

# ANNOTATED INDIAN ACT

## CHAPTER I-5

[October 21, 1999]

## Introduction

The *Indian Act* consists of 122 sections, of which 32 sections deal directly with reserves. Thus about 25% of the Act is related to the management of land belonging to First Nations. However, the Act is very paternalistic, since it requires the Minister and the Governor in Council to be directly involved in the land affairs of First Nations. This involvement occurs in 25 (78%) of the 32 sections. Only 7 of the 32 sections do not involve the Minister or Governor in Council.

This document is a copy of the Indian Act that has been annotated to illustrate some of the problems with the Act. The following items are included in this copy:

1. The sections of the Act dealing with First Nations' lands are **highlighted**.
2. Provisions in which the Governor in Council, the Minister and the Superintendent have discretionary powers to decide matters better left with the First Nation itself are underlined. This shows the extent of the paternalism in the Act and the lack of recognition of the authority and responsibility of the band council.
3. Some examples of ambiguity, omissions, etc. are noted in the right column with bullets.

On the coming into force of a First Nation's land code under the *Framework Agreement* and the *First Nations Land Management Act*, the following provisions of the Indian Act and the regulations under that Act cease to apply to the first nation, first nation members and first nation land:

- (a) sections 18 to 20, 22 to 28, 30 to 35, 37 to 41 and 49, subsection 50(4) and sections 53 to 60, 66, 69, 71 and 93 of the *Indian Act*;
- (b) any regulations made under section 57 of that Act; and
- (c) to the extent of any inconsistency or conflict with the Framework Agreement, the land code or first nation laws, any regulations made under sections 42 and 73 of that Act.

Indian Act  
CHAPTER I-5

An Act respecting Indians

SHORT TITLE

Short title

1. This Act may be cited as the *Indian Act*.

INTERPRETATION

Definitions

2. (1) In this Act,

"band" «*bande*»

"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 September 4, 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" «*liste de bande*»

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

"child" «*enfant*»

"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" «*conseil de la bande*»

"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;

"Department" «*ministère*»

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

"designated lands" «*terres désignées*»

"designated lands" means a tract of land or any interest therein the legal title to which remains vested in Her Majesty and in which the band for whose use and benefit it was set apart as a reserve has, otherwise than absolutely, released or surrendered its rights or interests, whether before or after the coming into force of this definition;

"elector" «*électeur*»

"elector" means a person who  
(a) is registered on a Band List,  
(b) is of the full age of eighteen years, and  
(c) is not disqualified from voting at band elections;

"estate" «*biens*»

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

"Indian" «*Indien*»

"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" «*argent des Indiens*»

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

"Indian Register" «*registre des Indiens*»

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

"intoxicant" «*boisson alcoolisée*»

"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, drinkable liquids, preparations or mixtures capable of human consumption that are intoxicating;

"member of a band" «*membre d'une bande*»

"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;

"mentally incompetent Indian" «*Indien mentalement incapable*»

"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;

"Minister" «*ministre*»

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

"registered" «*inscrit*»

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

"Registrar" «*registraire*»

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

"reserve" «*réserve*»

"reserve"

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

(b) except in subsection 18(2), sections 20 to 25, 28, 36 to 38, 42, 44, 46, 48 to 51, 58 to 60 and the regulations made under any of those provisions, includes designated lands;

"superintendent" «*surintendant*»

"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;

"surrendered lands" «*terres cédées*»

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

## Definition of "band"

(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.

## Exercise of powers conferred on band or council

- (3) Unless the context otherwise requires or this Act otherwise provides,
- (a) a power conferred on 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 on 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.

## ADMINISTRATION

### Minister to administer Act

**3.** (1) This Act shall be administered by the Minister, who shall be the superintendent general of Indian affairs.

### Authority of Deputy Minister and chief officer

(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 Parliament relating to Indian affairs.

## APPLICATION OF ACT

### Application of Act

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.

### Act may be declared inapplicable

(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 Indians or any group or band of Indians, or
- (b) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration.

### Authority confirmed for certain cases

(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 the Governor in Council 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.

### Certain sections inapplicable to Indians living off reserves

(3) Sections 114 to 122 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.

### Provisions that apply to all band members

**4.1** A reference to an Indian in any of the following provisions shall be deemed to include a reference to any person whose name is entered in a Band List and who is entitled to have it entered therein: the definitions "band", "Indian moneys" and "mentally incompetent Indian" in section 2, subsections 4(2) and (3) and 18(2), sections 20 and 22 to 25, subsections 31(1) and (3) and 35(4), sections 51, 52, 52.2 and 52.3, subsections 58(3) and 61(1), sections 63 and 65, subsections 66(2) and 70(1) and (4), section 71, paragraphs 73(g) and (h), subsection 74(4), section 84, paragraph 87(1)(a), section 88, subsection 89(1) and paragraph 107(b).

## DEFINITION AND REGISTRATION OF INDIANS

### *Indian Register*

#### Indian Register

**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.

#### Existing Indian Register

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

#### Deletions and additions

(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.

Date of change

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

Application for registration

(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.

Persons entitled to be registered

6. (1) Subject to section 7, a person is entitled to be registered if

- (a) that person was registered or entitled to be registered immediately prior to April 17, 1985;
- (b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;
- (c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;
- (d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read

immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

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

#### Idem

(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).

#### Deeming provision

(3) For the purposes of paragraph (1)(f) and subsection (2),

(a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(a); and

(b) a person described in paragraph (1)(c), (d), (e) or (f) or subsection (2) and who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that provision.

