

An Act to Amend and Consolidate the Laws Respecting Indians, April 12th, 1876 under provision of Section 91 (24) of the Constitution Act of 1867. (abridged)

<https://laws-lois.justice.gc.ca/eng/acts/i-5/>

- 1) The term “band” means any tribe, band or body of Indians who own or are interested in a reserve or in Indian lands of which the legal title is vested in the Crown, or who share in the distribution of any annuities or interest monies for which the Government of Canada is responsible
- 2) The term “irregular band” means any tribe, band, or body of persons of Indian blood who own no interest in any reserve lands, who possess no common fund managed by the Government of Canada, or who have had any treaty relations with the Crown.
- 3) The term “Indian” means –
 - a. Any male person of Indian blood reputed to belong to a particular band
 - b. Any child of such person
 - c. Any woman who is lawfully married to such person
- 4) Any illegitimate child unless having shared with the consent of the band in the distribution of moneys of such band for a period exceeding two years, may at any time be excluded from membership.
- 5) Any Indian having for five years continuously resided in a foreign country shall with the sanction of the Superintendent-General, cease to be a member thereof and shall not be permitted to become again a member thereof or of any other band.
- 6) Any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect to this Act.
- 7) No half-breed head of a family shall be accounted an Indian.
- 8) The term “reserve” means any tract of land set apart by treaty for the use or benefit a particular band of Indians, of which the legal title is in the Crown, and includes all the trees, wood, timber, soil, stone, minerals, metals, or other valuables thereon or therein.
- 9) The term “special reserve” means any tract of land and everything belonging thereto for the use or benefit of any band of Indians, the title of which is vested in a society, corporation, or community legally established and capable of suing and being sued, or in a person or

persons of European decent, but which land is held in trust for or benevolently allowed to be used by such band of Indians

10) The term “Indian Lands” means any reserve or portion of a reserve, which has been surrendered to the Crown.

11) The term “person” means an individual other than an Indian.

Reservation Lands

12) In a reserve subdivided into lots, by survey authorized by the Superintendent-General, no Indian shall be deemed to be lawfully in possession of one or more of such lots or part of a lot.

13) No Indian shall be dispossessed of any lot on which he has improvements without receiving compensation at a valuation to be approved by the Superintendent-General.

14) Upon the death of any Indian holding any lot or parcel of land, the right and interest of such deceased Indian shall together with his goods and chattels devolve one-third upon his widow and the remainder to his children equally. If he have no heir nearer than a cousin then the same shall be vested in the Crown for the benefit of the band. The claimants shall not be held to legally in possession until they obtain a location ticket from the Superintendent-General.

15) No person or Indian other than an Indian of the band shall settle, reside, or hunt upon, occupy or use any land or marsh, or shall settle, reside upon or occupy any road or allowance for roads running through any reserve.

16) All mortgages given or consented to by any Indian, and all leases, contracts and agreements made by any Indian shall be absolutely void.

17) If any person or Indian other than an Indian of the band, without the license of the Superintendent-General (which license he may revoke at any time), settles, resides, or hunts upon or occupies or uses any such land or marsh, or settles resides upon or occupies any such roads or allowances for roads, or if any Indian is illegally in possession of any lot, the Superintendent-General or such authorized officer shall on complaint to him and on proof to his satisfaction, issue his warrant signed and sealed, directed to the sheriff of the proper county commanding him to remove from the said land every such person or Indian and his family so settled. Any expenses incurred shall be borne by the party removed or notified.

18) If any person or Indian after having been removed or notified as aforesaid, returns to, settles upon, resides or hunts on the land, the Superintendent-General or any authorized officer upon proof to his satisfaction shall direct and send his warrant to the sheriff

commanding him to arrest such person or Indian and commit him to the common jail of the country for no more than thirty days.

Reservation Resources

- 19) If any person or Indian other than an Indian of the band to which the reserve belongs, without the license in writing of the Superintendent-General, trespasses upon any of the said land, roads, or allowances for roads in the said reserve by cutting, carrying away, or removing any of the trees, saplings, shrubs, underwood, timber, or hay, or by removing any of the stone, soil, minerals, metals or other valuables off the said land, the person or Indian so trespassing shall for every tree he cuts, carries away, or removes, forfeit and pay the sum of twenty dollars. Upon the non-payment of the fine the Superintendent-General may order the party to be imprisoned in the common jail for a period not exceeding three months.
- 20) In all orders, writs, warrants, summonses, and proceedings made by the Superintendent-General it shall not be necessary for him or such officer to insert or express the name of the person or Indian summoned, arrested, or imprisoned, unless the name is truly given. He may describe the person or Indian if the name is not known.
- 21) If any railway, road, or public work passes through or causes injury to any reserve, or if any act occasioning damage to any reserve be done under the authority of any Act of Parliament, or of the Legislature of any Province, compensation shall be made to them in the same manner as is provided with respect to the lands of other persons. The Superintendent-General shall name the arbitrator on behalf of the Indians, and the amount awarded shall be paid to the Receiver-General for the use of the band of Indians for whose benefit the reserve is held.
- 22) On a special reserve, on the breaking up of any society, corporation, or community, or if by the death of any person without a legal succession of trusteeship, the said title becomes void in law and the legal title shall become vested in the Crown.
- 23) Indians residing upon any reserve and engaged in the pursuit of agriculture as their then principal means of support, shall be liable to perform labour on the public roads; and the Superintendent-General or appointed officer, shall have the like power to enforce the performance of all such labour by imprisonment or otherwise as may be done by any power under any law in the province. This work may be performed at the cost of such band either out of their annual allowances or otherwise.
- 24) No reserve or portion of a reserve may be sold or leased until it has been released or surrendered to the Crown.

