

CHAPTER I-6

An Act respecting Indians

SHORT TITLE

Short title **1.** This Act may be cited as the *Indian Act*. R.S., c. 149, s. 1.

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 the 4th day of September 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;

"child"
<<enfant>> "child" includes a legally adopted Indian child;

"council of the band"
<<conseil...>> "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 ;

"elector"
<<électeur>> "elector" means a person who
 (a) is registered on a Band List,
 (b) is of the full age of twenty-one 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" <<deniers...>>	"Indian moneys" means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands;
"intoxicant" <<spiritueux>>	"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 or drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating;
"member of a band" <<membre...>>	"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 of the Department who is in charge of the Indian Register;
"reserve" <<r�serve>>	"reserve" 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;
"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...>>	"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.

"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 upon 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 upon 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. R.S., c. 149, s. 2; 1966-67, c. 25, s. 40.

ADMINISTRATION

Minister to administer Act

3. (1) This Act shall be administered by the Minister of Indian Affairs and Northern Development, 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 the Parliament of Canada relating to Indian affairs. R.S., c. 149, s. **3**; 1966-67, c. 25, s. 40.

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 Eskimos.

Act may be declared inapplicable

(2) The Governor in Council may by proclamation declare that this Act or any portion thereof, except 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.

Certain sections
inapplicable to
Indians living off
reserves

(3) Sections 114 to 123 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. R.S., c. 149, s. 4; 1956, c. 40, s. 1.

DEFINITION AND REGISTRATION OF INDIANS

Indian Register

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. R.S., c. 149, s. 5.

Band Lists and
General Lists

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. R.S., c. 149, s. 6.

Deletions and
additions

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 this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

Date of change

(2) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom. R.S., c. 149, s. 7.

Existing lists to
constitute
Register

8. The band lists in existence in the Department on the 4th day of September 1951 shall constitute the Indian Register, and the applicable lists shall be posted in a conspicuous place in the superintendent's office that serves the band or persons to whom the List relates and in all other places where band notices are ordinarily displayed. R.S., c. 149, s. 8.

Deletions and
additions may be
protested

9. (1) Within six months after a list has been posted in accordance with section 8 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 7

- (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 8, 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, and the onus of establishing those grounds lies on the person making the protest.

Registrar to
cause
Investigation

(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 (3), the decision of the Registrar is final and conclusive.

Reference to
judge

(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.

Inquiry and
decision

(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 purposes 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 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.

One reference only (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.

Burden of proof (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. R.S., c. 149, s. 9; 1956, c. 40, s. 2.

Wife and minor children **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. R.S., c. 149, s. 10.

Persons entitled to be registered **11.** (1) Subject to section 12, a person is entitled to be registered if that person
 (a) on the 26th day of May 1874 was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, being chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;
 (b) is a member of a band
 (i) for whose use and benefit, in common, lands have been set apart or since the 26th day of May 1874, 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 ;
 (c) is a male person who is a direct descendant in the male line of a male

person described in paragraph (a) or (b) ;
(d) is the legitimate child of
(i) a male person described in paragraph (a) or (b), or
(ii) a person described in paragraph (c);
(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d); or
(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).

Exception

(2) Paragraph (1)(e) applies only to persons born after the 13th day of August 1956. R.S., c. 149, s. 11; 1956, c. 40, s. 3.

Persons not entitled to be registered

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
(iv) is a person born of a marriage entered into after the 4th day of September 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a),(b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e),

unless, being a woman, that person is the wife or widow of a person described in section 11, and

(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.

Protest re illegitimate child

(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) 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 that paragraph.

Certificate

(3) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

Exception

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

- (a) pursuant to this Act is registered as an Indian on the 13th day of August 1958, or
- (b) is a descendant of a person described in paragraph (a) of this subsection.
- Idem (5) Subsection (2) applies only to persons born after the 13th day of August 1956. R.S., c. 149, s. 12; 1956, c. 40, ss. 3, 4; 1958, c. 19, s. 1.
- Admission to band and transfer **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. 1956, c. 40, s. 5.
- Woman marrying outside band **14.** A woman who is a member of a band ceases to be a member of that band if she marries a person who is not a member of that band, but if she marries a member of another band, she thereupon becomes a member of the band of which her husband is a member. R.S., c. 149, s. 14.
- Payments to persons ceasing to be members **15.** (1) Subject to subsection (2), an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from Her Majesty
- (a) one per capita share of the capital and revenue moneys held by Her Majesty on behalf of the band, and
- (b) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the band and Her Majesty if he had continued to be a member of the band.
- Payments not to be made in certain cases (2) A person is not entitled to receive any amount under subsection (1)
- (a) if his name was removed from the Indian register pursuant to a protest made under section 9, or
- (b) if he is not entitled to be a member of a band by reason of the application of paragraph 11(1)(e) or subparagraph 12(1)(a)(iv).
- Payments to minors (3) Where by virtue of this section moneys

are payable to a person who is under the age of twenty-one, the Minister may

(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

(6) cause payment of the moneys to be withheld until that person reaches the age of twenty-one.