#### Persons not entitled to be registered

7. (1) The following persons are not entitled to be registered:

- (a) a person who was 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 whose name was subsequently omitted or deleted from the Indian Register under this Act; or
- (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.

#### Exception

(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.

#### Idem

(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.

### *Band Lists*

#### Band Lists

**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.

#### Band Lists maintained in Department

**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.

#### Existing Band Lists

(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.

#### Deletions and additions

(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.

#### Date of change

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

#### Application for entry

(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.

#### Band control of membership

**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.

#### Membership rules

(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.

#### Exception relating to consent

(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.

#### Acquired rights

(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.

Idem

(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.

Notice to the Minister

(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.

Notice to band and copy of Band List

(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 in the Department.

Effective date of band's membership rules

(8) Where a band assumes control of its 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.

#### Band to maintain Band List

(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.

#### Deletions and additions

(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.

#### Date of change

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

#### Membership rules for Departmental Band List

**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 it 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

(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.

#### Additional membership rules for Departmental Band List

(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 the circumstances set out in that paragraph; or

(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.

#### Deeming provision

(3) For the purposes of paragraph (1)(d) and subsection (2),

(a) 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) and who was no longer living on the first day on which the person would otherwise be entitled to have the person's name entered in the Band List of the band of which the person ceased to be a member shall be deemed to be entitled to have the person's name so entered; and

(b) a person described in paragraph (2)(b) shall be deemed to be entitled to have the person's name entered in the Band List in which the parent referred to in that paragraph is or was, or is deemed by this section to be, entitled to have the parent's name entered.

Where band amalgamates or is divided

(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 that person has the closest family ties, as the case may be.

Entitlement with consent of band

**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.

#### Limitation to one Band List

**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.

#### Decision to leave Band List control with Department

**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.

#### Notice to the Minister

(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.

#### Subsequent band control of membership

(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.

#### Return of control to Department

**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.

Notice to the Minister and copy of membership rules

(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.

Transfer of responsibility to Department

(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 and from that time the Band List shall be maintained in accordance with the membership rules set out in section 11.

Entitlement retained

**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.

*Notice of Band Lists*

Copy of Band List provided to band council

**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 to, 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.

List of additions and deletions

(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.

Lists to be posted

(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 or the list, as the case may be, in a conspicuous place on the reserve of the band.

### *Inquiries*

Inquiries relating to Indian Register or Band Lists

**14.1** The Registrar shall, on inquiry from any person who believes that 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.

### *Protests*

#### Protests

**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.

#### Protest in respect of Band List

(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 that person's representative.

#### Protest in respect of Indian Register

(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 that person's representative.

#### Onus of proof

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

#### Registrar to cause investigation

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

## Evidence

(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 the Registrar, in his discretion, sees fit or deems just.

## Decision final

(7) Subject to section 14.3, the decision of the Registrar under subsection (5) is final and conclusive.

## Appeal

**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 that person's 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 that person's representative,

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

## Copy of notice of appeal to the Registrar

(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.

Material to be filed with the court by Registrar

(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.

#### Decision

(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.

#### Court

(5) An appeal may be heard under this section

- (a) 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;
- (a.1) in the Province of Ontario, before the Superior Court of Justice;
- (b) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, before the Court of Queen's Bench;
- (c) in the Province of Prince Edward Island or Newfoundland, before the Trial Division of the Supreme Court;
- (c.1) [Repealed, 1992, c. 51, s. 54]
- (d) in the Provinces of Nova Scotia and British Columbia, the Yukon Territory or the Northwest Territories, before the Supreme Court; or

(e) in Nunavut, before the Nunavut Court of Justice.

*Payments in Respect of Persons Ceasing to be Band Members*

**15.** (1) to (4) [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 5]

Commutation of payments under former Act

(5) Where, prior to September 4, 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 that woman out of the moneys of the band an amount equal to ten times the average annual amounts of the 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.

**16.** (1) [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 6]

Transferred member's interest

(2) A person who ceases to be a member of one band by reason of 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 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.

(3) [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 6]

*New Bands*

Minister may constitute new bands

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 proposing to form the new bands.

#### Division of reserves and funds

(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.

#### No protest

(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 the Minister's powers under subsection (1).

## RESERVES

Reserves to be held for use and benefit of Indians

**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.

Use of reserves for schools, etc.

(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 those purposes, but where an individual Indian, immediately prior to the taking, was entitled to the possession of those lands, compensation for that 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.

Children of band members

**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 the member has custody.

Surveys and subdivisions

**19.** The Minister may  
(a) authorize surveys of reserves and

The Governor in Council **not the band council** determines use and benefit

- ▶ There is no criteria for determining “use and benefit”
- ▶ Do lands ever revert back?
- ▶ Who provides compensation?

The Minister not the band council authorizes particular uses of land

- ▶ What is the meaning of “general welfare”?
- ▶ Who provides compensation?
- ▶ What are the criteria for compensation?
- ▶ When would land revert back?

Minister **not the band council** determines compensation

Minister not the band council authorizes surveys, creates subdivisions, and determines road locations

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.

▶ Who pays for these things?

## POSSESSION OF LANDS IN RESERVES

### Possession of lands in a reserve

Minister approves band council decisions on land possession

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.

### Certificate of Possession

Minister not the band council issues certificates of possession

(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.

