

### 3. HISTORICAL LEGISLATION: 1850 - 1970

This chapter deals with provisions of the *Indian Act* regarding membership and entitlement from 1850 to 1970. These provisions are organized into chronological sections. Each section contains provisions with headers which summarize and explain the legislative text that follows. The provisions listed are not intended to be all-inclusive, but are only those that stated new concepts or altered previous legislation.

#### 1850

- The first attempt to define *Indian*.

The legislatures of Upper and Lower Canada passed parallel acts “for the protection of Indians from imposition and the property occupied or enjoyed by them from trespass or injury.”

The term “Indian” was very broadly defined and included:

- any person deemed to be aboriginal by birth or blood;
- any person reputed to belong to a particular band or body of Indians; and
- any person who married an Indian or was adopted by Indians.

#### 1857

- The first legislation regarding enfranchisement.

An Indian was now able to voluntarily give up status and band membership through enfranchisement. His wife and children would automatically be enfranchised with him and their names need not be listed.

At this time most Indians still resided within native communities. The intent of this legislation was that the enfranchised Indian would continue to reside in his community but outside the terms of the *Indian Act*.

#### 1868

- Continued the board 1850 definition of an Indian after Confederation.

## 1868 (cont'd)

15. For the purpose of determining what persons are entitled to hold, use or enjoy the lands and other immoveable property belonging to or appropriated to the use of various tribes, bands or bodies of Indians in Canada, the following persons and classes of persons, and none other, shall be considered as Indians belonging to the tribe, band or body of Indians interested in any such lands or immoveable property:

Firstly: All persons of Indian blood, reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and their descendants;

Secondly: All persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians or an Indian reputed to belong to a particular tribe, band or body of Indians interested in such lands or immoveable property and the descendants of all such persons; And

Thirdly: All women lawfully married to any of the persons included in the several classes hereinbefore designated; the children issue of such marriages, and their descendants.

## 1869

- An Indian woman who married a non-Indian now lost status on marriage, and the children of that marriage were not entitled.
- On marriage to an Indian man, an Indian woman became a member of her husband's band.

6. Provided always that any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such marriage be considered as Indians within the meaning of this Act; Provided also, that any Indian woman marrying an Indian of any other tribe, band or body shall cease to be a member of the tribe, band or body to which she formerly belonged, and become a member of the tribe, band or body of which her husband is a member, and the children, issue of this marriage, shall belong to their father's tribe only.

Eligibility for Indian statut and band membership was narrowed to a much greater degree than in previous legislation. Male lineage was emphasized.

3. The following terms contained in this Act shall be held to have the meaning hereinafter assigned to them, unless such meaning be repugnant to the subject or inconsistent with the context: -

(3)The term "Indian" means

First. Any male person of Indian blood reputed to belong to a particular band,

Secondly. Any child of such person;

Thirdly. Any woman who is or was lawfully married to such person:

The first reference to illegitimate children and there removal from band membership.

(a) Provided that any illegitimate child, unless having shared with the consent of the band in the distribution moneys of such band for a period exceeding two years may, at any time, be excluded from the membership thereof by the band, if such proceeding be sanctioned by the Superintendent General:

Loss of band membership as a result of foreign residency for a period of over five years.

(b) Provided that any Indian having for five years continuously resided in a foreign country shall with the sanction of the Superintendent General, cease to be a member thereof and shall not be permitted to become again a member thereof, or of any other band. unless the consent of the band with the approval of the Superintendent-General or his agent, be first had and obtained; but this provision shall not apply to any professional man, mechanic, missionary, teacher or interpreter, while discharging his or her duty as such:

## 1876 (Cont'd)

Indian status denied to half-breeds who had taken scrip.

(e) Provided also that no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian: and that no half-breed head of a family (except the widow of an Indian, or a half-breed who has already been admitted into a treaty) shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty.

Any Indian by virtue of his education was now automatically enfranchised. Professions and degree of education were specified.

86(1) Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law either as an Advocate or as a Barrister or Counsellor or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by and denomination of Christians as a Minister of the Gospel, shall *ipso facto* become and be enfranchised under this Act.

## 1918

Indians who lived away from Indian communities could now be enfranchised. The wife and unmarried minor children of such Indians were automatically enfranchised.

