he lost band membership shall be deemed to be entitled to have his name so entered.

## Section 11 (4)

Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which he has the closest family ties, as the case may be.

## Section 12

Commencing on the day that is two years after the day that an Act entitled An Act to amend the Indian Act, Introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under Section 13.1, any person who

(a) is entitled to be registered under Section 6, but is not entitled to have his name entered in the Band List maintained in the Department under Section 11, or

(b) is a member of another band, is entitled to have his name entered in the Band List maintained in the Department for a band if the council of the admitting band consents.

## Section 11 (4)

Where a band amalgamates with another band or is divided to make a new band, any person who would have been entitled to have his name entered in the Band List of that band can have his name on the Band List of the amalgamated band or the new band to which he has the closest family ties.

## Section 12

After June, 1987, or at an earlier date where a band decides to leave control of its Band List with the Department (Section 13.1) any person who

(a) is entitled to be registered as an Indian (Section 6), but isn't entitled to have his name entered in the Departmental Band List (Section 11), or

(b) is a member of another band, can have his name entered in the Departmental Band List if the band council of the admitting band consents.



### Section 13

Notwithstanding Sections 11 and 12, no person is entitled to have his name entered at the same time in more than one Band List maintained in the Department.

#### Section 13.1 (1)

A band may at any time prior to the day that is two years after the day that an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented to, decide to leave the control of its Band List with the Department if a majority of the electors of the band gives its consent to that decision.

#### Section 13.1 (2)

Where a band decides to leave the control of its Band List with the Department under Subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect.

### Section 13

Despite membership rules for Departmental Band Lists (Section 11) and entitlement to be listed on a Band List with a band council's consent (Section 12), no person can have his name entered on more than one Departmental Band List.

#### Section 13.1 (1)

Between June, 1985 and June, 1987 a band can, with the consent of the majority of the band electors, decide to leave control of its Band List with the Department.

#### Section 13.1 (2)

When a band decides to leave control of its Band List with the Department the band council shall immediately give written notice to the Minister.

## Section 13.1 (3)

Notwithstanding a decision under Subsection (1), a band may, at any time after that decision is taken, assume control of its Band List under Section 10.

## Section 13.2 (1)

A band may, at any time after assuming control of its Band List under Section 10 decide to return control of the Band List to the Department if a majority of the electors of the band gives its consent to that decision.

## Section 13.2 (2)

Where a band decides to return control of its Band List to the Department under Subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect and shall provide the Minister with a copy of the Band List and a copy of all the membership rules that were established by the band under Subsection 10(2) while the band maintained its own Band List.

## Section 13.1 (3)

Despite a band's decision to leave control of its Band List with the Department the band can later take control over its Band List under Section 10.

## Section 13.2 (1)

After assuming control of its Band List a band can later decide to return control of its Band List to the Department if a majority of the band electors consent.

## Section 13.2 (2)

When a band decides to return control of its Band List to the Department, the band council shall immediately give written notice of their intention to do so to the Minister. The band council must also provide the Minister with a copy of all their membership rules established while they had control over their Band List.

### Section 13.2 (3)

Where a notice is given under Subsection (2) in respect of a Band List, the maintenance of that Band List shall be the responsibility of the Department from the date on which the notice is received from that time the Band List shall be maintained in accordance with the membership rules set out in Section 11.

### Section 13.3

A person is entitled to have his name entered in a Band List maintained in the Department pursuant to Section 13.2 if that person was entitled to have his name entered and his name was entered, in the Band List immediately before a copy of it was provided to the Minister under Subsection 13.2 (2), whether or not that person is also entitled to have his name entered in the Band List under Section 11.

### Section 13.2 (3)

When notice is given of a band's decision to return control of its Band List to the Department the Department will be responsible for that Band List from the date on which they received the notice. The Band List will then be kept in accordance with the membership rules in Section 11.

### Section 13.3

A person is entitled to have his name entered in the Departmental Band List if his name had been entered on the Band List according to the band's membership rules before the band returned control of its Band List to the Department. That is the case whether or not that person is entitled to have his name entered according to membership rules for the Departmental Band List.

## NOTICE OF BAND LISTS

## Section 14 (1)

Within one month after the day an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented, the Registrar shall provide the council of each band with a copy of the Band List for the band as it stood immediately prior to that day.

## Section 14 (2)

Where a Band List is maintained by the Department, the Registrar shall, at least once every two months after a copy of the Band List is provided to the council of a band under Subsection (1), provide the council of the band with a list of the additions to or deletions from the Band List not included in a list previously provided under this subsection.

## Section 14 (3)

The council of each band shall, forthwith on receiving a copy of the Band List under Subsection (1), or a list of additions to and deletions from its Band List under Subsection (2), post the copy of the list, as the case may be, in a conspicuous place on the reserve of the band.

## Section 14 (1)

One month after the 1985 amendment to the Indian Act has become law the Registrar shall provide each band council with a copy of the Band List as it stood immediately before that day.

## Section 14 (2)

Where the Department has maintained control of a Band List the Registrar must at least once every two months provide the band council with an updated list that includes changes made to the previous Band List.

## Section 14 (3)

As soon as a band council receives a copy of a Band List under Subsection (1) or an updated Band List under Subsection (2) it must post the copy or updated list in an obvious place on the reserve.

## INQUIRIES

### Section 14.1

The Registrar shall, on inquiry from any person who believes he or any person he represents is entitled to have his name included in the Indian Register or a Band List maintained in the Department, indicate to the person making the inquiry whether or not that name is included therein.

### Section 14.1

When any person or a person he represents believes he is entitled to be entered on the Indian Register or Departmental Band List the Registrar must tell the person inquiring whether or not that person's name is entered on the Indian Register or Departmental Band List.

## PROTESTS

### Section 14.2 (1)

A protest may be made in respect of the inclusion or addition of the name of a person in, or the omission or deletion of the name of a person from, the Indian Register, or a Band List maintained in the Department, within three years after the inclusion or addition, or omission or deletion, as the case may be, by notice in writing to the Registrar, containing a brief statement of the grounds therefor.

### Section 14.2 (1)

A protest can be made about the inclusion or exclusion of the name of a person the Indian Register or a Departmental Band List by written notice containing a brief statement of the complaint to the Registrar within three years from the date the person's name was included or excluded by the Registrar.

**Section 14.2 (2)**

A protest may be made under this section in respect of the Band List of a band by the council of the band, any member of the band or the person in respect of whose name the protest is made or his representative.

**Section 14.2 (2)**

A protest about the Band List can be made to the Registrar by the band council any band member or the person in whose name the protest is made or his representative.

**Section 14.2 (3)**

A protest may be made under this section in respect of the Indian Register by the person in respect of whose name the protest is made or his representative.

**Section 14.2 (3)**

A protest can be made about the Indian Register to the Registrar by the person in whose name the protest is made or his representative.

**Section 14.2 (4)**

The onus of establishing the grounds of a protest under this section lies on the person making the protest.

**Section 14.2 (4)**

The burden of providing the grounds of a protest is with the person making the protest.

**Section 14.2 (5)**

Where a protest is made to the Registrar under this section, he shall cause an investigation to be made into the matter and render a decision.

**Section 14.2 (5)**

When a protest is made the Registrar must begin an investigation and give his decision.

**Section 14.2 (6)**

For the purposes of this section, the Registrar may receive such evidence on oath, on affidavit or in any other manner, whether or not admissible in a court of law, as in his discretion he sees fit or deems just.

**Section 14.2 (7)**

Subject to Section 14.3, the decision of the Registrar under Subsection (5) is final and conclusive.

**Section 14.3 (1)**

Within six months after the Registrar renders a decision on a protest under Section 14.2,

(a) in the case of a protest in respect of the Band List of a band, the council of the band, the person by whom the protest was made, or the person in respect of whose name the protest was made or his representative, or

(b) in the case of a protest in respect of the Indian Register, the person in respect of whose name the protest was made or his representative,

may, by notice in writing, appeal the decision to a court referred to in Subsection (5).

**Section 14.2 (6)**

In responding to the protest the Registrar has a discretion to receive evidence on oath, affidavit or any manner whether or not that evidence is admissible in court.

**Section 14.2 (7)**

Subject to an appeal (Section 14.3) the Registrar's decision after an investigation is final and conclusive.

**Section 14.3 (1)**

Within six months after the Registrar makes a decision on a protest under Section 14.2,

(a) about a band's Band List, the band council, the person who made the protest, or the person in whose name the protest was made or his representative, or

(b) about the Indian Register, the person in whose name the protest was made or his representative,

can by written notice appeal the decision.

## Section 14.3 (2)

Where an appeal is taken under this section, the person who takes the appeal shall forthwith provide the Registrar with a copy of the notice of appeal.

## Section 14.3 (3)

On receipt of a copy of a notice of appeal under Subsection (2), the Registrar shall forthwith file with the court a copy of the decision being appealed together with all documentary evidence considered in arriving at that decision and any recording or transcript of any oral proceedings related thereto that were held before the Registrar.

## Section 14.3 (4)

The court may, after hearing an appeal under this section,

(a) affirm, vary or reverse the decision of the Registrar; or

(b) refer the subject-matter of the appeal back to the Registrar for reconsideration or further investigation.

## Section 14.3 (2)

When an appeal is taken under this section, the person taking the appeal must provide the Registrar with a copy of the notice of appeal.

## Section 14.3 (3)

When the Registrar receives a copy of the notice of appeal he must file with the court a copy of the decision being appealed together with all documentary evidence considered in the decision and any recording or transcript of any oral proceedings held before the Registrar.

## Section 14.3 (4)

After hearing an appeal the court can

(a) affirm, vary or reverse the Registrar's decision, or

(b) refer the matter back to the Registrar for reconsideration or further investigation.



## Section 14.3 (5)

An appeal may be heard under this section

(a) in the Province of Prince Edward Island, the Yukon Territory or the Northwest Territories, before the Supreme Court;

(b) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, before the court of Queen's Bench;

(c) in the Province of Quebec, before the Superior Court for the district in which the band is situated or in which the person who made the protest resides, or for such other district as the Minister may designate; or

(d) in any other province, before the county or district court of the county or district in which the band is situated or in which the person who made the protest resides, or of such other county or district as the Minister may designate.

## Section 14.3 (5)

An appeal can be heard

(a) in Prince Edward Island, the Yukon Territory or Northwest Territories before the Supreme Court;

(b) in New Brunswick, Manitoba, Saskatchewan or Alberta before the Court of the Queen's Bench;

(c) in Quebec before the Superior Court for the district where the band is situated or where the person who made the protest lives or another district as the Minister may designate; or

(d) in any other province before the county or district court of the county or district where the band is situated or where the person who made the protest resides, or another county or district as the Minister may designate.

PAYMENTS IN RESPECT OF PERSONS CEASING TO BE  
BAND MEMBERS

Section 15 (1) to (4)  
[Repealed, 1985, c.27, s.5]

## Section 15 (5)

Where, prior to the 4th day of September, 1951, any woman became entitled, under Section 14 of the Indian Act, chapter 98 of the Revised Statutes of Canada, 1927, or any prior provisions to the like effect, to share in the distribution of annuities, interest moneys or rents, the Minister may in lieu thereof, pay to such woman out of the moneys of the band an amount equal to ten times the average annual amounts of such payments made to her during the ten years last preceding or, if they were paid for less than ten years, during the years they were paid.

## Section 15 (5)

If a woman lost status by marriage to a non-Indian but had the right, under the 1927 Indian Act (or previous Acts) to share in any Indian moneys the Minister can pay her instead a lump sum calculated in such a way that it should be equal to what the woman would receive over the last ten years or if payments were made for less than ten years than than payments equal to the number of years payments were made.

Section 16 (1)  
[Repealed, 1985, c.27, s.6]

## Section 16 (2)

A person who ceases to be a member of one band by reason of his becoming a member of another band is not entitled to any interest in the lands or moneys held by Her Majesty on behalf of the former band, but he is entitled to the same interest in common in lands and moneys held by Her Majesty on behalf of the latter band as other members of that band.

Section 16 (3)  
[Repealed, 1985, c.17, s.6]

## Section 16 (2)

When a person transfers to another band he does not have the right to any of the lands or moneys of his former band, but he has the right to the same share in the lands and moneys of his new band as other members of that band.

Section 16 (3)  
[Repealed, 1985, c.17, s.6]

## NEW BANDS

## Section 17 (1)

The Minister may, whenever he considers it desirable

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

(b) constitute new bands and establish Band Lists with respect thereto from existing Band Lists, or from the Indian Register, if requested to do so by persons to form the new bands.

## Section 17 (1)

The Minister can, when he considers it desirable

(a) amalgamate bands that by a majority vote of their electors request amalgamation; and

(b) make new bands and establish Band Lists, from existing band lists, or from the Indian Register at the request of persons proposing to form the new band.

## Section 17 (2)

Where pursuant to Subsection (1) a new band has been established from an existing band or any part thereof, such portion of the reserve lands and funds of the existing band as the Minister determines shall be held for the use and benefit of the new band.

## Section 17 (3)

No protest may be made under Section 14.2 in respect of the deletion from or the addition to a Band List consequent on the exercise by the Minister of any of his powers under Subsection (1).