### Location tickets issued under previous legislation

(3) For the purposes of this Act, any person who, on September 4, 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.

Minister can override band council decision and grant temporary possession of land

### Temporary possession

(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

▶ What criteria are used to determine

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.

the conditions of “use and settlement”?

#### Certificate of Occupation

Minister can override band council decision and grant possession of land for 2 years

(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.

#### Extension and approval

Minister not the band council can extend term of possession

(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

Minister judges band council decision

(a) approve the 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 re-allotment by the council of the band.

Minister can override band council decision

#### Register

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.

### Improvements on lands

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 those lands at the time they are included.

### Compensation for improvements

23. An Indian who is lawfully removed from lands in a reserve on 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.

### Transfer of possession

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

### Indian ceasing to reside on reserve

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.

### When right of possession reverts

(2) Where an Indian does not dispose of his right of possession in accordance with subsection (1), the right to possession of the

Minister **not the band council** decides if compensation to be paid

Minister **not independent party** decides amount of compensation

Minister **not independent third party** can require band to pay compensation

- ▶ What are the circumstances for “lawfully removed”?
- ▶ What are the criteria for compensation?

Minister not the band council approves transfers

Minister not the band council directs time period

Minister **not an independent party** determines compensation

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.

- ▶ There are no objective criteria for compensation
- ▶ When does the land revert?

#### Correction of Certificate or Location Tickets

**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.

Minister **not the band council** has power to cancel previously issued certificates

#### Cancellation of Certificates or Location Tickets

**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.

Minister not the band council cancels CP

#### Grants, etc., of reserve lands void

**28.** (1) Subject to subsection (2), any 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.

Minister **not the band council** issues occupancy permits

#### Minister may issue permits

(2) The Minister may by permit in writing

- ▶ What is the meaning and purpose of

permits to occupy or use?

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.

Exemption from seizure

**29.** Reserve lands are not subject to seizure under legal process.

### TRESPASS ON RESERVES

Penalty for trespass

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

Information by Attorney General

**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 on

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

Information deemed action by Crown

(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.

## Existing remedies preserved

(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.

## SALE OR BARTER OF PRODUCE

### Sale or barter of produce

**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.

Superintendent not the band council approves transactions

Minister not the band council can exempt band

### Exemption

(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.

### Offence

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

Superintendent instructs the band

- ▶ There are no limits to the Superintendent's discretion

## ROADS AND BRIDGES

### Roads, bridges, etc.

**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.

Minister judges actions of the band and can impose costs on the band

## Idem

(2) Where, in the opinion of the Minister, a band has not carried out the instructions of the superintendent issued under subsection (1), the Minister may cause the instructions 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 member.

## LANDS TAKEN FOR PUBLIC PURPOSES

### Taking of lands by local authorities

**35.** (1) Where by an Act of Parliament 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.

### Procedure

(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.

### Grant in lieu of compulsory taking

(3) Whenever the Governor in Council has consented to the exercise by a province, a municipal or local authority or a corporation of the powers referred to in subsection (1), the Governor in Council may, in lieu of the province, authority or corporation taking or

Governor in Council can consent to the expropriation of band lands by provinces, municipal governments, local authorities and corporations

- ▶ There are no limits to this discretion

Governor in Council can alter statutory procedure

Governor in Council can transfer lands without band consent on terms decided by itself not the band council

- ▶ There are no limits to this discretion.

using the lands without the consent of the owner, authorize a transfer or grant of the lands to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council.

#### Payment

(4) Any amount that is agreed on 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).

### SPECIAL RESERVES

#### Reserves not vested in the Crown

**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.

### SURRENDERS AND DESIGNATIONS

#### Sales

**37.** (1) Lands in a reserve shall not be sold nor title to them conveyed until they have been absolutely surrendered to Her Majesty pursuant to subsection 38(1) by the band for whose use and benefit in common the reserve was set apart.

#### Other transactions

(2) Except where this Act otherwise provides, lands in a reserve shall not be leased nor an interest in them granted until

they have been surrendered to Her Majesty pursuant to subsection 38(2) by the band for whose use and benefit in common the reserve was set apart.

#### Surrender to Her Majesty

**38.** (1) A band may absolutely surrender to Her Majesty, conditionally or unconditionally, all of the rights and interests of the band and its members in all or part of a reserve.

#### Designation

(2) A band may, conditionally or unconditionally, designate, by way of a surrender to Her Majesty that is not absolute, any right or interest of the band and its members in all or part of a reserve, for the purpose of its being leased or a right or interest therein being granted.

#### How lands surrendered or designated

**39.** (1) An absolute surrender or a designation is void unless

- (a) it is made to Her Majesty;
- (b) it is assented to by a majority of the electors of the band
  - (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 absolute surrender or designation, or
  - (iii) by a referendum as provided in the regulations;
- and
- (c) it is accepted by the Governor in Council.

Minister **not the band council** calls the meeting

Minister **not the band council** calls a second meeting

#### Minister may call meeting or referendum

(2) Where a majority of the electors of a band did not vote at a meeting or referendum called pursuant to subsection (1), the Minister may, if the proposed absolute surrender or designation 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.

#### Assent of band

(3) Where a meeting is called pursuant to subsection (2) and the proposed absolute surrender or designation is assented to at the meeting or referendum by a majority of the electors voting, the surrender or designation shall be deemed, for the purposes of this section, to have been assented to by a majority of the electors of the band.

Minster has discretion to decide whether there will be a secret vote

#### Secret ballot

(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.

