

4 - 5 ELIZABETH II.

CHAP. 40

An Act to amend the Indian Act.

[Assented to 14th August, 1956.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. (1) Subsection (1) of section 4 of the *Indian Act* is repealed and the following substituted therefor:

“4. (1) A reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as Eskimos.

(2) Section 4 of the said Act is further amended by adding thereto the following subsection:

“(3) Sections 113 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.”

2. (1) Subsection (1) of section 9 of the said Act is amended by deleting all the words after the end of paragraph (c) thereof and substituting therefor the following:

“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.”

(2) Section 9 of the said Act is further amended by adding thereto the following subsections:

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

“(6) 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.”

3. (1) Paragraph (e) of section 11 of the said Act is repealed and the following substituted therefor:

“(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d); or”.

(2) Section 12 of the said Act is amended by adding thereto, immediately after subsection (1) thereof, the following subsection:

“(1a) 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.”

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

4. Paragraph (b) of subsection (1) of section 12 of the said Act is repealed and the following substituted therefor:

“(b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.”

5. Section 13 of the said Act is repealed and the following substituted therefor:

“13. Subject to the approval of the Minister and, if the Minister so directs, to the consent of the admitting band,

(a) a person whose name appears on a General List may be admitted into membership of a band with the consent of the council of the band; and

(b) a member of a band may be admitted into membership of another band with the consent of the council of the latter band.”

6. (1) Paragraph (a) of subsection (3) of section 15 of the said Act is repealed and the following substituted therefor:

“(a) pay the moneys to the parent, guardian or other person having the custody of that person or to the public trustee, public administrator or other like official for the province in which that person resides, or”

(2) Section 15 of the said Act is further amended by adding thereto the following subsection:

“(5) Where, prior to the coming into force of this Act, 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 such woman out of the moneys of the band an amount equal to ten times the average annual amounts of such 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.”

7. (1) Subsection (1) of section 17 of the said Act is amended by striking out the word “and” at the end of paragraph (a) thereof, by inserting the word “and” at the end of paragraph (b) thereof and by adding thereto the following paragraph:

“(c) where a band has applied for enfranchisement, remove any name from the Band List and add it to the General List.”

(2) Subsection (2) of section 17 of the said Act is repealed and the following substituted therefor:

“(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.

(3) No protest may be made under section 9 in respect of the deletion from or addition to a list consequent upon the exercise by the Minister of any of his powers under subsection (1).”

8. Subsection (2) of section 18 of the said Act is repealed and the following substituted therefor:

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

9. Sections 26 and 27 of the said Act are repealed and the following substituted therefor:

“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.

“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.”

10. Subsection (2) of section 28 of the said Act is repealed and the following substituted therefor:

“(2) The Minister may by permit in writing 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.”

11. Subsections (1), (2) and (3) of section 39 of the said Act are repealed and the following substituted therefor:

“39. (1) A surrender 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 surrender, or

(iii) by a referendum as provided in the regulations, and

(c) it is accepted by the Governor in Council.

(2) Where a majority of the electors of a band did not vote at a meeting or referendum called pursuant to subsection (1) of this section or pursuant to section 51 of the *Indian Act*, chapter 98 of the

Revised Statutes of Canada, 1927 the Minister may, if the proposed surrender 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.

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

12. Section 42 of the said Act is amended by adding thereto the following subsections:

"(2) The Governor in Council may make regulations for 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.

"(3) Regulations made under this section may be made applicable to estates of Indians who died before or after the coming into force of this Act."

13. Subsection (16) of section 48 of the said Act is repealed and the following substituted therefor:

"(16) In this section Achild" includes a legally adopted child and a child adopted in accordance with Indian custom."

14. The portion of subsection (1) of section 58 of the said Act that precedes paragraph (a) thereof is repealed and the following substituted therefor:

"58. (1) Where land in a reserve is uncultivated or unused, the Minister may, with the consent of the council of the band,"

15. Section 64 of the said Act is amended by deleting the word "and" at the end of paragraph (i) thereof, by re-lettering paragraph (j) thereof as paragraph (k) and by adding thereto, immediately after paragraph (i) thereof, the following paragraph:

"(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".

16. (1) Subsection (2) of section 66 of the said Act is repealed and the following substituted therefor:

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

(2) The portion of subsection (3) of section 66 of the said Act that precedes paragraph (a) thereof is repealed and the following substituted therefor:

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

17. The said Act is further amended by adding thereto, immediately after section 66 thereof, the following section:

“66A. 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.”

18. (1) Subsection (1) of section 69 of the said Act is amended by striking out the word “or” at the end of paragraph (a) thereof, by inserting the word “Aor” at the end of the paragraph (b) thereof, and by adding thereto the following paragraph:

“(c) to provide for any other matter prescribed by the Governor in Council.”

(2) Subsection (5) of section 69 of the said Act is repealed and the following substituted therefor:

“(5) The total amount of outstanding advances to the Minister under this section shall not at any one time exceed one million dollars.”