## Section 17 (2)

When the Minister establishes a new band from an existing band, the lands and funds of the existing band can be divided between the new and existing band in whatever way the Minister decides.

## Section 17 (3)

No protest can be made under Section 14.2 (Protests) against the membership of a new Band List established by the Minister under his authority to establish a new band out of an existing one (Subsection 17 (1) (b)).

## RESERVES

## Section 18 (1)

Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart; and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

## Section 18 (1)

Subject to this Act, reserves are tracts of land legally held by the federal government, but set aside for the use and benefit of a band of Indians; and subject to the terms of any treaty or surrender, the federal government can decide whether any particular use of reserve lands is for the use and benefit of a band.

**Section 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, but where an individual Indian, immediately prior to such taking, was entitled to the possession of such lands, compensation for such use shall be paid to the Indian, in such amount as may be agreed between the Indian and the Minister, or, failing agreement, as may be determined in such manner as the Minister may direct.

**Section 18.1**

A member of a band who resides on the reserve of the band may reside there with his dependent children or any children of whom he has custody.

**Section 18 (2)**

The Minister can allow reserve lands for use as Indian schools, Indian affairs administration offices, Indian burial grounds, and Indian Health projects without the band council's consent. With the band council's consent, the Minister can allow the use of reserve land for other purposes that benefit the band. However, if an Indian had lawful possession of reserve land taken in this way, then he shall be paid for loss of use of the land. If the amount of compensation cannot be agreed upon between the individual Indian and the Minister, then the Minister will say how to determine the amount.

**Section 18.1**

A band member residing on the reserve can live there with his children or any children in his custody.

Section 19

The Minister may

(a) authorize surveys of reserves and the preparation of plans and reports with respect thereto;

(b) divide the whole or any portion of a reserve into lots or other subdivisions; and

(c) determine the location and direct the construction of roads in a reserve.

Section 19

The Minister can authorize reserve land surveys, the subdivision of reserve lands, and the location and direction of road construction on reserve.

POSSESSION OF LANDS IN RESERVES

Section 20 (1)

No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

Section 20 (1)

No Indian can lawfully possess reserve land unless it has been allotted to him by the band council with the Minister's approval.

Section 20 (2)

The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

Section 20 (2)

The Minister can issue a Certificate of Possession describing the reserve lands that the Indian holds in lawful possession.

## Section 20 (3)

For the purposes of this Act, any person who, on the 4th day of September, 1951, held a valid and subsisting Location Ticket issued under The Indian Act, 1880, or any statute relating to the same subject-matter, shall be deemed to be lawfully in possession of the land to which the location ticket relates and to hold a Certificate of Possession with respect thereto.

## Section 20 (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.

## Section 20 (5)

Where the Minister withholds approval pursuant to Subsection (4), he shall issue a Certificate of Occupation to the Indian, and the Certificate entitles the Indian, or those claiming possession by devise or descent, to occupy the land in respect of which it is issued for a period of two years from the date thereof.

## Section 20 (3)

Any person holding a valid and subsisting Location Ticket issued under The Indian Act, 1880 is in lawful possession of the land described in the Location Ticket, and for purposes of this Act a Location Ticket is the same as a Certificate of Possession.

## Section 20 (4)

When a band has allotted a band member lawful possession of reserve land, the Minister can withhold his approval, and can allow the band member conditional possession until improvements as to use and settlement are made.

## Section 20 (5)

When the Minister withholds his approval for an allotment he must give the Indian a Certificate of Occupation which entitles the Indian, or those claiming possession under a will, to stay on the allotment for two years from the date of issue.

## Section 20 (6)

The Minister may extend the term of a Certificate of Occupation for a further period not exceeding two years, and may, at the expiration of any period during which a Certificate of Occupation is in force

(a) approve allotment by the council of the band and issue a Certificate of Possession if in his opinion the conditions as to use and settlement have been fulfilled; or

(b) refuse approval of the allotment by the council of the band and declare the land in respect of which the Certificate of Occupation was issued to be available for reallocation by the council of the band.

## Section 21

There shall be kept in the Department a register, to be known as the Reserve Land Register, in which shall be entered particulars relating to Certificates of Possession and Certificates of Occupation and other transactions respecting lands in a reserve.

## Section 20 (6)

The Minister can extend the Certificate of Occupation for another two year period, but when the Certificate expires the Minister can either

(a) approve the allotment of the conditions as to use and settlement are met; or

(b) refuse approval and declare the land available for the band council to allot to another Indian.

## Section 21

The Department shall keep a register called the Reserve Land Register containing all particulars described in Certificates of Possession and Certificates of Occupation and any other transactions affecting reserve land.



**Section 22**

Where an Indian who is in possession of lands at the time they are included in a reserve, made permanent improvements thereon before that time, he shall be deemed to be in lawful possession of such lands at the time they are so included.

**Section 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 respect thereof 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.

**Section 24**

An Indian who is lawfully in possession of lands in a reserve may transfer to the band or to another member of the band the right to possession of the land, but no transfer or agreement of lands in a reserve is effective until it is approved by the Minister.

**Section 22**

When an Indian was in possession of land before it was included in a reserve, and had made permanent improvements on it, he shall be entitled to lawful possession of that land when it becomes part of a reserve.

**Section 23**

An Indian who has been legally removed from reserve lands upon which he has made improvements can be paid compensation, either from the person taking over or from band funds, in an amount determined by the Minister.

**Section 24**

When an Indian is in lawful possession of reserve land he can transfer the land to another band member or to the band, but the Minister must agree to the transfer before it is valid.

## Section 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.

## Section 25 (1)

Within six months (or longer, if the Minister agrees) from when an Indian is no longer entitled to live on a reserve, he can transfer to the band or another band member any reserve lands he held in lawful possession.

## Section 25 (2)

Where an Indian does not dispose of his right of possession in accordance with Subsection (1), the right to possession of the land reverts to the band, subject to the payment to the Indian who was lawfully in possession of the land, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

## Section 25 (2)

If the Indian does not transfer his right of possession to either a band member or to the band within the time allowed, then the right of possession reverts to the band. The Indian can be paid compensation for permanent improvements from band funds as the Minister decides is appropriate.

**Section 26**

Whenever a Certificate of Possession or Occupation or a Location Ticket issued under The Indian Act, 1880, or any statute relating to the same subject-matter was, in the opinion of the Minister, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer, or wrong description of any material fact therein, the Minister may cancel the Certificate or Location Ticket and issue a corrected Certificate in lieu thereof.

**Section 27**

The Minister may, with the consent of the holder thereof, cancel any Certificate of Possession or Occupation or Location Ticket referred to in Section 26, and may cancel any Certificate of Possession or Occupation or Location Ticket that in his opinion was issued through fraud or in error.

**Section 26**

When a Certificate of Possession or Occupation or Location Ticket was made by mistake to the wrong person, or contains a clerical error, or contains a misdescription of any material fact the Minister can cancel the Certificate or Location Ticket and issue a corrected one.

**Section 27**

The Minister can, with, the consent of the holder, cancel a Certificate of Possession or Occupation or Location Ticket made with the errors listed in Section 26. The Minister can also cancel a Certificate of Possession or Occupation or Location Ticket if he is of the opinion that it was obtained through fraud or in error.

## Section 28 (1)

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

## Section 28 (2)

The Minister may by permit in writing 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.

## Section 29

Reserve lands are not subject to seizure under legal process.

## Section 28 (1)

Any reserve land transaction whether oral or written where a band or band member purports to permit a person other than a band member to use reserve land or exercise any rights on a reserve is not valid.

## Section 28 (2)

However, the Minister can give written permission to any person (non-band member) to use reserve land or exercise rights on a reserve for a period not longer than one year, or with the band council's consent for a longer period.

## Section 29

Reserve lands cannot be taken to pay off a court judgment. For example, if an Indian or the Indian band is sued in court for money and cannot pay, the reserve land cannot be taken to pay the debt.

## TRESPASS ON RESERVES

## Section 30

A person who trespasses on a reserve is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding one month, or to both.

## Section 30

A person can be fined \$50.00 or jailed for one month (or both) for trespassing on a reserve.

## Section 31 (1)

Without prejudice to Section 30, where an Indian or a band alleges that persons other than Indians are or have been

(a) unlawfully in occupation or possession of,

(b) claiming adversely the right to occupation or possession of, or

(c) trespassing upon

a reserve or part of a reserve, the Attorney General of Canada may exhibit an Information in the Federal Court of Canada claiming, on behalf of the Indian or the band, the relief or remedy sought.

## Section 31 (1)

Aside from Section 30, where an Indian or band claims that non-Indians have been unlawfully occupying or possessing, or claiming an adverse right to occupation or possession, or trespassing upon a reserve or a part of a reserve, the federal government can issue an Information in the Federal Court of Canada claiming relief on behalf of the band.

## Section 31 (2)

An information exhibited under Subsection (1) shall, for all purposes of the Federal Court Act, be deemed to be a proceeding by the Crown within the meaning of that Act.

## Section 31 (3)

Nothing in this section shall be construed to impair, abridge or otherwise affect any right or remedy that, but for this section, would be available to Her Majesty or to an Indian or a band.

## Section 31 (2)

For purposes of the Federal Court Act an information under Subsection (1) is a proceeding by the Crown.

## Section 31 (3)

This section does not affect any other legal rights that the federal government, an Indian or the band has against trespassers.

## SALE OR BARTER OF PRODUCE

## Section 32 (1)

A transaction of any kind whereby a band or a member thereof purports to sell, barter, exchange, give or otherwise dispose of cattle or other animals, grain or hay, whether wild or cultivated, or root crops or plants or their products from a reserve in Manitoba, Saskatchewan or Alberta, to a person other than a member of that band, is void unless the superintendent approves the transaction in writing.

## Section 32 (1)

In Manitoba, Saskatchewan or Alberta the superintendent (DIA) must agree in writing to any transaction in which reserve farm stock, produce or products are sold.

**Section 32 (2)**

The Minister may at any time by order exempt a band and the members thereof or any member thereof from the operation of this section, and may revoke any such order.

**Section 33**

Every person who enters into a transaction that is void under Subsection 32 (1) is guilty of an offence.

**Section 32 (2)**

The Minister can make an order saying that this section does not apply to a band. He can also cancel the order after he has made it.

**Section 33**

It is a crime to enter into a transaction with respect to reserve farm stock, produce or products without DIA's consent.

**ROADS AND BRIDGES****Section 34 (1)**

A band shall ensure that the roads, bridges, ditches and fences within the reserve occupied by that band are maintained in accordance with instructions issued from time to time by the superintendent.

**Section 34 (2)**

Where, in the opinion of the Minister, a band has not carried out the instructions of the superintendent given under Subsection (1), the Minister may cause the instruction to be carried out at the expense of the band or any member thereof and may recover the cost thereof from any amounts that are held by Her Majesty and are payable to the band or such member.

**Section 34 (1)**

A band shall look after the roads, bridges, ditches and fences on its reserve in accordance with the Department's instructions.

**Section 34 (2)**

If the Minister decides that a band has not taken care of the roads, bridges, ditches and fences on its reserve he can arrange for the work to be done at the band's expense.

See, Sections 19 (c) - Surveys and Subdivisions, 81 - By-laws, and 64 - Expenditures of capital moneys with consent.

## LANDS TAKEN FOR PUBLIC PURPOSES

### Section 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.

### Section 35 (1)

When, under either federal or provincial law, the province, a municipal authority, or a corporation has power to take land or use it without the consent of the owner, that power can be exercised on reserve land if the federal cabinet agrees.

### Section 35 (2)

Unless the Governor in Council otherwise directs, all matters relating to compulsory taking or using of lands in a reserve under Subsection (1) are governed by the statute by which the powers are conferred.

### Section 35 (2)

Unless the federal government directs otherwise expropriation of reserve lands is governed by the appropriate provincial or federal law.



**Section 35 (3)**

Whenever the Governor in Council has consented to the exercise by a province, authority or corporation of the powers referred to in Subsection (1), 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 to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council.

**Section 35 (3)**

After the federal cabinet has given consent to a governmental authority to expropriate reserve lands, and rather than the governmental authority taking the lands without the owner's consent, the federal cabinet can authorize a transfer of the reserve lands in question to the governmental authority, but subject to terms of agreement between the parties.

**Section 35 (4)**

Any amount that is agreed upon or awarded in respect of the compulsory taking or using of land under this section or that is paid for a transfer or grant of land pursuant to this section shall be paid to the Receiver General for the use and benefit of the band or for the use and benefit of any Indian who is entitled to compensation or payment as a result of the exercise of the powers referred to in Subsection (1).

**Section 35 (4)**

Any compensation paid for the expropriation of reserve lands shall be paid to the federal government for the use and benefit of the band or for the use and benefit of any Indian who had been entitled to compensation for expropriation of his allotment.

## SPECIAL RESERVES

## Section 36

Where lands have been set apart for the use and benefit of a band and legal title thereto is not vested in Her Majesty, this Act applies as though the lands were a reserve within the meaning of this Act.

## Section 36

Land that has been set apart for the use and benefit of a band, but the federal government does not have the legal title, is still reserve land for the purposes of this Act.