#### Officials required

(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.

#### Certification

**40.** A proposed absolute surrender or designation that is assented to by the band in accordance with section 39 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 then submitted to the Governor in Council for acceptance or refusal.

## Effect of surrenders and designations

**41.** An absolute surrender or a designation shall be deemed to confer all rights that are necessary to enable Her Majesty to carry out the terms of the surrender or designation.

## DESCENT OF PROPERTY

Powers of Minister with respect to property of deceased Indians

**42.** (1) Subject to 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.

Regulations

(2) The Governor in Council may make regulations 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.

Application of regulations

(3) Regulations made under subsection (2) may be made applicable to estates of Indians who died before, on or after September 4, 1951.

Particular powers

**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.

Courts may exercise jurisdiction with consent of Minister

**44.** (1) The court that would have jurisdiction if a deceased were not an Indian may, with the consent of the Minister, exercise, in accordance with this Act, the jurisdiction and authority conferred on the Minister by this Act in relation to testamentary matters and causes and any other powers, jurisdiction and authority ordinarily vested in that court.

Minister may refer a matter to the court

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

Orders relating to lands

(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.

## WILLS

Indians may make wills

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

Form of will

(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 on his death.

Probate

(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.

Minister may declare will void

**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;
- (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.

Where will declared void

(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 is so 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.

## APPEALS

Appeal to Federal Court

**47.** A decision of the Minister made in the exercise of the jurisdiction or authority conferred on 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, if the amount in controversy in the appeal exceeds five hundred dollars or if the Minister consents to an appeal.

## DISTRIBUTION OF PROPERTY ON INTESTACY

Surviving spouse's share

**48.** (1) Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed seventy-five thousand dollars or such other amount as may be fixed by order of the Governor in Council, the estate shall go to the widow.

Idem

(2) Where the net value of the estate of an intestate, in the opinion of the Minister, exceeds seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, seventy-five thousand dollars, or such other amount as may be fixed by order of the Governor in Council, shall go to the widow, and

(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

(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 that 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.

Where children not provided for

(3) Notwithstanding subsections (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 in a reserve that were occupied by her deceased husband at the time of his death.

Distribution to issue

(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.

#### Distribution to father and mother

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

#### Distribution to brothers, sisters and their issue

(6) Where an intestate dies leaving no widow or issue or father or mother, his estate shall be distributed among his brothers and sisters in equal shares, and where 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 per capita.

#### Next-of-kin

(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.

#### Distribution among next-of-kin

(8) Where an 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.

## Degrees of kindred

(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.

## Descendants and relatives born after intestate's death

(10) Descendants and relatives of an 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.

## Estate not disposed of by will

(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.

## No dower or estate by curtesy

(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 dying intestate, and there is no community of real or personal property situated in a reserve.

(13) and (14) [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 9]

## Definition of "widow"

(15) This section applies in respect of an intestate woman as it applies in respect of an intestate man, and for the purposes of this section "widow" includes "widower".

(16) [Repealed, R.S., 1985, c. 32 (1st

Supp.), s. 9]

#### Devisee's entitlement

**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 those lands until the possession is approved by the Minister.

#### Non-resident of reserve

**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.

#### Sale by superintendent

(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.

#### Unsold lands revert to band

(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 of land 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.

## Approval required

(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.

## MENTALLY INCOMPETENT INDIANS

### Powers of Minister generally

**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.

### Particular powers

(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.

Property off reserve

(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.

## GUARDIANSHIP

Property of infant children

**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 that purpose.

## MONEY OF INFANT CHILDREN

Distributions of capital

**52.1** (1) The council of a band may determine that the payment of not more than three thousand dollars, or such other amount as may be fixed by order of the Governor in Council, in a year of the share of a distribution under paragraph 64(1)(a) that belongs to an infant child who is a member of the band is necessary or proper for the maintenance, advancement or other benefit of the child.

Procedure

(2) Before making a determination under subsection (1), the council of the band must

- (a) post in a conspicuous place on the reserve fourteen days before the determination is made a notice that it proposes to make such a determination; and
- (b) give the members of the band a reasonable opportunity to be heard at a general meeting of the band held

before the determination is made.

#### Minister's duty

(3) Where the council of the band makes a determination under subsection (1) and notifies the Minister, at the time it gives its consent to the distribution pursuant to paragraph 64(1)(a), that it has made that determination and that, before making it, it complied with subsection (2), the Minister shall make a payment described in subsection (1) for the maintenance, advancement or other benefit of the child to a parent or person who is responsible for the care and custody of the child or, if so requested by the council on giving its consent to that distribution, to the council.

#### Money of infant children of Indians

**52.2** The Minister may, regardless of whether a payment is made under section 52.1, pay all or part of any money administered by the Minister under section 52 that belongs to an infant child of an Indian to a parent or person who is responsible for the care and custody of the child or otherwise apply all or part of that money if

- (a) the Minister is requested in writing to do so by the parent or the person responsible; and
- (b) in the opinion of the Minister, the payment or application is necessary or proper for the maintenance, advancement or other benefit of the child.

#### Attaining majority

**52.3** (1) Where a child of an Indian attains the age of majority, the Minister shall pay any money administered by the Minister under section 52 to which the child is entitled to that child in one lump sum.

