

Treaty Week Primer #5: The Indian Act (1876)

Building on Confederation and the attempt to set aside Treaty relationships was a legislative agenda put forward by the Government of Canada to marginalize and assimilate Indigenous Peoples into the newly created Dominion of Canada. The process was begun before Confederation with laws like the [1857 Gradual Civilization Act](#) and the colonial government in Canadian stepping into the relationships that were intended to be directly with the British Crown.

All of this culminated with the **1876 Indian Act**, a piece of legislation that consolidated all the different laws into one omnibus bill. [The Indian Act remains the principal law through which the federal government administers all aspects of life of Indigenous People living on reserves including Indian status, Elected Councils and the management of reserve land and all aspects of funding for Indigenous communities.](#)

- The Indian Act is a massive and oppressive piece of legislation that has been amended several times since 1876. To get to the roots of the system the Indian Act established there are a few sections that can be highlighted, beginning with the original definition of a person given in the legislation (this remained in until 1951):

Person.

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

*Even though this definition was removed in 1951, many of the systems and policies that grew from it – including the Indian Act itself - remain in place.

Indian Status:

The Indian Act created "**Indian**" as a legal description within Canadian law - it is an artificial term that wipes out Indigenous national identities such as Cree, Haudenosaunee, Mississaugas, Mik'maq, etc. The creation of "Indian Status" was never meant to grant special rights, but rather to be used as a tool for assimilation.

- Who is, and is not, an "Indian" is at the discretion of the Minister of Indian Affairs (renamed several times & currently called the Minister of Crown-Indigenous Relations). Originally an "Indian" recognized under the Indian Act, called a "**Status Indian**," had to meet the following criteria:

Indians.	3. The term "Indian" means <i>First.</i> Any male person of Indian blood reputed to belong to a particular band; <i>Secondly.</i> Any child of such person; <i>Thirdly.</i> Any woman who is or was lawfully married to such person:
----------	---

- This immediately, among other things, disenfranchised women, shifting legal Indigenous identity (recognized by the state) to men. Under this definition, if a "Status Indian" woman married a non-Indigenous man she immediately lost her status (any of her offspring, regardless of their father, lost their status as well).
- This legal definition was replaced in 1985 with one that recognized **Blood Quantum**. Essentially, "Indian Status" was conferred through blood and could be diluted by marrying a "non-Status Indian." Learn more (including an explanation of why Indigenous People do not want to give up status even though it deprives them of rights) here: https://indigenousfoundations.arts.ubc.ca/indian_status/
- You have to be a "Status Indian" in order to live on reserve or receive any funding guaranteed by Treaty (including education and healthcare). Put simply, if you are not a "Status Indian" the Government of Canada considers you **enfranchised** and **assimilated** into the Canadian body politic. Historically, Indigenous People would lose their status for a variety of reasons determined by the Canadian Government including: Serving in the military, achieving a university or college degree, entering into a recognized profession (doctor, lawyer), or leaving a reserve without permission (re: The Pass System). Until 1960 a "Status Indian" became enfranchised the moment they voted in a Canadian election, therefore relinquishing their status.

- Learn more about "Status Indians": <https://www.cbc.ca/news/indigenous/indian-status-5-things-you-need-to-know-1.2744870>

Reserves:

- The Indian Act created reserves, which are owned by the Crown. Here is the legal description of a reserve in the modern Indian Act:

Reserves to be held for use and benefit of Indians

18 (1) Subject to this Act, reserves are held by **His 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.

- Reserves are not Indigenous-controlled territory – they are land owned by the Crown that has been set aside, in trust, for "Status Indians" and are under the jurisdiction of the federal government through the Indian Act. All aspects of life on a reserve are touched on, and funded, by the Indian Act. This begins with the Elected Councils mandated by the legislation.
 - Regardless of the First Nation's pre-existing governance structure, the Indian Act imposed **Elected Councils** on all of Canada's 600+ reserves. The Councils are accountable to and funded by the federal government - their powers are explicitly laid out in the Indian Act. Here are the modern - and rather narrow - powers of Elected Councils detailed in the legislation:

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;

- Elected Councils DO NOT have jurisdiction over traditional territory, or Treaty territories. They are creations of the Indian Act and only have authority within a reserve and are accountable to the Government of Canada.
- All funds given to reserves must be approved by the Government of Canada, via the **Ministry of Indigenous-Crown Relations** and the **Ministry of Indigenous Services**.
- The right to live on reserve land remains at the discretion of the Minister of Crown-Indigenous Relations.
- Each reserve used to have a representative, called an "**Indian Agent**," of the Ministry of Indian Affairs (Crown-Indigenous Relations) that lived on reserve - everything revolved around them (for example: The Indian Agent had final approval over all spending by the Elected Council). Indian Agents still exist, although they no longer go by that title or live on reserve (they now inhabit cubicles in office blocks).

Other points:

- Christianity was imposed on Indigenous people as a means of "civilizing" them. Potlatches and Sun Dances were outlawed in 1884. Persons who were caught celebrating these events could be imprisoned. Banning these traditional gatherings assisted missionaries in their attempts to replace Indigenous spiritual beliefs with Christian beliefs.
- The Indian Act controls the financial transactions of Indigenous Peoples. Sales and purchase transactions were strictly monitored under the Permit system (an unconstitutional system brought in by John A. Macdonald and part of the Indian Act until 1995). Under the permit system "Status Indians" needed a permit to:
 1. leave the reserve
 2. sell a load of hay, firewood, lime, charcoal

3. sell produce grown on the Reserve
4. buy groceries or clothes
5. sell cattle and grain

and . . .

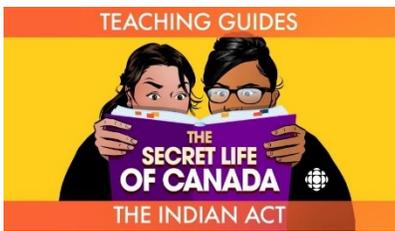
- **The Indian Act provided the legal framework to establish Residential Schools (which remains part of the act to this day).**

There is so much more - [I encourage you to check out the Act for yourself](#). This provision of the Indian Act remained on the books until 2015:

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.

R.S., 1985, c. I-5, s. 119; R.S., 1985, c. 32 (1st Supp.), s. 21.



Another excellent resource that explores the Indian Act (complete with a Teaching Guide) is the CBC podcast [The Secret Life of Canada](#).