## SURRENDERS

"Surrendered lands" means any piece of reserve land that has been surrendered by the band that had the use and benefit of it, but to which the federal government still retains legal title

"Surrendered lands" means any piece of reserve land that has been surrendered by the band that had the use and benefit of it, but to which the federal government still retains legal title.

## Section 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.

## Section 37

Reserve lands cannot be sold, alienated, leased or otherwise disposed of unless they are surrendered to the federal government by the band for whose use and benefit the reserve was set apart.

See, Section 35 - Lands Taken For Public Purposes

## Section 38 (1)

A band may surrender to Her Majesty any right or interest of the band and its members in a reserve.

## Section 38 (2)

A surrender may be absolute or qualified, conditional or unconditional.

## Section 39 (1)

A surrender is void unless

(a) it is made to Her Majesty;

(b) it is assented to by a majority of the electors of the band

## Section 38 (1)

A band can surrender any right it has to its reserve.

## Section 38 (2)

A surrender can be absolute, final for all time, which forever alienates the rights of an Indian Band to an interest in land. A conditional surrender involves surrender of an Indian interest in land to the Crown for a particular purpose, such as a lease, or for a particular period of time or both. A qualified surrender is the same as a conditional one, and an unconditional surrender is the same as an absolute surrender.

## Section 39 (1)

A surrender can only be made to the federal government: it cannot be made to anyone else. A majority of the band electors must give their assent in one of the following ways:

## (Section 39 (1) cont'd)

(i) at a general meeting of the band called by the council of the band,

(ii) at a special meeting of the band called by the Minister for the purpose of considering a proposed surrender, or

(iii) by a referendum as provided in the regulations; and

(c) it is accepted by the Governor in Council

(i) at a general meeting called by the band council, or

(ii) at a special meeting called by the Minister, or

(iii) by a referendum;

and the surrender must be accepted by the federal cabinet.

See, "Indian Referendum Regulations", C.R.C. 1978, c.957.

## Section 39 (2)

Where a majority of the electors of a band did not vote at a meeting or referendum called pursuant to Subsection (1) of this section or pursuant to Section 51 of the Indian Act, chapter 98 of the Revised Statutes of Canada, 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.

## Section 39 (2)

If a majority of the voters did not vote at a surrender meeting under Subsection (1) the Minister could, if a majority of those who did attend voted for the surrender, call another meeting by giving 30 days notice. Note that it is a majority of the electors, not only a majority of electors who attend the meeting, that must vote for a surrender.

**Section 39 (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, for the purpose of this section, to have been assented to by a majority of the electors of the band.

**Section 39 (3)**

When a second surrender meeting is called under Subsection (2) and the majority of the electors in attendance vote for a surrender, then for the purposes of this section, the majority of the band electors have assented to a surrender.

**Section 39 (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.

**Section 39 (4)**

The Minister can, either at the band's request or when he considers it appropriate, order that a vote at a meeting be by secret ballot.

**Section 39 (5)**

Every meeting under this section shall be held in the presence of the superintendent or some other officer of the Department designated by the Minister.

**Section 39 (5)**

Every surrender meeting must be held in the presence of the Minister or a Department official appointed by the Minister.

**Section 40**

When a proposed surrender has been assented to by the band in accordance with Section 39, it shall be certified on oath by the superintendent or other officer who attended the meeting and by the chief or a member of the council of the band, and shall then be submitted to the Governor in Council for acceptance or refusal.

**Section 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.

**Section 40**

A department official must be present at any meeting on a surrender. If the band voted for the surrender, then a department official and either the chief or band council member must sign and swear the surrender paper under oath. The surrender paper then goes to the federal cabinet for acceptance or refusal.

**Section 41**

A surrender allows the federal cabinet to do whatever is necessary to carry out the terms of the surrender. For example, if the surrender is a lease of land, then the Department can arrange to have a lease written up and signed and do everything required to have the land properly leased.

**DESCENT OF PROPERTY**

"Estate" means everything a person owns -- land, leases, money, car, house, furniture, television, clothes and so on.

"Estate" means everything a person owns -- land, leases, money, car, house, furniture, television, clothes, and so on.

## Section 42 (1)

Unless otherwise provided in this Act, all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister, and shall be exercised subject to and in accordance with regulations of the Governor in Council.

## Section 42 (1)

The Minister has all jurisdiction and authority over the estate of a deceased Indian, but those powers shall be exercised subject to regulations made by the federal cabinet. There are exceptions to this rule, for instance in Section 44 where an Indian dies off reserve, and the Minister agrees that the deceased Indian's estate can be administered according to the appropriate provincial laws.

See, "Indian Estate Regulations", C.R.C. 1978, c.954.

## Section 42 (2)

The Governor in Council may make regulations for providing that a deceased Indian who at the time of his death was in possession of land in a reserve shall, in such circumstances and for such purposes as the regulations prescribe, be deemed to have been at the time of his death lawfully in possession of that land.

## Section 42 (2)

The federal cabinet can make regulations saying that the deceased, who at the time of his death was in possession of reserve land, is for purposes of those regulations, in lawful possession of that reserve land.

## Section 42 (3)

Regulations made under this section may be made applicable to estates of Indians who died before, on or after the 4th day of September, 1951.

## Section 42 (3)

Regulations can be made applicable to estates of Indians who died before, on or after September 4, 1951.

## Section 43

Without restricting the generality of Section 42, the Minister may

(a) appoint executors of wills and administrators of estates of deceased Indians, remove them and appoint others in their stead;

(b) authorize executors to carry out the terms of the wills of deceased Indians;

(c) authorize administrators to administer the property of Indians who die intestate;

(d) carry out the terms of wills of deceased Indians and administer the property of Indians who die intestate; and

(e) make or give any order, direction or finding that in his opinion it is necessary or desirable to make or give with respect to any matter referred to in Section 42

## Section 43

While the Minister generally has the power to look after estates, he is specifically given the power to do the following things:

(a) appoint people to look after the property of Indians who have died; as well as dismissing anyone he appoints and replacing him with someone else;

(b) permit people to carry out the terms specified in the deceased person's will;

(c) permit people to look after the property of Indians who die without making a will;

(d) otherwise the Minister can himself carry out wills or look after the property of Indians who die without making wills; and

(e) make any order that he thinks is appropriate with respect to the property of Indians who have died.



**Section 44 (1)**

The court that would have jurisdiction if the deceased were not an Indian may, with the consent of the Minister, exercise, in accordance with this Act, 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.

**Section 44 (2)**

The Minister may direct in any particular case that an application for the grant of the probate of the will or letters of administration shall be made to the court that would have jurisdiction if the deceased were not an Indian, and the Minister may refer to such court any question arising out of any will or the administration of any estate.

**Section 44 (3)**

A court that is exercising any jurisdiction or authority under this section shall not without the consent in writing of the Minister enforce any order relating to real property on a reserve.

**Section 44 (1)**

The Minister can give his consent to a court of competent jurisdiction (provincial or territorial) to administer the estate of a deceased Indian.

**Section 44 (2)**

The Minister may refer a particular case to the appropriate provincial or territorial court which would handle the estate of that deceased person if the deceased were not an Indian.

**Section 44 (3)**

However, a court order made with respect to reserve lands cannot be enforced without the Minister's written consent.

## WILLS

## Section 45 (1)

Nothing in this Act shall be construed to prevent or prohibit an Indian from devising or bequeathing his property by will.

## Section 45 (2)

The Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes or intention with respect to the disposition of his property upon his death.

## Section 45 (3)

No will executed by an Indian is of any legal force or effect as a disposition of property until the Minister has approved the will or a court has granted probate thereof pursuant to this Act.

## Section 46 (1)

The Minister may declare the will of an Indian to be void in whole or in part if he is satisfied that

(a) the will was executed under duress or undue influence;

## Section 45 (1)

The Indian Act does not prevent an Indian from making a will.

## Section 45 (2)

The Minister can accept as a will any written document signed by an Indian in which he says what he wants done with his property when he dies.

## Section 45 (3)

An Indian's will is invalid without the Minister's approval or a court has given someone the power to carry out its terms.

## Section 46 (1)

The Minister can say that an Indian's will in whole or in part if the Minister believes that:

(a) somebody forced the Indian to sign the will;

## (Section 46 (1) cont'd)

(b) the testator at the time of execution of the will lacked testamentary capacity;

(c) the terms of the will would impose hardship on persons for whom the testator had a responsibility to provide;

(d) the will purports to dispose of land in a reserve in a manner contrary to the interest of the band or contrary to this Act;

(e) the terms of the will are so vague, uncertain or capricious that proper administration and equitable distribution of the estate of the deceased would be difficult or impossible to carry out in accordance with this Act; or

(f) the terms of the will are against the public interest.

## (Section 46 (1) cont'd)

(b) when the Indian signed the will he was for some reason (senile or insane) incapable of knowing what he was doing;

(c) the terms of the will would create hardship for the Indian's family;

(d) the will attempts to give away reserve land in a way that is not good for the band or which conflicts with the Indian Act;

(e) it is so hard to figure out what the will means that it would be difficult or impossible to carry out the terms of the will; or

(f) the will is against the public interest - that is, it directs that something wrong or illegal be done.

## Section 46 (2)

Where a will of an Indian is declared by the Minister or by a court to be wholly void, the person executing the will shall be deemed to have died intestate, and where the will so is declared to be void in part only, any bequest or devise affected thereby, unless a contrary intention appears in the will, shall be deemed to have lapsed.

## Section 46 (2)

When the Minister or a court says that an Indian's will is invalid the result is the same as if that person died without making a will. But when the Minister or a court says that only a part of the will is invalid this has no effect on the rest of the will which remains valid and can be administered. When a part of a will is declared invalid anything given by that section cannot be carried out and must remain to be given in some other way unless the will provides otherwise.

## APPEALS

## Section 47 (1)

A decision of the Minister made in the exercise of the jurisdiction or authority conferred upon him by Section 42, 43 or 46 may, within two months from the date thereof, be appealed by any person affected thereby to the Federal Court of Canada, if the amount in controversy in the appeal exceeds five hundred dollars or if the Minister consents to an appeal.

## Section 47 (1)

Any decision that the Minister makes under the powers given to him under Sections 42, 43 and 46 with respect to descent of property can be appealed to the Federal Court of Canada. The appeal must be made within two months of the Minister's decision, and either the amount being contested must be over \$500.00, or the Minister consents to the appeal.

## Section 47 (2)

[Repealed, R.S., c. 10 (2nd Supp.), s. 65]

## DISTRIBUTION OF PROPERTY ON INTESTACY

Note: This part deals with how an Indian's property is divided up if he dies without a will.

"Intestate" means a person intestate when he dies without making a will, or dies without leaving anything to testify what his wishes were with respect to the disposal of his property after his death.

### Section 48 (1)

Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed in value two thousand dollars, the estate shall go to the widow.

### Section 48 (1)

Where the value of the estate is less than two thousand dollars, then the estate is given to the widow.

### Section 48 (2)

Where the net value of the estate of an intestate, in the opinion of the Minister, is two thousand dollars or more, two thousand dollars shall go to the widow, and the remainder shall go as follows, namely:

(a) if the intestate left no issue, the remainder shall go to the widow,

(b) if the intestate left one child, one - half of the remainder shall go to the widow, and

### Section 48 (2)

Where the value of the estate is more than two thousand dollars, the first two thousand dollars goes to the widow and the rest is divided as follows:

(a) if there were no children the rest goes to the widow.

(b) if there was one child then half goes to the child and half goes to the widow;

## (Section 48 (2) cont'd)

(c) if the intestate left more than one child, one - third of the remainder shall go to the widow.

and where a child has died leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate as if the child had been living at that date.

## Section 48 (3)

Notwithstanding Subsection (1) and (2),

(a) where in any particular case the Minister is satisfied that any children of the deceased will not be adequately provided for, he may direct that all or any part of the estate that would otherwise go to the widow shall go to the children; and

(b) the Minister may direct that the widow shall have the right, during her widowhood, to occupy any lands on a reserve that were occupied by her deceased husband at the time of his death.

(c) if there were more than one child then two - thirds go to the children and one - third goes to the widow.

and if a child has died, but he leaves children of his own who are alive at the intestates death, then the widow takes the same share as she would have taken if the child had been alive.

## Section 48 (3)

Regardless of the above,

(a) if the Minister thinks that the children of the Indian who dies without a will, will not be properly looked after then he can say that all or a part of the estate that would usually go to the widow goes to the children instead.

(b) the Minister can also say that the widow can, as long as she remains a widow, live on any reserve lands that her husband occupied at the time of his death.

## Section 48 (4)

Where an intestate dies leaving issue his estate shall be distributed, subject to the rights of the widow, if any, per stirpes among such issue.

## Section 48 (4)

Where an Indian dies leaving children, their share of the property is divided up equally among them. If one child is dead, the share that the child would have received is divided equally among that child's children.

## Section 48 (5)

Where an intestate dies leaving no widow or issue his estate shall go to his father or mother in equal shares if both are living, but if either of them is dead the estate shall go to the survivor.

## Section 48 (5)

When an Indian dies leaving no widow or children then his estate goes to his parents in equal shares, if they are both alive, but if one is dead, then the whole estate goes to the one who is still alive.