Compensation for permanent improvements

(4) Where the name of a person is removed from the Indian Register and he is not entitled to any payment under subsection (1), the Minister shall, if he considers it equitable to do so, authorize payment, out of moneys appropriated by Parliament, of such compensation as the Minister may determine for any permanent improvements made by that person on lands in a reserve.

Commutation of payments under former Act

(5) Where, prior to the 4th day of September 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 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. R.S., c. 149, s. 15; 1956, c. 40, s. 6.

Transfer of funds

16. (1) Section 15 does not apply to a person who ceases to be a member of one band by reason of his becoming a member of another band, but, subject to subsection (3), there shall be transferred to the credit of the latter band the amount to which that person would, but for this section, have been entitled under section 15.

Transferred member's interest

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

Transfer of
woman by
marriage

(3) Where a woman who is a member of one band becomes a member of another band by reason of marriage, and the per capita share of the capital and revenue moneys held by Her Majesty on behalf of the first-mentioned band is greater than the per capita share of such moneys so held for the second-mentioned band, there shall be transferred to the credit of the second-mentioned band an amount equal to the per capita share held for that band, and the remainder of the money to which the woman would, but for this section, have been entitled under section 15 shall be paid to her in such manner and at such times as the Minister may determine. R.S., c. 149, s. 16.

Minister may
constitute new
bands

17. (1) The Minister may, whenever he considers it desirable,

(a) constitute new bands and establish Band Lists with respect thereto from existing Band Lists or General Lists, or both,

(b) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated, and

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

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 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). R.S., c. 149, s. 17; 1956, c. 40, s. 7.

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 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. R.S., c. 149, s. 18; 1956, c. 40, s. 8.

Surveys and
subdivisions

19. The Minister may

(a) authorize surveys of reserves and 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. R.S., c. 149, s. 19.

POSSESSION OF LANDS IN RESERVES

Possession of
lands in a
reserve

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

(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 the 4th day of September 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.

- 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 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.
- Certificate of Occupation (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 (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
 (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. R.S., c. 149, s. 20.
- 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. R.S., c. 149, s. 21.
- 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 there-on before that time, he shall be deemed to be in lawful possession of such lands at the time they are so included. R.S., c. 149, s. 22.
- Compensation for improvements **23.** An Indian who is lawfully removed from lands in a reserve upon 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. R.S., c. 149, s. 23.

Transfer of
possession

24. An Indian who is lawfully in possession of lands in a reserve may transfer to the band or to 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. R.S., c. 149, s. 24.

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 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. R.S., c. 149, s. 25.

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. 1956, c. 40, s. 9.

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. 1956, c. 40, s. 9.

Grants, etc. of
reserve lands
void

28. (1) Subject to subsection (2), a 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 may
issue permits

(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. R.S., c. 149, s. 28; 1956, c. 40, s. 10.

Exemption from
seizure

29. Reserve lands are not subject to seizure under legal process. R.S., c. 149, s. 29.

TRESPASS ON RESERVES

Penalty for
trespass

30. A person who trespasses on a reserve is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding one month, or to both. R.S., c. 149, s. 30.

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 upon

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

Information
deemed action by
Crown

(2) An Information exhibited under subsection (1) shall, for all purposes of the *Exchequer Court Act*, be deemed to be an action or suit by the Crown within the meaning of paragraph

29(d) 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. R.S., c. 149, s. 31.

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.

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. R.S., c. 149, s. 32.

Offence

33. Every person who enters into a trans-action that is void under subsection 32(1) is guilty of an offence. R.S., c. 149, s. 33.

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.

Idem

(2) Where, in the opinion of the Minister, a band has not carried out the instructions of the superintendent given 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 such member. R.S., c. 149, s. 34.

LANDS TAKEN FOR PUBLIC PURPOSES

Taking of
lands by local
authorities

35. (1) Where by an Act of the Parliament of Canada 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, authority or corporation of the powers referred to in subsection (1), the Governor in Council may, in lieu of the province, authority or corporation taking or using the lands without the consent of the owner, authorize a transfer or grant of such 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 upon 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). R.S., c. 149, s. 35.

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. R.S., c. 149, s. 36.