- 25) The Superintendent-General may issue a license to any person or Indian to cut and remove trees, wood, timber, and hay, or to quarry and remove stone and gravel on and from the reserve. Provided he first obtain the consent of the band.
- 26) If any person before or at the time of the public sale of any Indian lands, by intimidation, combination, or unfair management, prevents or attempts to hinder any person from bidding upon or purchasing any lands shall be guilty of a misdemeanor, and on conviction shall be liable of a fine not exceeding four hundred dollars, or imprisonment for a term not exceeding two years, or both.
- 27) The Superintendent-General may grant licenses to cut timber on reserves and ungranted Indian lands. Every license shall describe the lands upon which the timber may be cut, and shall confer on the nominee the right to take and keep exclusive possession of the land during the term of the license.
- 28) If any timber has been cut without authority on Indian lands, the Superintendent-General or appointed officer may seize the timber wherever it is found. If the timber has been made up into a crib, dram, or raft, or in any other manner has been so mixed up at the mills as to render it impossible to distinguish the timber so cut on reserves without license, the whole of the timber so mixed shall be seized until satisfactorily separated by the holder.

Legal Rights and Court Proceedings

- 29) Indians shall have the right to sue for debts due to them, or compel the performance of obligations contracted with them.
- 30) No presents given to Indians, nor any property purchased by means of annuities granted to Indians shall be liable to be taken for any debt or cause whatsoever. Any such sale, barter, exchange or gift shall be absolutely null and void unless with the written assent of the Superintendent-General. Any done without the consent of the Superintendent-General is guilty of a misdemeanor and is punishable by fine of no more than two hundred dollars or by imprisonment not exceeding six months.
- 31) Upon any inquest or enquiry into any matter involving a criminal charge, it shall be lawful for any court, judge or justice of the peace to receive the evidence of any Indian who is destitute of the knowledge of God and of any fixed clear belief in religion or in a future state of rewards and punishments. Upon his solemn affirmation or declaration to tell the truth, the whole truth, and nothing but the truth, the magistrate will caution every such Indian that he will be liable to incur punishment if he does not tell the truth

32) The substance of the information or evidence shall be reduced to writing and signed by the person, by mark if necessary.

Intoxicants:

33) Whoever sells, exchanges with, barters, supplies, or gives to any Indian in Canada any kind of intoxicant, or opens on any reserve or special reserve a tavern or building where any intoxicant is sold or given, or is found in possession of any intoxicant in the house, tent, or wigwam of any Indian, shall upon the evidence of one credible witness other than an informer, be liable to imprisonment for a period not less than one month nor exceeding six months, with or without hard labour, and be fined not less than fifty dollars, nor more than three hundred dollars, with the costs of prosecution. This fine will form part of the fund for the benefit of that body of Indians.

34) No penalty shall be incurred in case of sickness where the intoxicant is made use under the sanction of a medical man or under the directions of a minister or religion.

35) The keg, barrel, case, or receptacle whence any intoxicant has been sold or given and the remainder of the contents may be seized by any constable where-so-ever found on Indian land and cause the same to be destroyed.

36) When it is proved before any judge that any vessel, boat, or canoe is employed in carrying any intoxicant to be supplied to Indians such boat or vessel, may be seized and declared forfeited.

37) Every article, chattel, commodity or thing in the acquisition of an intoxicant shall be forfeited to Her Majesty and may be sold.

38) It shall be lawful for any constable with process of law, to arrest any Indian whom he may find in a state of intoxication, and to convey him to any common jail and to be kept there until he shall have become sober. If convicted in front of a judge, shall be liable to imprisonment in any common jail for any period not exceeding one month.

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

Amendments:

- 1) 1880 – Amended so that any Indian accepted to University becomes enfranchised as a British Subject.
- 2) 1881 -- Amended to make officers of the Indian Department, legal justices of the peace, able to enforce regulations. The following year they were granted the same legal power as magistrates. Further amended to prohibit the sale of agricultural produce by Indians in Prairie Provinces without an appropriate permit from an Indian agent.
- 3) 1885 -- Amended to prohibit religious ceremonies (such as potlatches)
- 4) 1914 -- Amended to require western Indians to seek official permission before appearing in "aboriginal costume" in any "dance, show, exhibition, stampede or pageant."