## Section 48 (6)

Where an intestate dies leaving no widow or issue or father or mother his estate shall go to his brothers and sisters in equal shares, and if any brother or sister is dead the children of the deceased brother or sister shall take the share their parent would have taken if living but where the only persons entitled are children of deceased brothers and sisters, they shall take a per capita.

## Section 48 (6)

When an Indian dies leaving no widow, children or parents, his estate is divided equally among his brothers and sisters. If any brother or sister is dead the children of that brother or sister take the share that their parents would have taken. If all the brothers and sisters are dead all their children share the whole estate equally.

## Section 48 (7)

Where an intestate dies leaving no widow, issue, father, mother, brother or sister, and no children of any deceased brother or sister, his estate shall go to his next-of-kin.

## Section 48 (8)

Where the estate goes to the next-of-kin it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in Her Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister.

## Section 48 (9)

For the purposes of this section, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

## Section 48 (7)

When an Indian dies leaving no widow, children, father, mother, brother or sister, or children of any brother or sister who had died then his estate shall go to his next-of-kin (next closest relative).

## Section 48 (8)

When the estate goes to the next-of-kin it is divided up equally among the next-of-kin who are equally close relatives to the Indian who has died. Where one of the next-of-kin has died, then his share goes to whoever has the legal right to it provided they are not more distantly related than brothers' or sisters' children. Any land goes back to the band if the nearest of kin is more distant than a brother or sister.

## Section 48 (9)

For the purposes of this section how closely related a person was to the deceased Indian is calculated by counting upward to the nearest person who was an ancestor to them both and then down to the relative.



## Section 48 (10)

Descendants and relatives of the intestate begotten before his death but born thereafter shall inherit as if they had been born in the lifetime of the intestate and had survived him.

## Section 48 (10)

Descendents and relatives of the Indian who were conceived, but not born when he died, shall inherit as if they had been born during the Indian's lifetime.

## Section 48 (11)

All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

## Section 48 (11)

If an Indian's will does not cover his whole estate what is left is distributed as if the Indian had died without a will and had no other estate.

## Section 48 (12)

No widow is entitled to dower in the land of her deceased husband dying intestate, and no husband is entitled to an estate by curtesy in the land of his deceased wife so dying, and there is no community of real or personal property situated on a reserve.

## Section 48 (12)

The English law of dower and curtesy whereby either spouse would inherit one-third of his/her land if he/she died without a will does not apply to Indians. There is no real or personal property situated on reserve that is owned in common by husband and wife each having an undivided one-half interest by reason of marriage.

Section 48 (13) and (14)  
[Repealed, 1985, c.27,s9]  
"Widow" includes "widower"

Section (13) and (14)  
[Repealed, 1985, c.27, s9]  
"Widow" includes "widower"

## Section 48 (15)

This section applies in respect of an intestate woman as it applies in respect of an intestate male, and for the purposes of this section the word "widow" includes "widower".

## Section 48 (16)

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

## Section 49

A person who claims to be entitled to possession or occupation of lands in a reserve by devise or descent shall be deemed not to be in lawful possession or occupation of that land until the possession is approved by the Minister.

## Section 50 (1)

A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession or occupation of land in that reserve.

## Section 48 (15)

This section applies to both a woman and man dying without a will, and where "widow" is used it can mean "widower" without changing the meaning of the section.

## Section 48 (16)

This section reflects the change in the 1985 amendment to the Indian Act to the definition of "child" which now includes a child born in or out of wedlock, a legally adopted Indian or non-Indian child, and an Indian or non-Indian child adopted under Indian custom.

## Section 49

A person who claims that he has a right to a piece of reserve land as his share of the estate of a deceased Indian does not have lawful possession until the Minister gives his approval.

## Section 50 (1)

A person not entitled to reside on a reserve cannot inherit the right to a piece of reserve land from a deceased Indian's estate.

## Section 50 (2)

Where a right to possession or occupation of land in a reserve passes by devise or descent to a person who is not entitled to reside on a reserve, that right shall be offered for sale by the superintendent to the highest bidder among persons who are entitled to reside on the reserve and the proceeds of the sale shall be paid to the devisee or descendant, as the case may be.

## Section 50 (2)

If, by will an Indian attempts to give the lawful possession of a piece of reserve land to a person not entitled to reside on a reserve, then the Department shall sell the land to the highest bidder among the band members, and give the proceeds to the person who obtained rights to the reserve land under a will, but did not have the right to live on reserve land.

## Section 50 (3)

Where no tender is received within six months or such further period as the Minister may direct after the date when the right to possession or occupation is offered for sale under Subsection (2), the right shall revert to the band free from any claim on the part of the devisee or descendant, subject to the payment, at the discretion of the Minister, to the devisee or descendant, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

## Section 50 (3)

If no bid is received within six months (or a longer period, if directed by the Minister) from the time the land was put up for sale, then the land goes back to the band. The Minister can, if he wishes, pay the person who inherited the land by will, but was not entitled to reside on reserve land, any compensation from the band funds for major improvements done on and to the land.

**Section 50 (4)**

The purchaser of a right to possession or occupation of land under Subsection (2) shall be deemed not to be in lawful possession or occupation of the land until the possession is approved by the Minister.

**Section 50 (4)**

A person who bids for the land pursuant to Subsection (2) does not obtain a legal right or lawful possession to the land until the possession is approved by the Minister.

**MENTALLY INCOMPETENT INDIANS****Section 51 (1)**

Subject to this section, all jurisdiction and authority in relation to the property of mentally incompetent Indians is vested exclusively in the Minister.

**Section 51 (1)**

The Minister has complete control over the property of an Indian who is "mentally incompetent"

"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 defective or incompetent persons.

"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 defective or incompetent persons.

## Section 51 (2)

Without restricting the generality of Subsection (1), the Minister may

(a) appoint persons to administer the estates of mentally incompetent Indians;

(b) order that any property of a mentally incompetent Indian shall be sold, leased, alienated, mortgaged, disposed of or otherwise dealt with for the purpose of

(i) paying his debts or engagements,

(ii) discharging encumbrances on his property,

(iii) paying debts or expenses incurred for his maintenance or otherwise for his benefit or

(iv) paying or providing for the expenses of future maintenance; and

(c) make such orders and give such directions as he considers necessary to secure the satisfactory management of the estates of mentally incompetent Indians.

## Section 51 (2)

The Minister can do the following:

(a) appoint someone to look after the mentally incompetent Indian's property

(b) order the mentally incompetent Indian's property be sold, leased, alienated, mortgaged, or disposed of in some other way to

pay his real and personal property debts, and in order to pay the present and future costs of his care; and

(c) the Minister can also do whatever is necessary to ensure the proper management of the mentally incompetent Indian's property.

## Section 51 (3)

The Minister may order that any property situated off a reserve and belonging to a mentally incompetent Indian shall be dealt with under the laws of the province in which the property is situated.

## Section 51 (3)

If the Indian has property which is off reserve, the Minister can order that that property should be dealt with under the relevant provincial law.

## GUARDIANSHIP

## Section 52

The Minister may administer or provide for the administration of any property to which infant children of Indians are entitled, and may appoint guardians for such purposes.

## Section 52

The Minister can look after the property of a child under the age of majority or appoint a guardian to do so.

MANAGEMENT OF RESERVES AND  
SURRENDERED LANDS

See, "Administrative Services Fees Order", C.R.C. 1978, c. 947.

## Section 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.

## Section 53 (1)

The Minister, or his representative, can do whatever is necessary to manage, sell, lease surrendered lands according to the terms of the surrender.

**Section 53 (2)**

Where the original purchaser of surrendered lands is dead and the heir, assignee or devisee of the original purchaser applies for a grant of the lands, the Minister may, upon receipt of proof in such manner as he directs and requires in support of any claim for the grant and upon being satisfied that the claim has been equitably and justly established allow the claim and authorize a grant to issue accordingly.

**Section 53 (2)**

The Minister can, upon receipt of proof of the claim of the original purchaser, grant the surrendered lands to his heir.

**Section 53 (3)**

No person who is appointed to manage, sell, lease or otherwise dispose of surrendered lands or who is an officer or servant of Her Majesty employed in the Department may, except with the approval of the Governor in Council, acquire directly or indirectly any interest in surrendered lands.

**Section 53 (3)**

No person who is employed by the Department can for himself buy or lease surrendered lands without federal cabinet's approval.

## Section 54

Where surrendered lands have been agreed to be sold or otherwise disposed of and letters patent relating thereto have not issued, or where surrendered lands have been leased, the purchaser, leasee or other person having an interest in the surrendered lands may, with the approval of the Minister, assign his interest in the surrendered lands or a part thereof to any other person.

## Section 55 (1)

There shall be kept in the Department a register, to be known as the Surrendered Lands Register, in which shall be entered particulars in connection with any lease or other disposition of surrendered lands by the Minister or any assignment thereof.

## Section 55 (2)

A conditional assignment shall not be registered.

## Section 55 (3)

Registration of an assignment may be refused until proof of its execution has been furnished.

## Section 54

When a person has arranged to buy surrendered lands, and there has been no grant of possession given, or where those lands have been leased the person obtaining an interest in the land, in either case, can sell or give his right to buy or lease the land to someone else provided the Minister agrees.

## Section 55 (1)

The Department shall keep a record called the "Surrendered Lands Register" where all the details involving surrendered lands are recorded.

## Section 55 (2)

A conditional assignment cannot be registered.

## Section 55 (3)

An assignment may be refused registration until the person submitting it provides proof that it has been properly signed and completed.



**Section 55 (4)**

An assignment registered under this section is valid against an unregistered assignment or an assignment subsequently registered.

**Section 56**

Where an assignment is registered there shall be endorsed on the original copy thereof a certificate of registration signed by the Minister or by the officer of the Department authorized by him to sign such certificates.

**Section 57**

The Governor in Council may make regulations

(a) authorizing the Minister to grant licences to cut timber on surrendered lands or, with the consent of the council of the band, on reserve lands;

(b) imposing terms, conditions and restrictions with respect to the exercise of rights by licences granted under Paragraph (a);

**Section 55 (4)**

A registered assignment shall be valid against all unregistered assignments or an assignment subsequently registered.

**Section 56**

After an assignment has been registered the Minister or Department official shall sign the original copy of the certificate of registration.

**Section 57**

The federal cabinet can make regulations

(a) giving the Minister power to grant timber licences on surrendered lands without the band's consent; as well as the power to grant timber licences on reserve lands with a band council's consent.

(b) give instructions on how the timber license can be used and how long they are valid.

See, "Indian Timber Regulations", C.R.C. 1987, c.961.

(c) providing for the disposition of surrendered mines and minerals underlying lands in a reserve;

(c) providing for the sale and mining of surrendered mines and minerals under reserve lands;

See, "Indian Mining Regulations", C.R.C. 1978, c.956.

(d) prescribing the penalty not exceeding one hundred dollars or imprisonment for a term of three months, or both, that may be imposed on summary conviction for violation of any regulation made under this section; and

(d) establishing the penalty for breaking the regulations where the fine does not exceed \$100.00 or a prison term of three months; or both; and

(e) providing for the seizure and forfeiture of any timber or minerals taken in violation of any regulation made under this section.

(e) providing for the seizure and forfeiture of timber or minerals taken against the regulations.

Section 58 (1)

Where land in a reserve is uncultivated or unused, the Minister may, with the consent of the council of the band,

Section 58 (1)

Where reserve land is unused or uncultivated the Minister can with the band council's consent,

## (Section 58 (1) cont'd)

## (Section 58 (1) cont'd)

(a) improve or cultivate such land and employ persons therefor, and authorize and direct the expenditure of so much of the capital funds of the band as he considers necessary for such improvement or cultivation including the purchase of such stock, machinery or material or for the employment of such labour as the Minister considers necessary;

(b) where the land is in lawful possession of any individual, grant a lease of such land for agricultural or grazing purposes or for any purpose that is for the benefit of the person in possession; and

(c) where the land is not in lawful possession of any individual, grant for the benefit of the band a lease of such land for agricultural or grazing purposes.

(a) cultivate the land by hiring persons to do the work and authorizing the use of a band's capital funds, as he thinks is necessary, for the improvement which includes the purchase of machinery and livestock;

(b) if an individual holds the land in lawful possession the Minister can grant an agricultural or grazing lease or for any other purpose that is of benefit to that person in possession.

(c) if no one holds the land in lawful possession the Minister can grant agricultural or grazing lease for the band's benefit.

(c) providing for the disposition of surrendered mines and minerals underlying lands in a reserve;

(c) providing for the sale and mining of surrendered mines and minerals under reserve lands;

See, "Indian Mining Regulations", C.R.C. 1978, c.956.

(d) prescribing the penalty not exceeding one hundred dollars or imprisonment for a term of three months, or both, that may be imposed on summary conviction for violation of any regulation made under this section; and

(d) establishing the penalty for breaking the regulations where the fine does not exceed \$100.00 or a prison term of three months; or both; and

(e) providing for the seizure and forfeiture of any timber or minerals taken in violation of any regulation made under this section.