## Exception

(2) Notwithstanding subsection (1), where requested in writing to do so before a child of an Indian attains the age of majority by a parent or a person who is responsible for the care and custody of the child or by the council of the band of which the child is a member, the Minister may, instead of paying the money in one lump sum, pay it in instalments during a period beginning on the day the child attains the age of majority and ending not later than the day that is three years after that day.

## Relief

**52.4** Where, in a proceeding in respect of the share of a distribution under paragraph 64(1)(a) or of money belonging to an infant child that was paid pursuant to section 52.1, 52.2 or 52.3, it appears to the court that the Minister, the band, its council or a member of that council acted honestly and reasonably and ought fairly to be relieved from liability in respect of the payment, the court may relieve the Minister, band, council or member, either in whole or in part, from liability in respect of the payment.

## Effect of payment

**52.5** (1) The receipt in writing from a parent or person who is responsible for the care and custody of an infant child for a payment made pursuant to section 52.1 or 52.2

(a) discharges the duty of the Minister, the band, its council and each member of that council to make the payment to the extent of the amount paid; and

(b) discharges the Minister, the band, its council and each member of that council from seeing to its application or being answerable for its loss or misapplication.

Idem

(2) The receipt in writing from the council of the band of which an infant child is a member for a payment made pursuant to section 52.1

- (a) discharges the duty of the Minister to make the payment to the extent of the amount paid; and
- (b) discharges the Minister from seeing to the application of the amount paid or being answerable for its loss or misapplication.

Minister **not the band council** manages or sells surrendered or designated lands

### MANAGEMENT OF RESERVES AND SURRENDERED AND DESIGNATED LANDS

Transactions re surrendered and designated lands

**53.** (1) The Minister or a person appointed by the Minister for the purpose may, in accordance with this Act and the terms of the absolute surrender or designation, as the case may be,

- (a) manage or sell absolutely surrendered lands; or
- (b) manage, lease or carry out any other transaction affecting designated lands.

Minister **not the band council** allows the claim

Grant where original purchaser dead

(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, on receipt of proof in such manner as he directs and requires in support of any claim for the grant and on being satisfied that the claim has been equitably and justly established, allow the claim and authorize a grant to issue accordingly.

Governor in Council **not the band council** may authorize DIAND employees to buy surrendered lands

Departmental employees

(3) No person who is appointed pursuant to subsection (1) or who is an officer or a 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 absolutely surrendered or designated lands.

Minister **not the band council** approves assignment

#### Assignments

54. Where absolutely surrendered lands are agreed to be sold and letters patent relating thereto have not issued, or where designated lands are leased or an interest in them granted, the purchaser, lessee or other person who has an interest in the absolutely surrendered or designated lands may, with the approval of the Minister, assign all or part of that interest to any other person.

#### Surrendered and Designated Lands Register

55. (1) There shall be maintained in the Department a register, to be known as the Surrendered and Designated Lands Register, in which shall be recorded particulars in connection with any transaction affecting absolutely surrendered or designated lands.

#### Conditional assignment

(2) A conditional assignment shall not be registered.

#### Proof of execution

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

#### Effect of registration

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

## Certificate of registration

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 an officer of the Department authorized by the Minister to sign such certificates.

Minister **not the band council** authorized to grant licences

Regulations of Governor in Council **not band by-laws** set terms and conditions, etc.

## Regulations

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 conferred by licences granted under paragraph (a);
- (c) providing for the disposition of surrendered mines and minerals underlying lands in a reserve;
- (d) prescribing the punishment, not exceeding one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for contravention of any regulation made under this section; and
- (e) providing for the seizure and forfeiture of any timber or minerals taken in contravention of any regulation made under this section.

Minister **not the band council** has authority to improve land and grant leases

## Uncultivated or unused lands

58. (1) Where land in a reserve is uncultivated or unused, the Minister may, with the consent of the council of the band,  
(a) improve or cultivate that land and employ persons therefor, and authorize and direct the expenditure of such amount of the capital funds

of the band as he considers necessary for that 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 the lawful possession of any individual, grant a lease of that land for agricultural or grazing purposes or for any purpose that is for the benefit of the person in possession of the land; and

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

- ▶ How is “reasonable rent” determined?

#### Distribution of proceeds

(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 the improvements from the rent payable to the individual under this subsection.

Minister not the band council has the power to determine deductions for improvements

Minister **not the band council or the member** has power to lease land

#### Lease at request of occupant

(3) The Minister may lease for the benefit of any Indian, on application of that Indian for that purpose, the land of which the Indian is lawfully in possession without the land being designated.

Minister **not the band council** may dispose of resources

#### Disposition of grass, timber, non-metallic substances, etc.

(4) Notwithstanding anything in this Act, the Minister may, without an absolute surrender

or a designation

(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 on or under lands in a reserve, or, where that 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 on or under lands in a reserve, renewable only with the consent of the council of the band.

Minister **not the band council** has power to divide proceeds

Proceeds

(5) The proceeds of the transactions referred to in subsection (4) 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.

Minister **not the band council** has power to adjust amounts

Adjustment of contracts

**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 transaction affecting absolutely surrendered lands, designated lands or other lands in a reserve or the rate of interest payable thereon; 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.

Governor in Council has discretion over how much power to give a band council

Control over lands

**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.

#### Withdrawal

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

### MANAGEMENT OF INDIAN MONEYS

Indian moneys to be held for use and benefit

**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.

Interest

(2) Interest on 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.

Capital and revenue

**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.

Payments to Indians

**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.

Expenditure of capital moneys with consent

**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 watercourses on reserves or on surrendered lands;

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

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

(e) to purchase for the band the interest of 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;

(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.