19. Subsection (1) of section 72 of the said Act is amended by striking out the word “and” at the end of paragraph (k) thereof, by adding the word “and” at the end of paragraph (l) thereof and by adding thereto the following paragraph:

“(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.”

20. (1) Subsections (1) and (2) of section 73 of the said Act are repealed and the following substituted therefor:

“73. (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.

“(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.”

(2) Paragraphs (c) and (d) of subsection (3) of section 73 of the said Act are repealed.

(3) Subsection (4) of section 73 of the said Act is repealed and the following substituted therefor:

“(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 that the reserve shall for voting purposes be divided 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 shall be distinguished or identified.”

21. Subsection (1) of section 82 of the said Act is amended by striking out the word “and” at the end of paragraph (e) thereof, by re-lettering paragraph (f) thereof as paragraph (g) and by adding thereto, immediately after paragraph (e) thereof, the following paragraph:

“(f) the raising of money from band members to support band projects; and”.

22. Section 92 of the said Act and the heading immediately preceding that section are repealed and the following substituted therefor:

“REMOVAL OF MATERIALS FROM RESERVES.

92. 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 is 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 fine and imprisonment.”

23. (1) Section 95 of the said Act is repealed and the following substituted therefor:

“95. (1) Subsection (2) or subsection (3) shall come into force, or cease to be in force, in a province or in a part thereof only if a proclamation declaring it to be in force, or to cease to be in force, as the case may be, in the province or part thereof is issued by the Governor in Council at the request of the Lieutenant Governor in Council of the province.

(2) No offence is committed against subparagraph (ii) of paragraph (a) of section 93 or paragraph (a) of section 94 if intoxicants are sold to an Indian for consumption in a public place in accordance with the law of the province where the sale takes place.

(3) No offence is committed against subparagraph (ii) of paragraph (a) of section 93 or paragraph (a) of section 94 if intoxicants are sold to or had in possession by an Indian in accordance with the law of the province where the sale takes place or the possession is had.”

(2) The said Act is further amended by adding thereto, immediately after section 96 thereof, the following section:

“96A. (1) Subsection (2) shall come into force, or cease to be in force, in a reserve only if a proclamation declaring it to be in force, or to cease to be in force, as the case may be, in the reserve, is issued by the Governor in Council.

(2) No offence is committed against paragraph (a) of section 96 if intoxicants are had in possession by any person in accordance with the law of the province where the possession is had.

(3) A proclamation in respect of a reserve shall not be issued under subsection (1) except in accordance with the wishes of the band, as expressed at a referendum of the electors of the band by a majority of the electors who voted thereat.

(4) The Governor in Council may make regulations

(a) respecting the taking of votes and the holding of a referendum for the purposes of this section; and

(b) defining a reserve for the purposes of subsection (1) to consist of one or more reserves or any part thereof.

(5) No proclamation bringing subsection (2) into force in a reserve shall be issued unless the council of the band has transmitted to the Minister a resolution of the council requesting that subsection (2) be brought into force in the reserve, and either

(a) the reserve is situated in a province or part thereof in which subsection (3) of section 95 is in force, or

(b) the Minister has communicated the contents of the resolution to the Attorney General of the province in which the reserve is situated, the Lieutenant-Governor in Council of the province has not, within sixty days after such communication, objected to the granting of the request, and the Governor in Council has directed that the wishes of the band with respect thereto be ascertained by a referendum of the electors of the band.

(6) Where subsection (2) is in force in a reserve no offence is committed against subparagraph (ii) of paragraph (a) of section 93 or paragraph (a) of section 94 if intoxicants are sold to or had in possession by a member of the band in accordance with the law of the province in which the reserve is situated."

24. (1) Subsection (1) of section 101 of the said Act is repealed and the following substituted therefor:

"FORFEITURES AND PENALTIES.

101. (1) Whenever a peace officer or a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section 33, 89, 92, 93, 94 or 96 has been committed, he may seize all goods and chattels by means of or in relation to which he reasonably believes the offence was committed."

(2) Subsection (3) of section 101 of the said Act is repealed and the following substituted therefor:

“(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.

“(4) A justice who is satisfied by information upon oath that there is reasonable ground to believe that there are upon 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 such goods or chattels.”

25. Paragraph (b) of section 105 of the said Act is repealed.

26. Subsection (2) of section 108 of the said Act is repealed and the following substituted therefor:

“(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 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.”

27. Section 109 of the said Act is repealed and the following substituted therefor:

“109. A person with respect to whom an order for enfranchisement is made under this Act shall, from the date thereof, or from the date of enfranchisement provided for therein, be deemed not to be an Indian within the meaning of this Act or any other statute or law.”

28. Section 113 of the said Act is repealed and the following substituted therefor:

“113. (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 Northwest Territories,
- (c) the Commissioner of the Yukon Territory,
- (d) a public or separate school board, and
- (e) a religious or charitable organization.

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

29. Paragraph (a) of subsection (2) of section 115 of the said Act is repealed and the following substituted therefor:

“(a) require an Indian who has attained the age of six years to attend school,”

30. Paragraph (b) of section 116 of the said Act is repealed.