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#### Section 58 (1)

Where reserve land is unused or uncultivated the Minister can with the band council's consent,

## Section 58 (2)

Out of the proceeds derived from the improvement or cultivation of lands pursuant to Paragraph (1)(b), a reasonable rent shall be paid to the individual in lawful possession of the lands or any part thereof, and the remainder of the proceeds shall be placed to the credit of the band, but if improvements are made on the lands occupied by an individual, the Minister may deduct the value of such improvements from the rent payable to such individual under this subsection.

## Section 58 (3)

The Minister may lease for the benefit of any Indian upon his application for the purpose, the land of which he is lawfully in possession without the land being surrendered.

## Section 58 (4)

Notwithstanding anything in this Act, the Minister may, without a surrender

(a) dispose of wild grass or dead or fallen timber, and

## Section 58 (2)

Out of the moneys earned from lands held in lawful possession by an individual a reasonable rent shall be paid to the individual in lawful possession, and the remainder shall go to the band; however, if improvements are made to the land, then the value of the improvements can be deducted from the rent payable to the individual.

## Section 58 (3)

The Minister can lease land held in lawful possession by an Indian who applies for such a lease without there being a surrender.

## Section 58 (4)

The Minister can, 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 temporary permits for the taking of sand, gravel, clay and other non-metallic substances upon or under lands in a reserve, renewable only with the consent of the council of the band,

and the proceeds of such transactions shall be credited to band funds or shall be divided between the band and the individual Indians in lawful possession of the lands in such shares as the Minister may determine.

#### Section 59

The Minister may, with the consent of the council of a band,

(a) reduce or adjust the amount payable to Her Majesty in respect of a sale, lease or other disposition of surrendered lands or a lease or other disposition of lands in a reserve or the rate of the interest payable thereon; and

(b) with the band council's consent dispose of sand, gravel and other non-metallic material on reserve lands. If consent is difficult to obtain, then the Minister can give temporary permits to people to take this material from the reserve. The temporary permits cannot be renewed unless the band council agrees.

The moneys earned from these arrangements shall be paid either into band funds, or divided between the band and the individual Indians who hold the land in lawful possession as the Minister may decide.

#### Section 59

If the band council agrees, the Minister can

(a) alter the amount payable for the sale or lease of surrendered lands and reserve lands or the interest rate payable; and

(b) reduce or adjust the amount payable to the band by an Indian in respect of a loan made to the Indian from band funds.

(b) alter the amount payable by an Indian who has borrowed money from his band's funds.

Section 60 (1)

The Governor in Council may at the request of a band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable.

Section 60 (1)

The federal cabinet can at the band's request grant to them the right to exercise such control and management over their reserve lands as the federal cabinet considers desirable.

Section 60 (2)

The Governor in Council may at any time withdraw from a band a right conferred upon the band under Subsection (1).

Section 60 (2)

The federal cabinet can at any time withdraw a band's right to control and manage their reserve lands.

## MANAGEMENT OF INDIAN MONEYS

"Indian moneys" means any money collected, received or held by the federal government for the use and benefit of individual Indians or Indian bands.

### Section 61 (1)

Indian moneys shall be expended only for the benefit of the Indians or bands for whose use and benefit in common the moneys are received or held, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which Indian moneys are used or are to be used is for the use and benefit of the band.

### Section 61 (2)

Interest upon Indian moneys held in the Consolidated Revenue Fund shall be allowed at a rate to be fixed from time to time by the Governor in Council.

### Section 62

All Indian moneys derived from the sale of surrendered lands or the sale of capital assets of a band shall be deemed to be capital moneys of the band and all Indian moneys other than capital moneys shall be deemed to be revenue moneys of the band.

### Section 61 (1)

Indian moneys are to be spent only for the use and benefit of the Indians or bands for whose use and benefit in common the moneys are held, and subject to this Act and the terms of any treaty, the federal cabinet can determine whether moneys being spent is really for the use and benefit of the band.

### Section 61 (2)

The federal cabinet shall determine the interest rate payable on Indian moneys.

### Section 62

All Indian moneys from the sale of surrendered lands or the sale of capital assets (i.e., a building) shall be called the band's capital moneys, and all other moneys shall be called the band's revenue moneys.



## Section 63

Notwithstanding the Financial Administration Act, where moneys to which an Indian is entitled are paid to a superintendent under any lease or agreement made under this Act, the superintendent may pay the moneys to the Indian.

## Section 64 (1)

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

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

(b) to construct and maintain roads, bridges, ditches and water courses on the reserves or on surrendered lands;

(c) to construct and maintain outer boundary fences on reserves;

(d) to purchase land for use by the band as a reserve or as an addition to a reserve;

## Section 63

Even though the Financial Administration Act says otherwise, if moneys to which an Indian is entitled to under a lease or agreement are paid to a superintendent, he can pay the moneys directly to the Indian.

## Section 64 (1)

With the band council's consent the Minister can spend capital moneys of the band

(a) to divide equally among band members fifty per cent of the moneys derived from the sale of surrendered lands.

(b) to build roads, bridges and ditches on reserves or surrendered lands;

(c) to build boundary fences around the reserves;

(d) to buy land as a reserve or as extra reserve land for the band;

(e) to purchase for the band the interest of a member of the band in lands on a reserve;

(f) to purchase livestock and farm implements, farm equipment or machinery for the band;

(g) to construct and maintain on or in connection with a reserve such permanent improvements or works as in the opinion of the Minister will be of permanent value to the band or will constitute a capital investment;

(h) to make to members of the band, for the purpose of promoting the welfare of the band, loans not exceeding one-half of the total value of

(i) the chattels owned by the borrower, and

(ii) the land with respect to which he holds or is eligible to receive a Certificate of Possession,

and may charge interest and take security therefor;

(e) to buy for the band a piece of reserve land held by a band member;

(f) to buy livestock and farm equipment for the band;

(g) to build such long-lasting works (i.e., a water dam) as the Minister thinks will be of longlasting value to the band or will be a good investment;

(h) to make loans to band members, with the intention of promoting the band's welfare, of not more than one-half of the value of the borrower's personal property and one-half value of reserve lands for which he is eligible to receive a Certificate of Possession, and to set an interest rate payable along with acceptable security;

(i) to meet expenses necessarily incidental to the management of lands on a reserve surrendered lands and any band property;

(j) to construct houses for members of the band, to make loans to members of the band for building purposes with or without security and to provide for the guarantee of loans made to members of the band for building purposes; and

(k) for any other purpose that in the opinion of the Minister is for the benefit of the band.

#### Section 64 (2)

The Minister may make expenditures out of the capital moneys of a band in accordance with by-laws made pursuant to Paragraph 81 (1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the capital moneys.

(i) to pay the cost of managing reserve land, surrendered land or band property;

(j) to build houses for band members, and make loans to band members for building purposes, or to guarantee any loan made to band members for building purposes.

(k) finally, the Minister can spend the band's capital moneys for any purpose that he decides is for the band's benefit.

#### Section 64 (2)

The Minister can spend capital moneys of a band authorized by a band by-law made pursuant to Paragraph 81 (1) (p.3) to make payments to any person who has been deleted from the Band List. The payment shall not exceed one per capita share of the capital money.

## Section 64.1 (1)

A person who has received an amount that exceeds one thousand dollars under Paragraph 15 (1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of a band in circumstances set out in Paragraph 6 (1)(c), (d) or (e) is not entitled to receive an amount under Paragraph 64 (1)(a) until such time as the aggregate of all amounts that he would, but for this subsection have received under Paragraph 64 (1)(a) is equal to the amount by which the amount that he received under Paragraph 15 (1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, exceeds one thousand dollars, together with any interest thereon.

## Section 64.1 (1)

A person who received an amount over \$1000.00 when he was enfranchised and lost Indian status either by the double mother rule, marriage, or birth is not entitled to receive any moneys derived from a sale of surrendered lands that is divided among band members (s.64 (1)(a)) until the total amount exceeding the \$1000.00 is recovered with interest.

## Section 64.1 (2)

Where the band council makes a by-law under Paragraph 81 (1) (p.4) bringing this subsection into effect, a person who has received an amount that exceeds one thousand dollars under Paragraph 15 (1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of the band in the circumstances set out in Paragraph 6(1)(c), (d) or (e) is not entitled to receive any benefit afforded to members of the band as individuals as a result of the expenditure of Indian moneys under Paragraphs 64 (1)(b) to (k), Subsection 66 (1) or Subsection 69 (1) until the amount by which the amount so received exceeds one thousand dollars, together with any interest thereon, has been repaid to the band.

## Section 64.1 (3)

The Governor in Council may make regulations prescribing the manner of determining interest for the purpose of Subsections (1) and (2).

## Section 64.1 (2)

Where a band council makes a by-law to bring this subsection into effect a person who received an amount over \$1000.00 when he became enfranchised by ceasing to be a band member and lost Indian status either by the double mother rule, marriage, birth or enfranchisement isn't entitled to receive benefits available to other band members that are a direct result of the expenditure of Indian moneys (that is, the capital moneys and the revenue moneys) until the amount that exceeds \$1000.00 together with interest is repaid to the band.

## Section 64.1 (3)

The federal cabinet can make regulations to determine the interest rate applicable to moneys to be repaid under Subsection (1) and (2).

## Section 65

The Minister may pay from capital moneys

(a) compensation to an Indian in an amount that is determined in accordance with this Act to be payable to him in respect of land compulsorily taken from him for band purposes; and

(b) expenses incurred to prevent or suppress grass or forest fires or to protect the property of Indians in cases of emergency.

## Section 66 (1)

With the consent of the council of a band, the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in his opinion will promote the general progress and welfare of the band or any member of the band.

## Section 65

The Minister can use a band's capital moneys to

(a) pay an Indian who has had his land taken away from him for band purposes; and

(b) pay for forest and grass fire prevention or to protect the property of Indians in cases of emergency.

## Section 66 (1)

With a band council's consent the Minister can spend the band's revenue moneys for any purpose he decides will be for the good of the band or any band member.

## Section 66 (2)

The Minister may make expenditures out of the revenue moneys of the band to assist sick, disabled, aged or destitute Indians of the band and to provide for the burial of deceased indigent members of the band and to provide for the payment of contributions under the Unemployment Insurance Act on behalf of employed persons who are paid in respect of their employment out of moneys of the band.

## Section 66 (2.1)

The Minister may make expenditures out of the revenue moneys of a band in accordance with by-laws made pursuant to Paragraph 81 (1) (p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the revenue moneys.

## Section 66 (3)

The Minister may authorize the expenditure of revenue moneys of the band for all or any of the following purposes, namely:

## Section 66 (2)

The Minister can spend the band revenue moneys to assist the sick, disabled, aged, or destitute Indians of the band, and to provide the burial of deceased poor band members, and to pay the contributions under the Unemployment Insurance Act for people who are employed and paid by the band.

## Section 66 (2.1)

The Minister can pay out of a band's revenue moneys, in accordance with a band by-law for the purpose of paying any person whose name was deleted from the Band List, an amount not exceeding one per capita share.

## Section 66 (3)

The Minister can allow a band's revenue moneys to be spent for all or any of the following purposes:

(a) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;

(b) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;

(c) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;

(d) to prevent overcrowding of premises on reserves used as dwellings;

(e) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves; and

(f) for the construction and maintenance of boundary fences.

(a) to destroy weeds and pests on reserves;

(b) to prevent the spread of infectious or non-infectious diseases on reserves;

(c) to provide building inspection on reserves and to destroy or repair the building;

(d) to stop overcrowding in reserve housing;

(e) to provide for clean and hygienic conditions in houses and public places on reserves; and

(f) to build and maintain boundary fences.



## Section 67

Where money is expended by Her Majesty for the purpose of raising or collecting Indian moneys, the Minister may authorize the recovery of the amount so expended from the moneys of the band.

## Section 68

Where the Minister is satisfied that an Indian

(a) has deserted his spouse or family without sufficient cause,

(b) has conducted himself in such a manner as to justify the refusal of his spouse or family to live with him, or

(c) has been separated by imprisonment from his spouse and family,

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

## Section 67

When the federal government has spent money in order to raise or collect Indian moneys, then the Minister can recover that amount from the band's moneys.

## Section 68

When the Minister is satisfied that an Indian

(a) has left his spouse or family without good reason,

(b) has carried on in such a way that his spouse or family cannot be expected to live with him, or

(c) has been separated from his spouse and family because he is in jail,

the Minister can order that the Indian moneys the Indian had been entitled to shall be used to support his spouse or family or both the spouse and family.

## Section 69 (1)

The Governor in Council may by order permit a band to control, manage and expend in whole or in part its revenue moneys and may amend or revoke any such order.

## Section 69 (1)

The federal cabinet can allow a band to control, manage and expend its revenue monies but it can also take that power away.

## Section 69 (2)

The Governor in Council may make regulations to give effect to Subsection (1) and may declare therein the extent to which this Act and the Financial Administration Act shall not apply to a band to which an order made under Subsection (1) applies.

## Section 69 (2)

The federal cabinet can make regulations dealing with the situation where a band has control of its revenue monies outlining where the Indian Act and the Financial Administration Act do not apply.