Expenditure of capital moneys in accordance with by-laws

(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.

Limitation in respect of paragraphs 6(1)(c), (d) and (e)

**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 the 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 the person would, but for this subsection, have received under paragraph 64(1)(a) is equal to the amount by which the amount that the person 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.

#### Additional limitation

(2) Where the council of a band 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.

#### Regulations

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

#### Expenditure of capital

**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.

Expenditure of revenue moneys with consent of band

**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 the opinion of the Minister will promote the general progress and welfare of the band or any member of the band.

Minister may direct expenditure

(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, to provide for the burial of deceased indigent members of the band and to provide for the payment of contributions under the *Employment Insurance Act* on behalf of employed persons who are paid in respect of their employment out of moneys of the band.

Idem

(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.

Expenditure of revenue moneys with authority of Minister

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

- (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.

#### Recovery of certain expenses

**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.

#### Maintenance of dependants

**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.

Management of revenue moneys by band

**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.

Regulations

(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.

## LOANS TO INDIANS

Loans to Indians

**70.** (1) The Minister of Finance may 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 purchase 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.

### Regulations

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

### Accounting

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

### Repayment

(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).

### Limitation

(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.

### Report to Parliament

(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

### Minister may operate farms

**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.

#### Application of profits

(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 those profits in any way that he considers to be desirable to promote the progress and development of the Indians.

#### TREATY MONEY

Treaty money payable out of C.R.F.

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

#### REGULATIONS

#### Regulations

**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;
- (d) for the taxation, control and destruction of dogs and for the

protection of sheep on reserves;  
(*e*) for the operation, supervision and control of pool rooms, dance halls and other places of amusement on reserves;  
(*f*) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;  
(*g*) to provide medical treatment and health services for Indians;  
(*h*) to provide compulsory 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;  
(*j*) to prevent overcrowding of premises on reserves used as dwellings;  
(*k*) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves;  
(*l*) for the construction and maintenance of boundary fences; and  
(*m*) 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.

## Punishment

(2) The Governor in Council may prescribe the punishment, 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 contravention of a regulation made under subsection (1).

## Orders and regulations

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

## ELECTIONS OF CHIEFS AND BAND COUNCILS

### Elected councils

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.

### Composition of council

(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.

### Regulations

(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 votes of the elected councillors of the band from among themselves,

but the chief so elected shall remain a councillor; and

(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.

#### Electoral sections

(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 for the division of the reserve for voting purposes 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 are to be distinguished or identified.

#### Eligibility

**75.** (1) No person other than an elector who resides in an electoral section may be nominated for the office of councillor to represent that section on the council of the band.

#### Nomination

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

## Regulations governing elections

**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 is to be carried out;
- (d) election appeals; and
- (e) the definition of residence for the purpose of determining the eligibility of voters.

## Secrecy of voting

(2) The regulations made under paragraph (1)(c) shall provide for secrecy of voting.

## Eligibility of voters for chief

**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.

## Councillor

(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.

## Tenure of office

**78.** (1) Subject to this section, the chief and

councillors of a band hold office for two years.

#### Vacancy

(2) The office of chief or councillor of a band 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 three consecutive meetings of the council without being authorized to do so, or
- (iii) was guilty, in connection with an election, of corrupt practice, accepting a bribe, dishonesty or malfeasance.

#### Disqualification

(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 of a band for a period not exceeding six years.

#### Special election

(4) Where the office of chief or councillor of a band 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.

Governor in Council may set aside election

**79.** The Governor in Council may set aside the election of a chief or councillor of a band 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 contravention of this Act that might have affected the result of the election; or
- (c) a person nominated to be a candidate in the election was ineligible to be a candidate.

Regulations respecting band and council meetings

**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 such meetings to constitute a quorum.

## POWERS OF THE COUNCIL

By-laws

**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;

(b) the regulation of traffic;

(c) the observance of law and order;

(d) the prevention of disorderly conduct and nuisances;

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

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

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

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

(i) the survey and allotment of reserve lands among the 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 or prohibition of public games, sports, races, athletic

contests and other amusements;  
(*n*) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;  
(*o*) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;  
(*p*) the removal and punishment of persons trespassing on 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  
(*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.

Power to restrain by order where conviction entered

(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.

#### Power to restrain by court action

(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.

#### Copies of by-laws to be sent to Minister

**82.** (1) A copy of every by-law made under 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.

#### Effective date of by-law

(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.

#### Money by-laws

**83.** (1) Without prejudice to the powers conferred by section 81, the council of a band may, subject to the approval of the Minister, make by-laws for any or all of the following purposes, namely,  
(a) subject to subsections (2) and (3),  
taxation for local purposes of land,

or interests in land, in the reserve, including rights to occupy, possess or use land in the reserve;

(a.1) 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 enforcement of payment of amounts that are payable pursuant to this section, including arrears and interest;

(e.1) the imposition and recovery of interest on amounts that are payable pursuant to this section, where those amounts are not paid before they are due, and the calculation of that interest;

(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.

#### Restriction on expenditures

(2) An expenditure made out of moneys raised pursuant to subsection (1) must be so made under the authority of a by-law of the council of the band.

#### Appeals

(3) A by-law made under paragraph (1)(a)

must provide an appeal procedure in respect of assessments made for the purposes of taxation under that paragraph.

#### Minister's approval

(4) The Minister may approve the whole or a part only of a by-law made under subsection (1).