6(122A)(1) If an Indian who holds no land in a reserve, does not reside on a reserve and does not follow the Indian mode of life, makes application to be enfranchised, and satisfies the Superintendent General that he is self-supporting and fit to be enfranchised, and surrenders all claims whatsoever to any interest in the lands of the band to which he belongs, and accepts his share of the funds in the credit of the band including the principal of the annuities of the band, to which share he would have been entitled had he been enfranchised under the foregoing sections of the Act, in full of all claims to the property of the band, or in case the band to which he belongs has no funds or principal of annuities, surrenders all claim whatsoever to any property of the band, the Governor in Council may order that such Indian be enfranchised and paid his said share if

any, and from the date of such order such Indian, together with his wife and unmarried minor children, shall be held to be enfranchised.

- Unmarried women and widows could also be enfranchised.
- Unmarried minor children of an unmarried woman would not necessarily be enfranchised with her unless named on the enfranchisement order;  

but
- Unmarried minor children of a widow would be enfranchised with her whether or not their names appeared on the enfranchisement order.

(2) Any unmarried Indian woman of the age twenty-one years, and any Indian widow and her minor unmarried children, may be enfranchised in the like manner in every respect as a male Indian and his said children.

## 1951

- The establishment of the Indian Register as a centralized record of all persons entitled to registration.
- The Indian Register was composed of Band Lists and the General List.
- The General List included any persons registered in the Indian Register who were not band members and, therefore, not on Band Lists.

5. An Indian Register shall be maintained in the Department, which shall consist of Band Lists and General Lists and in which shall be recorded the name of every person who is entitled to be registered as an Indian.

6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the Band List for that band, and the name of every person who is not a member of a band and is entitled to be registered shall be entered in a General List.

- The Registrar was a Departmental official whose duties were to determine who was entitled to registration as Indians and band members.
- The Registrar could add names to or delete names from the General List and the Band Lists.

7(1) The Registrar may at any time add to or delete from a Band List or a General List the name of any person who, in accordance with the provisions of this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

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

- Band Lists were to be posted.

8. Upon the coming into force of this Act, the band lists then in existence in the Department shall constitute the Indian Register, and the applicable lists shall be posted in a conspicuous place in the superintendent's office that services the band or persons to whom the list relates and in all other places where band notices are ordinarily displayed.

- Individuals and band councils now had the right to protest additions to or deletions and omissions from the Indian Register.

9(1) Within six months after a list has been posted in accordance with section eight or within three months after the name of a person has been added to or deleted from a Band List or a General List pursuant to section seven

(a) in the case of a Band List, the council of the band, any ten electors of the band, or any three electors if there are less than ten electors in the band,

(b) in the case of a posted portion of a General List, any adult person whose name appears on that posted portion, and

(c) the person whose name was included in or omitted from the list referred to in section eight, or whose name was added to or deleted from a Band List or a General List,

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.

After a protest was made, the decision of the Registrar would be final and conclusive. This decision, however, was subject to appeal to the courts.

(2) Where a protest is made to the Registrar under this section he shall cause an investigation to be made into the matter and shall render a decision, and subject to a reference under subsection three, the decision of the Registrar is final and conclusive.

If a Registrar's decision was appealed, the judge's decision was final and conclusive.

(3) Within three months from the date of a decision of the Registrar under this section

(a) the council of the band affected by the Registrar's decision, or

(b) the person by or in respect of whom the protest was made,

may, by notice in writing, request the Registrar to refer the decision to a judge for review, and thereupon the Registrar shall refer the decision, together with all material considered by the Registrar in making his decision, to the judge of the county or district court of the county or district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other county or district as the Minister may designate, or in the Province of Quebec, to the judge of the Superior Court for the district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other district as the Minister may designate.

(4) The judge of the county, district or Superior Court, as the case may be, shall inquire into the correctness of the Registrar's decision, and for such purpose may exercise all the powers of a commissioner under Part I of the **Inquiries Act**; the judge shall decide whether the person in respect of whom the protest was made is, in accordance with the provisions of this Act, entitled or not entitled, as the case may be, to have his name included in the Indian Register, and the decision of the judge is final and conclusive.