## LOANS

Burrell and Sanders, Handbook of Case Law on the Indian Act, (Department of Indian and Northern Affairs, 1984), p 139

"Appropriation Act No. 1, 1970 (vote L53b) established new provisions for loans to Indians. Regulations were enacted under the Appropriation Act in 1972. The Appropriation Act waives the provisions of Section 89 of the Indian Act for any loans made pursuant to it. It allows for loans, to Indians or non-Indians, designed to contribute to the economic development of Indians. In certain circumstances the regulations provide for ministerial guarantee of loans. Because of the Appropriation Act and the regulations, Section 70 of the Indian Act is no longer in use".

## Section 70 (1)

The Minister of Finance may from time to time authorize advances to the Minister out of the Consolidated Revenue Fund of such sums of money as the Minister may require to enable him

(a) to make loans to bands, groups of Indians or individual Indians for the purpose of farm implements, machinery, livestock, motor vehicles, fishing equipment, seed grain, fencing materials, materials to be used in native handicrafts, any other equipment, and gasoline and other petroleum products, or for the making of repairs or the payment of wages, or for the clearing and breaking of land within reserves;

(b) to expend or to lend money for the carrying out of cooperative projects on behalf of Indians; or

(c) to provide for any other matter prescribed by the Governor in Council.

## Section 70 (2)

The Governor in Council may make regulations to give effect to Subsection (1).

**Section 70 (3)**

Expenditures that are made under Subsection (1) shall be accounted for in the same manner as public moneys.

**Section 70 (4)**

The Minister shall pay to the Receiver General all moneys that he receives from bands, groups of Indians or individual Indians by way of repayments of loans made under Subsection (1).

**Section 70 (5)**

The total amount of outstanding advances to the Minister under this section shall not at any one time exceed six million and fifty thousand dollars.

**Section 70 (6)**

The Minister shall within fifteen days after the termination of each fiscal year or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session, lay before Parliament a report setting out the total number and amount of loans made under Subsection (1) during that year.

## FARMS

## Section 71 (1)

The Minister may operate farms on reserves and may employ such persons as he considers necessary to instruct Indians in farming and may purchase and distribute without charge, pure seed to Indian farmers.

## Section 71 (2)

The Minister may apply any profits that result from the operation of farms pursuant to Subsection (1) on reserves to extend farming operations on the reserves or to make loans to Indians to enable them to engage in farming or other agricultural operations or he may apply such profits in any way that he considers to be desirable to promote the progress and development of the Indians.

## Section 71 (1)

The Minister can operate farms on reserves, hire someone to teach farming methods, and buy and divide seed among Indian farmers.

## Section 71 (2)

The Minister can use the profits made from a reserve farming operation to enlarge the existing one, or make loans to Indians to enable them to start up their own agricultural operation, or he may apply the profits in any way that he decides will best promote the progress and development of the Indians.

## TREATY MONEY

## Section 72

Moneys that are payable to Indians or to Indian bands under a treaty between Her Majesty and the band for the payment of which the Government of Canada is responsible, may be paid out of the Consolidated Revenue Fund.

## Section 72

Treaty moneys can be paid out of the Consolidated Revenue Fund.

## REGULATIONS

## Section 73 (1)

The Governor in Council may make regulations

(a) for the protection and preservation of fur-bearing animals, fish and other game on reserves;

(b) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves.

(c) for the control of the speed, operation and parking of vehicles on roads within reserves;

See, "Indian Reserve Traffic Regulations", C.R.C. 1978, c.959.

(d) for the taxation, control and destruction of dogs and for the protection of sheep on reserves;

See, "Indian Reserve Dog Regulations", C.R.C. 1978, c.958.

(e) for the operation, supervision and control of pool rooms, dance halls and other places of amusement on reserves;

See, "Places of Amusement Regulations", C.R.C. 1978, c.962.

## Section 73 (1)

The federal cabinet can make regulations

(a) for protecting and preserving wildlife on reserves;

(b) for destroying weeds and insects which might injure plants and trees on reserves;

(c) for traffic control on reserves;

(d) for taxing, controlling and destroying dogs and the protection of sheep on reserves;

(e) for operating, supervising, and controlling pool rooms, dance halls, and other places of amusement on reserves;

## (Section 73 (1) cont'd)

(f) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;

(f) to prevent the spread of infectious or non-infectious diseases on reserves;

See, "Indian Health Regulations", C.R.C. 1978, c.955.

(g) to provide medical treatment and health services for Indians;

(g) to provide health services for Indians;

(h) to provide compulsory hospitalization and treatment for infectious diseases among Indians;

(h) to provide for enforced hospitalization and treatment for infectious diseases among Indians;

(i) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;

(i) to provide for building inspection on reserves and to destroy or repair buildings,

(j) to prevent overcrowding of premises on reserves used as dwellings;

(j) to prevent overcrowding in reserve housing;

(k) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves;

(k) to provide for clean and hygienic conditions in houses and public places on reserves;

(l) for the construction and maintenance of boundary fences; and

(l) for building and maintaining boundary fences; and

## (Section 73 (1) cont'd)

(■) for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes.

(■) for authorizing a band council to borrow money for band projects or housing purposes and also for a band council to make loans to band members for housing purposes.

## Section 73 (2)

The Governor in Council may prescribe the penalty, not exceeding a fine of one hundred dollars or imprisonment for a term not exceeding three months, or both, that may be imposed on summary conviction for violation of a regulation made under Subsection (1).

## Section 73 (2)

The federal cabinet can allow for a fine of one hundred dollars or imprisonment for a term not exceeding three months, or both for a violation of any of the regulations mentioned in Subsection (1).

## Section 73 (3)

The Governor in Council may make orders and regulations to carry out the purposes and provisions of this Act.

## Section 73 (3)

The federal cabinet can make orders and regulations to carry out the purposes of the Indian Act.

## ELECTIONS OF CHIEFS AND BAND COUNCILS

See, "Indian Bands Election Order", C.R.C. 1978, c.951.

See, "Indian Band Election Regulations", C.R.C. 1978, c.952.



## Section 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.

## Section 74 (2)

Unless otherwise ordered by the Minister the council of a band in respect of which an order has been made under Subsection (1) shall consist of one chief, and one councillor for every one hundred members of the band, but the number of councillors shall not be less than two nor more than twelve and no band shall have more than one chief.

## Section 74 (3)

The Governor in Council may, for the purposes of giving effect to Subsection (1), make orders or regulations to provide

(a) that the chief of a band shall be elected by

(i) a majority of the votes of the electors of the band, or

(ii) a majority of the elected councillors of the band from among themselves, but the chief so elected shall remain a councillor; and

## Section 74 (1)

Whenever he decides that it is for the good government of a band, the Minister can order that after a given day the band council made up of chief and councillors, shall be elected according to the Indian Act.

## Section 74 (2)

Unless the Minister decides otherwise, the elected band council shall consist of only one chief and one councillor for every one hundred band members, but not less than two or more than twelve.

## Section 74 (3)

The federal cabinet can make election regulations which provide

(a) that the chief can be elected by

(i) a majority vote of the electors of the band, or

(ii) a majority vote of the elected band councillors, and he shall remain a councillor; and

## Section 74 (3) cont'd)

(b) that the councillors of a band shall be elected by

(i) a majority of the votes of the electors of the band, or

(ii) a majority of the votes of the electors of the band in the electoral section in which the candidate resides and that he proposes to represent on the council of the band.

## Section 74 (4)

A reserve shall for voting purposes consist of one electoral section, except that where the majority of the electors of a band who were present and voted at a referendum or a special meeting held and called for the purpose in accordance with the regulations have decided that the reserve should for voting purposes be divided into electoral sections and the Minister so recommends, the Governor in Council may make orders or regulations to provide that the reserve shall for voting purposes be divided into not more than six electoral sections containing as nearly as may be an equal number of Indians eligible to vote and to provide for the manner in which electoral sections so established shall be distinguished or identified.

(b) that the band councillors can be elected by

(i) a majority vote of the electors of the band, or

(ii) a majority vote of the electors of the band in the electoral section in which the candidate lives and which he will represent on the council.

## Section 74 (4)

A reserve will usually consist of one electoral section except where a majority of the electors vote at a referendum or special meeting that the reserve should be divided into electoral sections (and the Minister recommends the same). The federal cabinet can make regulations or orders that the reserve be divided into not more than six electoral sections with as nearly as possible equal eligible voters, and to provide how each section is to be identified.

## Section 75 (1)

No person other than an elector who resides in a section may be nominated for the office of councillor to represent that section on the council of the band.

## Section 75 (2)

No person may be a candidate for election as chief or councillor unless his nomination is moved and seconded by persons who are themselves eligible to be nominated.

## Section 76 (1)

The Governor in Council may make orders and regulations with respect to band elections and, without restricting the generality of the foregoing, may make regulations 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.

## Section 75 (1)

Only an elector who lives in a section can be nominated for councillor to represent that section.

## Section 75 (2)

For a person to be eligible as a candidate for chief or councillor his nomination must be moved and seconded by persons who are themselves eligible to be nominated.

## Section 76 (1)

Generally, the federal cabinet can make orders and regulations with respect to band elections, and more specifically can make regulations for:

- (a) meetings to nominate people to stand for chief and council;
- (b) the appointment and duties of electoral officers;
- (c) voting procedure;
- (d) election appeals; and
- (e) the definition of residency on reserve to determine voter eligibility.

## Section 76 (2)

The regulations under Paragraph (1) (c) shall make provision for secrecy of voting.

## Section 76 (2)

The regulations made for voting procedures shall make provision for a secret ballot.

## Section 77 (1)

A member of a band who has attained the age of eighteen 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.

## Section 77 (1)

Any member of a band who is 18 years old and usually lives on the reserve can vote in the election of a chief. He can also vote in the election of councillors where the reserve consists of one electoral section.

## Section 77 (2)

A member of a band who is of the full age of eighteen years and is ordinarily resident in a section that has been established for voting purposes is qualified to vote for a person nominated to be councillor to represent that section.

## Section 77 (2)

A band member who is eighteen years old and usually lives in an electoral section that has been established for voting purposes can vote in the election of a councillor to represent that section.

## Section 78 (1)

Subject to this section, chiefs and councillors hold office for two years.

## Section 78 (1)

Usually chiefs and councillors hold office for two years.

## Section 78 (2)

The office of chief or councillor becomes vacant when

(a) the person who holds that office

(i) is convicted of an indictable offence,

(ii) dies or resigns his office or

(iii) is or becomes ineligible to hold office by virtue of this Act; or

(b) the Minister declares that in his opinion the person who holds that office

(i) is unfit to continue in office by reason of his having been convicted of an offence,

(ii) has been absent from meetings of the council for three consecutive meetings without being authorized to do so, or

(iii) was guilty, in connection with an election, of corrupt practice, accepting a bribe, dishonesty or malfeasance.

## Section 78 (2)

The office of chief or councillor becomes vacant when:

(a) the chief or councillor

(i) is found guilty of a serious crime,

(ii) dies or resigns from his office, or

(iii) is or becomes ineligible to hold office by virtue of this Act; or

(b) the Minister decides that the person holding office

(i) is found guilty of a minor crime,

(ii) is absent from three consecutive meetings without permission; or

(iii) was fraudulent in connection with an election.

## Section 78 (3)

The Minister may declare a person who ceases to hold office by virtue of Subparagraph (2)(b)(iii) to be ineligible to be a candidate for chief or councillor for a period not exceeding six years.

## Section 78 (4)

Where the office of chief or councillor becomes vacant more than three months before the date when another election would ordinarily be held, a special election may be held in accordance with this Act to fill the vacancy.

## Section 79

The Governor in Council may set aside the election of a chief or a councillor on the report of the Minister that he is satisfied that

(a) there was corrupt practice in connection with the election;

(b) there was a violation of this Act that might have affected the result of the election;

(c) a person nominated to be a candidate in the election was ineligible to be a candidate.

## Section 78 (3)

Where a person was fraudulent in connection with an election the Minister can declare him ineligible as a candidate for up to six years.

## Section 78 (4)

If the office of chief or councillor becomes vacant more than three months before his term is up then a special election can be held to fill the vacancy.

## Section 79

On a report from the Minister the federal cabinet can set aside the election of a chief or councillor if

(a) there was something dishonest done in connection with the election;

(b) there was a violation of the Act that could have affected the election results; or

(c) a person nominated was an ineligible nominee.

## Section 80

The Governor in Council may make regulations with respect to band meetings and council meetings and, without restricting the generality of the foregoing, may make regulations with respect to

- (a) presiding officers at such meetings;
- (b) notice of such meetings;
- (c) the duties of any representative of the Minister at such meetings; and
- (d) the number of persons required at the meeting to constitute a quorum.

## Section 80

Generally, the federal government can make regulations with respect to band and band council meetings, and specifically can make regulations with respect to

- (a) the officers in charge at such meetings;
- (b) the type of notice required for such meetings;
- (c) the duties of the Minister's representative at such meetings; and
- (d) the number of people required to make binding decisions at such meetings.

## POWERS OF THE COUNCIL

## Section 81 (1)

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

- (a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;

## Section 81 (1)

The band council can make by-laws which cannot be inconsistent with this Act or with regulations made by the federal cabinet for the following purposes:

- (a) to provide health services for reserve residents and for the prevention of contagious diseases;

(b) the regulation of traffic;

(b) for traffic regulation;

(c) the observance of law and order;

(c) for law and order;

(d) the prevention of disorderly conduct and nuisances;

(d) for preventing disorderly conduct;

(e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;

(e) for protection against and prevention of domestic animal trespass, the establishment of animal pounds and pound-keepers, and the regulation of their duties as well as service fees.