#### Regulations re by-laws

(5) The Governor in Council may make regulations respecting the exercise of the by-law making powers of bands under this section.

#### By-laws must be consistent with regulations

(6) A by-law made under this section remains in force only to the extent that it is consistent with the regulations made under subsection (5).

#### Recovery of taxes

**84.** Where a tax that is imposed on 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.

**85.** [Repealed, R.S., 1985, c. 17 (4th Supp.), s. 11]

#### By-laws relating to intoxicants

**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).

#### Consent of electors

(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.

#### Copies of by-laws to be sent to Minister

(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.

#### Offence

(4) Every person who contravenes a by-law made under this section is guilty of an offence and 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  
(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.

#### Proof

**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.

## TAXATION

Property exempt from taxation

**87.** (1) Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely,

- (a) the interest of an Indian or a band in reserve lands or surrendered lands;
- and
- (b) the personal property of an Indian or a band situated on a reserve.

Idem

(2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(a) or (b) or is otherwise subject to taxation in respect of any such property.

Idem

(3) No succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any property mentioned in paragraphs (1)(a) or (b) 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*,

chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970, on or in respect of other property passing to an Indian.

## LEGAL RIGHTS

General provincial laws applicable to Indians

**88.** Subject to the terms of any treaty and any other Act of Parliament, 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 those laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that those laws make provision for any matter for which provision is made by or under this Act.

Restriction on mortgage, seizure, etc., of property on reserve

**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 or a band.

Exception

(1.1) Notwithstanding subsection (1), a leasehold interest in designated lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution.

Conditional sales

(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.

#### Property deemed situated on reserve

**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 Indians or 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.

#### Restriction on transfer

(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.

#### Destruction of property

(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.

## TRADING WITH INDIANS

Certain property on a reserve may not be acquired

**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,

- (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.

Saving

(2) Subsection (1) does not apply to chattels referred to therein that are manufactured for sale by Indians.

Removal, destruction, etc.

(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.

Punishment

(4) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months.

Departmental employees, etc., prohibited from trading without a licence

**92.** (1) No person who is

- (a) an officer or employee in 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.

#### Cancellation of licence

(2) The Minister or his duly authorized representative may at any time cancel a licence issued under this section.

#### Punishment

(3) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars.

#### Dismissal

(4) Without prejudice to subsection (3), an officer or employee in the Department who contravenes subsection (1) may be dismissed from office.

### REMOVAL OF MATERIALS FROM RESERVES

#### Removal of material from reserve

**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

(b) has in his possession anything removed from a reserve contrary to this section,

is guilty of an offence and 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.

## OFFENCES, PUNISHMENT AND ENFORCEMENT

**94. to 100.** [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 17]

Certificate of analysis is evidence

**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.

Penalty where no other provided

**102.** Every person who is guilty of an offence against any provision of this Act or any regulation made by the Governor in Council or the Minister for which a penalty is not provided elsewhere in this Act or the regulations is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both.

Seizure of goods

**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.

#### Detention

(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 are undertaken under this Act in respect of the offence, in which case the goods and chattels may be further detained until the proceedings are finally concluded.

#### Forfeiture

(3) Where a person is convicted of an offence against the sections 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.

#### Search

(4) A justice who is satisfied by information on oath that there is reasonable ground to believe that there are in 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 of those goods or chattels.

#### Disposition of fines

**104.** (1) Subject to subsection (2), every

fine, penalty or forfeiture imposed under this Act belongs to Her Majesty for the benefit of the band, or of one or more members of the band, with respect to which the offence was committed or to which the offender, if an Indian, belongs.

#### Exception

(2) The Governor in Council may from time to time direct that a fine, penalty or forfeiture described in subsection (1) 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.

#### Description of Indians in writs, etc.

**105.** In any order, writ, warrant, summons or proceeding issued under this Act it is sufficient if the name of the Indian or other person referred to therein is the name given to, or the name by which the Indian or other person is known by, the person who issues the order, writ, warrant, summons or proceeding, 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 proceeding, it is sufficient if the Indian or other person is described in any manner by which he may be identified.

#### Jurisdiction of provincial court judges

**106.** A provincial court judge has, 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.

#### Appointment of justices

**107.** The Governor in Council may appoint persons to be, for the purposes of this Act, justices of the peace and those persons have the powers and authority of two justices of the peace with regard to

- (a) any offence under this Act; and
- (b) any offence under 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.

#### Commissioners for taking oaths

**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
  - (c) the Minister, Deputy Minister and the chief officer in charge of the branch of the Department relating to Indian affairs,
- are commissioners for the taking of oaths.

### ENFRANCHISEMENT

**109. to 113.** [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 20]

### SCHOOLS

Agreements with provinces, etc.

**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 Yukon Territory;
- (c) the Commissioner of the Northwest Territories;
- (c.1) the Commissioner of Nunavut;
- (d) a public or separate school board; and
- (e) a religious or charitable organization.

#### Schools

(2) The Minister may, in accordance with this Act, establish, operate and maintain schools for Indian children.

#### Regulations

##### **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 a residential school to the maintenance of that child at that school.

## Attendance

**116.** (1) Subject to section 117, every Indian child who has attained the age of seven years shall attend school.

## Idem

- (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.

## When attendance not required

- 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.

School to be attended

**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.

Truant officers

**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.

Powers

(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, or who are required by the Minister to attend school;
- (b) investigate any case of truancy;
- and
- (c) serve written notice on the parent, guardian or other person having the care or legal custody of a child to cause the child to attend school regularly thereafter.

