

1951 (cont'd)

· When the name of an Indian was added or deleted from a Band or the General List, the names of his wife and minor children were also added or deleted.

10. Where the name of a male person is included in, omitted from, added to or deleted from a Band List or a General List, the names of his wife and his minor children shall also be included, omitted, added or deleted, as the case may be.

· Eligibility for registration was further defined.

11. Subject to section twelve, a person is entitled to be registered if that person

· Person eligible under 1874 legislation were still eligible.

(a) on the twenty-sixth day of May, eighteen hundred and seventy-four, was, for the purposes of **An Act providing for the organisation of the Department of secretary of state of Canada, and for the management of Indian and Ordnance Lads,...**, considered to be entitled to hold, use or enjoy the lads and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada,

· Person who were members of a band could be registered.

(b) is a member of a band

(i) for whose use and benefit, in common, lands have been set apart or since the twenty-sixth day of May, eighteen hundred and seventy-four have been agreed by treaty to be set apart, or

(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act,

· Illegitimate male children of Indian males could be registered.

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b),

· Legitimate children of Indian males be registered.

(d) is the legitimate child of

(i) a male person described in paragraph (a) or (b)

(ii) a person described in paragraph (c)

· The illegitimate child of an Indian woman was registered unless it was established that the father of the child was not an Indian.

(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d), unless the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered, or

· The wife or widow of an eligible Indian was also eligible to be registered.

(f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d), or (e).

· An Indian was not eligible for registration if his situation met certain criteria. There criteria included enfranchisement and being the owner or descendant of an owner of half-breed lands or money scrip.

12(1) The following persons are not entitled to be registered, namely,

(a) a person who

(i) has received or has been allotted half-breed lands or money scrip.

(ii) is a descendant of a person described in subparagraph (i)

(iii) is enfranchised, or

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- The double-mother clause: an Indian born of a marriage entered into after September 4, 1951 lost entitlement to registration at the age of 21 years if his/her mother and paternal grandmother were not entitled to registration as Indians before their marriages.

(iv) is a person born of a marriage entered into after the coming into force of this Act and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph (a), (b), (d), or entitled to be registered by virtue of paragraph (e) of section eleven.

- An Indian whose name appeared on the General List could be added to a Band List.

13(l) Subject to the approval of the Minister, a person whose name appears on a General List may be admitted into membership of a with the consent of the band or the council of the band.

(2) Subject to the approval of the Minister, a member of a band may be admitted into membership of another band with the consent of the latter band or the council of that band.

- An Indian was eligible for enfranchisement by meeting certain criteria. These included the ability to assume the responsibilities of citizenship and to support himself and his family.

108(1) On the report of the Minister that an Indian has applied for enfranchisement and that in his opinion the Indian

(a) is of the full age of twenty-one years;

(b) is capable of assuming the duties and responsibilities of citizenship, and

(c) when enfranchised, will be capable of supporting himself and his dependents,

the Governor in Council may by order declare that the Indian and his wife and minor unmarried children are enfranchised.

· A woman who had lost her status by marrying a non-Indian could be enfranchised.

(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage.

· An Indian could be enfranchised without his wife and minor children if he did not live with his family.

(3) Where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection one that enfranchises the Indian unless the wife has applied for enfranchisement, but where the Governor in council is satisfied that such wife is no longer living apart from her husband, the Governor in Council may by order declare that the wife and minor children are enfranchised.

· Persons were not enfranchised unless their names appeared on the order of enfranchisement. This ended the practice of automatically enfranchising the wife and minor children of an Indian without naming them specifically.

(4) A person is not enfranchised unless his name appears in an order of enfranchisement made by the Governor in Council.

· Bands were now eligible for enfranchisement.

111(1) Where the Minister reports that a band has applied for enfranchisement, and has submitted a plan for the disposal of division of the funds of the band and the lands in the reserve, and in his opinion the band is capable of managing its own affairs as a municipality or part of a municipality, the Governor in Council may by order approve the plan, declare that all the members of the band are enfranchised, either as of the date of the order or such later date as may be fixed in the order, and may make regulations for carrying the plan and the provisions of this section into effect.

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(2) An order for enfranchisement may not be made under subsection one unless more than fifty per cent of the electors of the band signify, at a meeting of the band called for the purpose, their willingness to become enfranchised under this section, and their approval of the plan.

- The provision of 1876, which stated that band membership would be lost as a result of foreign residency for a period of over five years, was omitted.
- Person currently living away from Canada would no longer lose their band membership. Persons who had lost band membership prior to 1951 could be added to the Indian Register and their band membership with the consent of the band council.

1956

- When lodging a protest, the onus of proof now resided with the protester.

2(1) ...may, by notice in writing to the Registrar, containing a brief statement of the grounds therefor, protest the inclusion, omission, addition, or deletion, as the case may be, of the name of that person, and the onus of establishing those grounds lies on the person making the protest.

- No matter how many people might wish to protest a Registrar's decision, the judge could hear only *one* appeal.

(2) Not more than one reference of a Registrar's decision in respect of a protest may be made to a judge under this section.

- When an appeal is made, the onus of proof resided with the protester.

(2) Where a decision of the Registrar has been referred to a judge for review under this section, the burden of establishing that the decision of the Registrar is erroneous is on the person who requested that the decision be so referred.

- The registration of illegitimate children was now permitted without an investigation into paternity;

but

- If a protest was made regarding the paternity of a registered child and confirmation of non-Indian paternity was established, the child's name would be removed from the Indian Register and Band List.

3(l) ...is the illegitimate child of a female person described in paragraph (a), (b), or (d); or

(2) The addition to a Band List of the name of an illegitimate child described in paragraph (e) of section 11 may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under paragraph (e) of section 11.

This section applies only to persons born after the coming into force of this Act.

- The children born to a woman prior to her marriage to a non-Indian could also be enfranchised, although this was not obligatory.

26. On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage and, on the recommendation of the Minister may by order declare that all or any of her children are enfranchised as of the date of the marriage or such other date as the order may specify.

1970

- In the past, a person who had taken half-breed lands or scrip might inadvertently be registered as an Indian.
- If such a person was registered on August 13, 1958, that person and his/her descendants could remain registered.

12(4) Subparagraphs (1)(u)(i) and (ii) do not apply to a person who

(a) pursuant to this Act is registered as an Indian on 13th day of August 1958, or

(b) is a descendant of a person described in paragraph (a) of this subsection.

NOTES

The numbers of Sections and Subsections in legislation often change when laws are amended. In some cases, the numbering in revised statutes does not match that of previous legislation in any respect. Personnel who wish to make a more in-depth study of the *Indian Act*, should note the following:

1. Section 108 in the 1951 *Indian Act* appears as Section 109 in the 1970 revised statutes.
2. Section 111 in the 1951 *Indian Act* appears as Section 112 in the 1970 revised statutes.
3. Section 2(1) and 2(2) in the 1956 amendments refer to additions and substitutions to Section 9(1) of the 1951 *Indian Act*.
4. Section 3(1) in the 1956 amendments refer to additions and substitutions to Section 11(1)(e) of the 1951 *Indian Act*.
5. Section 3(2) of the 1956 amendments is an addition to 12(1)(a) of the 1951 *Indian Act*, which in turn was changed to 12(2) in the 1970 revised statutes.
6. Section 26 of the 1956 amendments is a substitution of wording for 108(2) of the 1951 *Indian Act*.