(f) the construction and maintenance of water courses, roads, bridges, ditches, fences and other local works;

(f) for constructing and maintaining water courses, roads, bridges, and other local works;

(g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone;

(g) for subdividing all or a portion of the reserve into business or residential zones;

(h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;

(h) for regulating building construction and repair and use of buildings whether individually owned or band owned.



(i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under Section 60;

(j) the destruction and control of noxious weeds;

(k) the regulation of bee-keeping and poultry raising;

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

(m) the control and prohibition of public games, sports, races, athletic contests and other amusements;

(n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;

(o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;

(i) for reserve land surveys, reserve allotment among band members, and for establishing a registry relating to those allotments; and for setting aside reserve lands for common use if the band has been granted control and management over its reserve lands;

(j) for weed control;

(k) for bee-keeping and poultry farming;

(l) for constructing and regulating the band's water supply;

(m) for controlling and preventing certain athletic sports and other amusements;

(n) for regulating salesperson's conduct on reserve;

(o) for fish and wildlife protection and management on reserve;

(p) the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prohibited purposes;

(p.1) the residence of band members and other persons on the reserve;

(p.2) to provide for the rights of spouses and children who reside with members of the band on the reserve with respect to any matter in relation to which the council may make by-laws in respect of members of the band;

(p.3) to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band;

(p.4) to bring Subsection 10(3) or 64.1 (2) into effect in respect of the band;

(q) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and

(p) for removing and punishing trespassers on reserve, or those who frequent the reserve for prohibited purposes;

(p.1) for residence requirements of band members and others on reserve;

(p.2) for the rights of spouses and children who live on reserve with band members concerning any matter for which the band can make by-laws (i.e., health services or housing)

(p.3) to authorize the Minister to make payments out of band capital or revenue moneys to persons who were deleted from the Band List;

(p.4) to allow consent for band control of membership by band members (Subsection 10(3)) or to require the "pay back" of capital moneys greater than \$1,000.00 (Subsection 64.1 (2));

(q) for any matter required to do the things listed above; and

(r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section.

### Section 81 (2)

Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

### Section 81 (3)

Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council.

(r) for imposing a fine of not more than one thousand dollars or imprisonment for not more than thirty days, or both on summary conviction for a violation of a by-law made under this section.

### Section 81 (2)

Where a conviction is entered for the contravention of a band by-law, and in addition to any other penalty imposed, a court of competent jurisdiction can order the offender not to repeat the contravention.

### Section 81 (3)

Where there is a contravention of a band by-law, the court in addition to any other remedy or any penalty imposed, can put a restraint on the action at the band council's request.

## Section 82 (1)

A copy of every by-law made under the authority of Section 81 shall be forwarded by mail by the chief or a member of the council of the band to the Minister within four days after it is made.

## Section 82 (1)

A copy of a by-law made under this section must be sent to the Minister within four days after it is made.

## Section 82 (2)

A by-law made under Section 81 comes into force forty days after a copy thereof is forwarded to the Minister pursuant to Subsection (1), unless it is disallowed by the Minister within that period, but the Minister may declare the by-law to be in force at any time before the expiration of that period.

## Section 82 (2)

A band by-law comes into force forty days after it has been forwarded to the Minister, unless within that time he disallows the by-law; however, the Minister can declare the by-law in force at any time before the expiration of the forty days.

## Section 83 (1)

Without prejudice to the powers conferred by Section 81, 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

## Section 83 (1)

Aside from the band by-law making powers in Section 81 where the federal cabinet declares that a band has reached an "advanced stage of development" the band council can with the Minister's approval make by-laws for the following purposes:

(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 may be 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 or the amount remaining unpaid;

(a) raising money by

(i) the assessment and taxation of reserve lands held in lawful possession, and

(ii) licensing businesses or occupations;

(b) by taking and spending band moneys for band expenses;

(c) to hire employees to conduct band council business setting out their duties and paying them out of the moneys collected in assessment against reserve lands held in lawful possession by band members.

(d) to pay chief and councillors (as approved by the Minister) wages out of the moneys collected in assessment against reserve lands held in lawful possession by band members;

(e) to impose a penalty for nonpayment of taxes recoverable on summary conviction, but not exceeding the amount of tax unpaid;

(f) the raising of money from band members to support band projects; and

(g) with respect to any matter arising out of or ancillary to the exercise of powers under this section

(f) to raise money from band members to support band projects; and

(g) to make by-laws regarding any matter arising out of the exercise of powers under this section.

#### Section 83 (2)

No expenditure shall be made out of moneys raised pursuant to Paragraph (1)(a) except under the authority of a by-law of the council of the band.

#### Section 83 (2)

Moneys raised by taxation under Paragraph (1)(a) cannot be spent without a by-law passed by the band council authorizing the expenditure.

#### Section 84

Where a tax that is imposed upon an Indian by or under the authority of a by-law made under Section 83 is not paid in accordance with the by-law, the Minister may pay the amount owing together with an amount equal to one-half of one per cent thereof out of moneys payable out of the funds of the band to the Indian.

#### Section 84

Where a tax is imposed upon an Indian under the authority of a band by-law and it is unpaid the Minister can pay the amount owing along with an amount equal to one-half of one per cent out of the moneys due to the Indian out of band funds.

## Section 85

The Governor in Council may revoke a declaration made under Section 83 whereupon that section no longer applies to the band to which it formerly applied, but any by-law made under the authority of that section and in force at the time the declaration is revoked shall be deemed to continue in force until it is revoked by the Governor in Council.

## Section 85.1 (1)

Subject to Subsection (2), the council of a band may make by-laws

(a) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band;

(b) prohibiting any person from being intoxicated on the reserve;

(c) prohibiting any person from having intoxicants in his possession on the reserve; and

(d) providing for exceptions to any of the prohibitions established pursuant to Paragraph (b) or (c).

## Section 85

The federal cabinet can revoke a band's authority to make money by-laws. However a valid money by-law will remain in force until the cabinet does revoke it.

## Section 85.1 (1)

With the consent of the majority of the electors of the band, a band council can make by-laws

(a) prohibiting liquor sale or manufacture on reserve;

(b) prohibiting intoxication on reserve;

(c) prohibiting possession of liquor on reserve; and

(d) providing exceptions to intoxication on reserve or possession of liquor on reserve.

## Section 85.1 (2)

A by-law may not be made under this section unless it is first assented to by a majority of the electors of the band who voted at a special meeting of the band called by the council of the band for the purpose of considering the by-law.

## Section 85.1 (3)

A copy of every by-law made under this section shall be sent by mail to the Minister by the chief or a member of the council of the band within four days after it is made.

## Section 85.1 (4)

Every person who contravenes a by-law made under this section is guilty of an offence and is liable on summary conviction,

(a) in the case of a by-law made under Paragraph (1)(a), to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months or to both; and

## Section 85.1 (2)

A liquor by-law cannot be made unless a majority of the electors of the band voted for it at a special meeting called to consider the liquor by-law.

## Section 85.1 (3)

The chief or council member must send to the Minister a copy of every liquor by-law within four days after it is made.

## Section 85.1 (4)

Every person who breaks a liquor by-law is guilty of an offence and is liable on summary conviction

(a) for selling or manufacturing liquor to a fine of not more than one thousand dollars or to imprisonment for not more than six months or to both; and



(b) In the case of a by-law made under Paragraph (1)(b) or (c), to a fine of not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both.

#### Section 86

A copy of a by-law made by the council of a band under this Act, if it is certified to be a true copy by the superintendent, is evidence that the by-law was duly made by the council and approved by the Minister, without proof of the signature or official character of the superintendent, and no such by-law is invalid by reason of any defect in form.

(b) for being intoxicated or possessing liquor on reserve to a fine of not more than one hundred dollars or to imprisonment for not more than three months or to both.

#### Section 86

A certified copy of a band by-law is evidence that it was duly made by a band council and approved by the Minister even without the signature of the superintendent. No such by-law is invalid because of a defect in form.

### TAXATION

#### Section 87

Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to Section 83, the following property is exempt from taxation, namely:

#### Section 87

Despite any other federal or provincial law, but subject to a band's money by-laws (Section 83), the following property is exempt from taxation:

(a) the interest of an Indian or a band in reserve or surrendered lands; and

(a) an Indian or band's interest in reserve or surrendered lands; and

(b) the personal property of an Indian or band situated on a reserve;

(b) an Indian or band's personal property situated on a reserve;

and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in Paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the Dominion Succession Duty Act, being Chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the Estate Tax Act, on or in respect of other property passing to an Indian.

and no Indian or band can be taxed in respect of property mentioned in (a) and (b) above; and no estate duty on such property is taxable on the death of an Indian if the property passes to an Indian; nor can any such property be taken into account when calculating the duty payable under the Dominion Succession Duty Act or the tax payable under the Estate Tax Act.

## LEGAL RIGHTS

## Section 88

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.

## Section 89 (1)

Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian.

## Section 88

Subject to the terms of any treaty or federal law all provincial laws of general application (to all citizens) are applicable to Indians except where such laws might be inconsistent with the Indian Act or any order, rule, regulation or by-law made under the Indian Act.

## Section 89 (1)

The real and personal property of an Indian or band situated on a reserve cannot be seized to settle a debt with anyone other than another Indian.

## Section 89 (2)

A person who sells to a band or a member of a band a chattel under an agreement whereby the right of property or right of possession thereto remains wholly or in part in the seller, may exercise his rights under the agreement notwithstanding that the chattel is situated on a reserve.

## Section 90 (1)

For the purposes of Sections 87 and 89, personal property that was

(a) purchased by Her Majesty with Indian moneys or moneys appropriated by Parliament for the use and benefit of Indian bands, or

(b) given to Indians or to a band under a treaty or agreement between a band and Her Majesty,

shall be deemed always to be situated on a reserve.

## Section 89 (2)

A conditional sales agreement (where a right of property or of possession remains with the seller) made with a band member or the band allows the conditional seller to exercise his rights of seizure of the chattel whether or not the chattel is situated on the reserve.

## Section 90 (1)

For purposes of property exempt from taxation or seizure, personal property that was

(a) bought by the federal government with Indian moneys for the use and benefit of Indians or bands, or

(b) given to Indians or a band under a treaty or an agreement between the federal government and a band,

shall be deemed to be always situated on a reserve.

## Section 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.

## Section 90 (3)

Every person who enters into any transaction that is void by virtue of Subsection (2) is guilty of an offence and every person who, without the written consent of the Minister, destroys personal property that is by this section deemed to be situated on a reserve, is guilty of an offence.

## Section 90 (2)

Any transaction purporting to pass title of any property that is deemed to be situated on a reserve is invalid unless the transaction is approved by the Minister or is made between band members or between the band and a band member.

## Section 90 (3)

Any person who enters into an agreement purporting to pass title to property situated on a reserve without the Minister's consent is guilty of an offence; and any person who destroys personal property that is deemed to be situated on a reserve (without the Minister's consent) is guilty of an offence.

## TRADING WITH INDIANS

## Section 91 (1)

No person may, without the written consent of the Minister, acquire title to any of the following property situated on a reserve, namely:

## Section 91 (1)

No person can, without the Minister's consent, acquire title to any of the following property situated on a reserve:

- (a) an Indian grave house;
- (b) a carved grave pole;
- (c) a totem pole;
- (d) a carved house post; or
- (e) a rock embellished with paintings or carvings.

#### Section 91 (2)

Subsection (1) does not apply to chattels referred to therein that are manufactured for sale by Indians.

#### Section 91 (3)

No person shall remove, take away, mutilate, disfigure, deface or destroy any chattel referred to in Subsection (1) without the written consent of the Minister.

#### Section 91 (4)

A person who violates this section is guilty of an offence and is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months.

- (a) an Indian grave house;
- (b) a carved grave pole;
- (c) a totem pole;
- (d) a carved house post; or
- (e) a rock with paintings or carvings on it.

#### Section 91 (2)

Subsection (1) doesn't apply to goods made for sale by Indians.

#### Section 91 (3)

No one can remove or disfigure any Indian grave house, carved grave pole, totem pole, carved house post, or a rock with paintings or carvings on it without the Minister's written consent.

#### Section 91 (4)

A person who disfigures or removes the above-mentioned property is guilty of an offence and is liable on summary conviction to a fine of not more than two hundred dollars or to imprisonment for not more than three months.

Section 92 (1)

No person who is

(a) an officer or employee of the Department,

(b) a missionary engaged in mission work among Indians, or

(c) a school teacher on a reserve,

shall, without a licence from the Minister or his duly authorized representative, trade for profit with an Indian or sell to him directly or indirectly goods or chattels, but no such licence shall be issued to a full-time officer or employee in the Department.

Section 92 (2)

The Minister or his duly authorized representative may at any time cancel a licence given under this section.

Section 92 (3)

A person who violates Subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.