Warrant required to enter dwelling-house

(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).

#### Authority to issue warrant

(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,

the justice of the peace 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.

#### Use of force

(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.

#### Notice to attend school

(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 attend school and continue to attend school regularly thereafter, the person on whom the notice was served is guilty of an offence and

liable on summary conviction to a fine not exceeding five dollars or to imprisonment for a term not exceeding ten days or to both.

#### Further notices

(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 this Act, and whenever that 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 as required by this Act, that person is guilty of an offence and liable to the punishment imposed by subsection (3) as if he had been served with the notice.

#### Tardiness

(5) A child who is habitually late for school shall be deemed to be absent from school.

#### Take into custody

(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.

#### Denomination of teacher

**120.** (1) Where the majority of the members of a band belong 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.

Idem

(2) Where the majority of the members of a band are not members of the same religious denomination and the band by a majority vote of those electors of the band who were 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.

Minority religious denominations

**121.** 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.

Definitions

**122.** In sections 114 to 121,

"child" *«enfant»*

"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" *«école»*

"school" includes a day school, technical school, high school and residential school;

"truant officer" *«agent de surveillance»*

"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.

#### RELATED PROVISIONS

— **R.S., 1985, c. 32 (1st Supp.), ss. 22 and 23:**

##### Saving from liability

"22. For greater certainty, no claim lies against Her Majesty in right of Canada, the Minister, any band, council of a band or member of a band or any other person or body in relation to the omission or deletion of the name of a person from the Indian Register in the circumstances set out in paragraph 6(1)(c), (d) or (e) of the *Indian Act*.

##### Report of Minister to Parliament

23. (1) The Minister shall cause to be laid before each House of Parliament, not later than two years after this Act is assented to, a report on the implementation of the amendments to the *Indian Act*, as enacted by this Act, which report shall include detailed information on

- (a) the number of persons who have been registered under section 6 of the *Indian Act*, and the number entered on each Band List under subsection 11(1) of that Act, since April 17, 1985;
- (b) the names and number of bands that have assumed control of their own membership under section 10 of the *Indian Act*; and
- (c) the impact of the amendments on the lands and resources of Indian bands.

##### Review by Parliamentary committee

(2) Such committee of Parliament as may be

designated or established for the purposes of this subsection shall, forthwith after the report of the Minister is tabled under subsection (1), review that report and may, in the course of that review, undertake a review of any provision of the *Indian Act* enacted by this Act."

— **R.S., 1985, c. 27 (2nd Supp.), s. 11:**

Transitional: proceedings

"11. Proceedings to which any of the provisions amended by the schedule apply that were commenced before the coming into force of section 10 shall be continued in accordance with those amended provisions without any further formality."

— **R.S., 1985, c. 17 (4th Supp.), s. 7(2):**

Transitional

"(2) The Surrendered Lands Register kept in the Department before the coming into force of this Act constitutes, on the coming into force of this Act, the Surrendered and Designated Lands Register."

— **1990, c. 16, s. 24(1):**

Transitional: proceedings

"24. (1) Every proceeding commenced before the coming into force of this subsection and in respect of which any provision amended by this Act applies shall be taken up and continued under and in conformity with that amended provision without any further formality."

— **1990, c. 17, s. 45(1):**

Transitional: proceedings

"45. (1) Every proceeding commenced before the coming into force of this subsection and in respect of which any provision amended by this Act applies shall be taken up and continued under and in

conformity with that amended provision without any further formality."

— 1992, c. 51, s. 67(1):

Transitional: proceedings

**67. (1) Every proceeding commenced before the coming into force of this subsection and in respect of which any provision amended by this Act applies shall be taken up and continued under and in conformity with that amended provision without any further formality.**

— 1992, c. 51, s. 68:

Transitional: salary

**68. (1) Notwithstanding the *Judges Act*, a person who holds the office of Chief Judge of the County Court of Nova Scotia immediately before the coming into force of section 6 shall continue to be paid the salary then annexed to that office until the salary annexed to the office of judge of the Supreme Court of Nova Scotia exceeds that salary, at which time that person shall be paid the salary annexed to the last-mentioned office.**

Transitional: annuity

**(2) Notwithstanding the *Judges Act*, the Chief Judge of the County Court of Nova Scotia shall, on the coming into force of this subsection, be deemed to have made an election in accordance with section 32 of that Act for the purposes of subsection 43(2) of that Act, and if, at the time of resignation, removal or attaining the age of retirement, is holding office as a puisne judge of the Supreme Court of Nova Scotia or the Nova Scotia Court of Appeal, the annuity payable under section 42 of that Act shall be an annuity equal to two thirds of the result obtained by subtracting five thousand dollars from**

**the salary annexed at that time to the office of Chief Justice of the Supreme Court of Nova Scotia.**

Idem

**(3) Where, before the coming into force of this subsection, an annuity has been granted to or in respect of a judge of a county or district court of any province pursuant to sections 42, 43, 44 and 47 of the *Judges Act*, payment of that annuity shall continue in accordance with those sections, as they read immediately before the coming into force of this subsection. — 1998, c. 30, s. 10:**

Transitional — proceedings

**10. Every proceeding commenced before the coming into force of this section and in respect of which any provision amended by sections 12 to 16 applies shall be taken up and continued under and in conformity with that amended provision without any further formality.**