Section 92 (1)

A Department employee, a missionary, or a school teacher cannot trade with an Indian for profit without a licence from the Minister. A full-time Department official or employee cannot obtain a licence to trade with an Indian.

Section 92(2)

The Minister or his representative can cancel a trading licence issued under this section.

Section 92 (3)

A person who does trade with an Indian without a licence is guilty of an offence and is liable on summary conviction to a fine of not more than five hundred dollars.

## Section 92 (4)

Without prejudice to Subsection (3), an officer or employee in the Department who contravenes Subsection (1) may be dismissed from office.

## Section 92 (4)

Despite Subsection (3), a Department official who does trade with an Indian without a licence can be fired from his job.

## REMOVAL OF MATERIALS FROM RESERVES

## Section 93

A person who, without the written permission of the Minister or his duly authorized representative

(a) removes or permits anyone to remove from a reserve

(i) minerals, stone, sand, gravel, clay or soil, or

(ii) trees, saplings, shrubs, underbrush, timber, cordwood or hay, or

## Section 93

Anyone who, without the Minister's written permission,

(a) removes or allows anyone to remove from a reserve

(i) minerals, or

(ii) timber or hay, or



(b) has in his possession anything removed from a reserve contrary to this section,

(b) holds in possession anything taken from a reserve contrary to this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months, or to both.

is guilty of an offence and is liable on summary conviction to a fine of not more than five hundred dollars or to imprisonment for not more than three months, or to both.

Sections 94 to 100 [Repealed, 1985 c.27, s.17]

Note: Sections 94 to 100 have been replaced by the new liquor bylaw Section 85.1 (1) to (4).

## OFFENCES

### Section 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.

### Section 101

In every prosecution under the Indian Act a certificate of analysis given by a federal or provincial analyst is acceptable evidence of the facts, and of the authority of the analyst even without proving his signature.

## Section 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.

## Section 102

Every one who breaks the law as stated in this Act or in any of its regulations, and no penalty is provided for anywhere else, then he is liable to a fine of not more than two hundred dollars or to imprisonment for not more than three months or to both.

## FORFEITURES AND PENALTIES

## Section 103 (1)

Whenever a peace officer, a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against Section 33, 85.1, 90 or 93 has been committed, he may seize all goods and chattels by means of or in relation to which he believes on reasonable grounds the offence was committed.

## Section 103 (1)

Whenever a peace officer or Department official believes on reasonable grounds that there has been a sale of farm produce (In Manitoba, Saskatchewan, or Alberta - Section 33) without the Minister's consent, or a contravention of a liquor by-law - Section 85.1, or selling on reserve property - Section 90, or unlawful removal of reserve minerals or timber personal property situated on a reserve - Section 93, he can seize those goods.

## Section 103 (2)

All goods and chattels seized pursuant to Subsection (1) may be detained for a period of three months following the day of seizure unless during that period proceedings under this Act in respect of such offence are undertaken, in which case the goods and chattels may be further detained until such proceedings are finally concluded.

## Section 103 (3)

Where a person is convicted of an offence against the section mentioned in Subsection (1), the convicting court or judge may order that the goods and chattels by means of or in relation to which the offence was committed, in addition to any penalty imposed, are forfeited to Her Majesty and may be disposed of as the Minister directs.

## Section 103 (2)

All goods seized can be kept for three months following the day of the seizure except where proceedings have already begun in which case the goods can be kept until the proceedings are over.

## Section 103 (3)

Where a person is convicted of selling farm produce on reserve without the Minister's consent, or a contravention of a liquor by-law, or of selling on reserve property or of removing reserve minerals or timber, those goods in question can be forfeited to the federal government and disposed of as the Minister decides. This in addition to any other penalty imposed.

## Section 103 (4)

A justice who is satisfied by information upon oath that there is reasonable ground to believe that there are upon a reserve or in any building, receptacle or place any goods or chattels by means of or in relation to which an offence against any of the sections mentioned in Subsection (1) has been, is being or is about to be committed, may at any time issue a warrant under his hand authorizing a person named therein or a peace officer at any time to search the reserve, building, receptacle or place for any such goods or chattels.

## Section 104

Every fine, penalty or forfeiture imposed under this Act belongs to Her Majesty for the benefit of the band with respect to which or to one or more members of which the offence was committed or to which the offender, if an Indian, belongs, but the Governor in Council may from time to time direct that the fine, penalty or forfeiture shall be paid to a provincial, municipal or local authority that bears in whole or in part the expense of administering the law under which the fine, penalty or forfeiture is imposed, or that the fine, penalty or forfeiture shall be applied in the manner that he considers will best promote the purposes of the law under which the fine, penalty or forfeiture is imposed, or the administration of that law.

## Section 103 (4)

A justice who is satisfied by information upon oath that there is reasonable ground to believe that any of the goods obtained through a violation of Sections 30, 85.1, 90 and 93 are on the reserve, can at any time issue a search warrant to search the reserve or building where the goods are believed to be held.

## Section 104

When a person breaks the law under the Indian Act any fine he pays or any goods which are confiscated are held by the Department for the benefit of the band in respect of whom the law was broken. If the person who broke the law was an Indian, then the fine is held by the Department for the use of his band. However, the federal cabinet can say that fine or the confiscated goods are to go to the local law enforcement authority to help pay its costs. The federal cabinet can also say that the fines or confiscated goods can be used for the purpose of upholding the law which was broken.

## Section 105

In any order, writ, warrant, summons or proceeding issued under this Act it is sufficient if the name of the person or Indian referred to therein is the name given to, or the name by which the person or Indian is known, by the person who issues the order, writ, warrant, summons or proceedings, and if no part of the name of the person is given to or known by the person issuing the order, writ, warrant, summons or proceedings, it is sufficient if the person or Indian is described in any manner by which he may be identified.

## Section 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.

## Section 105

In any court proceedings it is alright to refer to the Indian concerned by his name or the name he is known by. If his name is not known, then it is alright to describe him in such a way that he can be identified.

## Section 106

A magistrate has power to decide cases arising from the Indian Act over the whole district over which he has power to decide cases under provincial law.

## Section 107

The Governor in Council may appoint persons to be, for the purposes of this Act, justices of the peace and those persons have and may exercise the powers and authority of two justices of the peace with regard to

(a) offences under this Act; and

(b) any offence against the provisions of the Criminal Code relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the person or property of an Indian.

## Section 108

For the purposes of this Act or any matter relating to Indian affairs

(a) persons appointed by the Minister for the purpose,

(b) superintendents, and

## Section 107

The federal cabinet can appoint people to be justices of the peace for the purposes of this Act. Two of them have the authority to

(a) decide cases under where people are charged with breaking this Act; and

(b) decide cases under the Criminal Code relating to cruelty to animals, common assault, breaking and entering and vagrancy where the law was broken by an Indian or the matter involved an Indian or his property.

## Section 108

For the purposes of the Indian Act and any matter relative to Indian affairs the following people are able to take oaths:

(a) persons appointed by the Minister,

(b) superintendents, and

(c) the Minister, Deputy Minister and the chief officer in charge of the branch of the Department relating to Indian affairs,

(c) the Minister, Deputy Minister and the chief officer in charge of the Indian affairs branch.

are ex officio commissioners for the taking of oaths.

Sections 109 to 113 [Repealed, 1985, c.27, s.19]

## SCHOOLS

[Burrell and Sanders, Handbook of Case Law on the Indian Act,] (Department of Indian and Northern Affairs, 1984) p.225:

"In most parts of Canada Indian children have been integrated into the regular provincial and territorial school systems. The most important documents governing Indian education are the agreements on Indian education entered into by the federal government with various provinces, local school boards and Indian bands. These agreements and the patterns of government funding are the real framework for Indian education, not Sections 114 to 123 of the Indian Act. Present patterns allow some examples of Indian-controlled schools in reserve communities".

### Section 114 (1)

The Governor in Council may authorize the Minister, in accordance with this Act, to enter into agreements on behalf of Her Majesty for the education in accordance with this Act of Indian children, with

(a) the government of a province;

(b) the Commissioner of the Northwest Territories;

(c) the Commissioner of the Yukon Territory;

(d) a public or separate school board; and

(e) a religious or charitable organization.

#### Section 114 (2)

The Minister may, in accordance with this Act, establish, operate and maintain schools for Indian children.

#### Section 115

The Minister may

(a) provide for and make regulations with respect to standards for buildings, equipment, teaching, education, inspection and discipline in connection with schools;

(b) provide for the transportation of children to and from school;

(c) enter into agreements with religious organizations for the support and maintenance of children who are being educated in schools operated by those organizations; and

(d) apply the whole or any part of moneys that would otherwise be payable to or on behalf of a child who is attending residential school to the maintenance of that child at that school.



Section 116 (1)

Subject to Section 117, every Indian child who has attained the age of seven years shall attend school.

Section 116 (2)

The Minister may

(a) require an Indian who has attained the age of six years to attend school;

(b) require an Indian who becomes sixteen years of age during the school term to continue to attend school until the end of that term; and

(c) require an Indian who becomes sixteen years of age to attend school for such further period as the Minister considers advisable but no Indian shall be required to attend school after he becomes eighteen years of age.

Section 117

An Indian child is not required to attend school if the child

(a) is, by reason of sickness or other unavoidable cause that is reported promptly to the principal, unable to attend school;

(b) is, with the permission in writing of the superintendent, absent from school for a period not exceeding six weeks in each term for the purpose of assisting in husbandry or urgent and necessary household duties;

(c) is under efficient instruction at home or elsewhere, within one year after the written approval by the Minister of such instruction; or

(d) is unable to attend school because there is insufficient accommodation in the school that the child is entitled or directed to attend.

#### Section 118

Every Indian child who is required to attend school shall attend such school as the Minister may designate, but no child whose parent is a Protestant shall be assigned to a school conducted under Roman Catholic auspices and no child whose parent is a Roman Catholic shall be assigned to a school conducted under Protestant auspices, except by written direction of the parent.

**Section 119 (1)**

The Minister may appoint persons to be called truant officers to enforce the attendance of Indian children at school, and for that purpose a truant officer has the powers of a peace officer.

**Section 119 (2)**

Without restricting the generality of Subsection (1), a truant officer may, subject to Subsection (2.1),

(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; and

(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.

**Section 119 (2.1)**

Where any place referred to in Paragraph (2)(a) is a dwelling house, a truant officer may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under Subsection (2.2).

### Section 119 (2.2)

Where on ex parte application a justice of the peace is satisfied by information on oath

(a) that the conditions for entry described in Paragraph (2)(a) exist in relation to a dwelling-house,

(b) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

he may issue a warrant under his hand authorizing the truant officer named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

### Section 119 (2.3)

In executing a warrant issued under Subsection (2.2), the truant officer named therein shall not use force unless he is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

## Section 119 (3)

Where a notice has been served in accordance with Paragraph (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 to 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 both.

## Section 119 (4)

Where a person has been served with a notice in accordance with Paragraph (2)(c), it is not necessary within a period of twelve months thereafter to serve that person with any other notice in respect of further non-compliance with the provision of this Act, and whenever such person within the period of twelve months fails to cause the child with respect to whom the notice was served or any other child of whom he has charge or control to attend school and continue in regular attendance required by this Act, such person is guilty of an offence and is liable to the penalties imposed by Subsection (3) as if he had been served with the notice.

Section 119 (5)

A child who is habitually late for school shall be deemed to be absent from school.

Section 119 (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.

Section 120 [Repealed, 1980-81-82-83, c.110, s.76]

Section 121 (1)

Where the majority of the members of a band belongs to one religious denomination, the school established on the reserve that has been set apart for the use and benefit of that band shall be taught by a teacher of that denomination.

Section 121 (2)

Where the majority of the members of a band are not members of the same religious denomination and the band by a majority of those electors of the band who are present at a meeting called for the purpose requests that day schools on the reserve should be taught by a teacher belonging to a particular religious denomination, the school on that reserve shall be taught by a teacher of that denomination.

Section 122

A Protestant or Roman Catholic minority of any band may, with the approval of and under regulations to be made by the Minister, have a separate day school or day school classroom established on the reserve unless, in the opinion of the Governor in Council the number of children of school age does not so warrant.

Section 123

In Sections 114 to 122,

"child" means an Indian who has attained the age of six years but has not attained the age of sixteen years and a person who is required by the Minister to attend school;

"school" includes a day school, technical school, high school and residential school;

"truant officer" includes

(a) a member of the Royal Canadian Mounted Police,

(b) a special constable appointed for police duty on a reserve, and

(c) a school teacher and a chief of the band, when authorized by the superintendent.

## Section 124

Where, prior to the 4th day of September, 1951, a reserve or portion of a reserve was released or surrendered to the Crown pursuant to Part I of the Indian Act, chapter 98 of the Revised Statutes of Canada, 1927, or 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 of 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, as the case may be, shall, for all purposes, be deemed to have been issued or made at the date thereof under the direction of the Governor in Council.

## Section 124

(a) Where before September 4, 1951 reserve land was surrendered under an old Indian Act and was granted to a person before that date then the grant shall be treated as if it had been made under this Act.

(b) Where before September 4, 1951 reserve land was surrendered under an old Indian Act and was, before that date, sold or agreed to be sold then the sale or agreement to sell shall be treated as if it had been made under this Act.