SURRENDERS

No sale etc., until surrender **37.** Except where this Act otherwise provides, lands in a reserve shall not be sold,

alienated, leased or otherwise disposed of until they have been surrendered to Her Majesty by the band for whose use and benefit in common the reserve was set apart. R.S., c. 149, s. 37.

Band may
surrender

38. (1) A band may surrender to Her Majesty any right or interest of the band and its members in a reserve.

Absolute or
qualified

(2) A surrender maybe absolute or qualified, conditional or unconditional. R.S., c. 149, s. 38.

How surrender
made

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.

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) 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.

Assent of band

(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.

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. R.S., c. 149, s. 39; 1956, c. 40, s. 11.

Certification of surrender **40.** When a proposed surrender has been assented to by the band in accordance with section 39, it 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 shall then be submitted to the Governor in Council for acceptance or refusal. R.S., c. 149, s. 40.

Effect of surrender **41.** A surrender shall be deemed to confer all rights that are necessary to enable Her Majesty to carry out the terms of the surrender. R.S., c. 149, s. 41.

DESCENT OF PROPERTY

Powers of Minister with respect to property of deceased Indians **42.** (1) Unless otherwise provided in this Act, all jurisdiction and authority in relation to matters and causes testamentary, with respect do 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 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.

Application of regulations (3) Regulations made under this section may be made applicable to estates of Indians who died before, on or after the 4th day of September 1951. R.S., c. 149, s. 42; 1956, c. 40, s. 12.

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; (a) 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. R.S., c. 149, s. 43.

Courts may exercise jurisdiction with consent of Minister

44. (1) The court that would have jurisdiction if the deceased were not an Indian may, with the consent of the Minister, exercise, in accordance with this Act, the jurisdiction and authority conferred upon 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 shall be made to the court that would have jurisdiction if the deceased were not an Indian, and the Minister may refer to such 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. R.S., c. 149, s. 44.

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 upon 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. R.S., c. 149, s. 45.

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;
- (a) 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
- (1) 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. R.S., c. 149, s. 46.

APPEALS

Appeal to
Exchequer
Court

47. (1) A decision of the Minister made in the exercise of the jurisdiction or authority conferred upon him by section 42, 43 or 46 may, within two months from the date thereof, be appealed by any person affected thereby to the Exchequer Court of Canada, if the amount in controversy in the appeal exceeds five hundred dollars or if the Minister consents to an appeal.

Rules

(2) The judges of the Exchequer Court may make rules respecting the practice and procedure governing appeals under this section. R.S., c. 149, s. 47.

DISTRIBUTION OF PROPERTY ON INTESTACY

Widow's share

48. (1) Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed in value two thousand dollars, 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, is two thousand dollars or more, two thousand dollars shall go to the widow, and the remainder shall go as follows, namely:

- (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 such 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 on 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 go to his brothers and sisters in equal shares, and if 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
amongst next-of-
kin

(8) Where the 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 the 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 so dying, and there is no community of real or personal property situated on a reserve.

Illegitimate
children

(13) Illegitimate children and their issue shall inherit from the mother as if the children were legitimate, and shall inherit as if the children were legitimate, through the mother, if dead, any real or personal property that she would have taken, if living, by gift, devise or descent from any other person.

Intestate being an
illegitimate child

(14) Where an intestate, being an illegitimate child, dies leaving no widow or issue, his estate shall go to his mother, if living, but if the mother is dead his estate shall go to the other children of the same mother in equal

shares, and where any child is dead the children of the deceased child shall take the share their parent would have taken if living; but where the only persons entitled are children of deceased children of the mother, they shall take per capita.

"Widow"
includes
"widower"

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

"Child"

(16) In this section "child" includes a legally adopted child and a child adopted in accordance with Indian custom. R.S., c. 149, s. 48; 1956, c. 40, s. 13.

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 that land until the possession is approved by the Minister. R.S., c. 149, s. 49.

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 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. R.S., c. 149, s. 50.

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 other-wise 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. R.S., c. 149, s. 51.

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 such purpose. R.S., c. 149, s. 52.

MANAGEMENT OF RESERVES AND
SURRENDERED LANDS

Disposition of surrendered lands	<p>53. (1) The Minister or a person appointed by him for the purpose may manage, sell, lease or otherwise dispose of surrendered lands in accordance with this Act and the terms of the surrender.</p>
Grant where original purchaser dead	<p>(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, upon receipt of proof in such manner as he directs and requires in support of any claim for the grant and upon being satisfied that the claim has been equitably and justly established, allow the claim and authorize a grant to issue accordingly.</p>
Departmental employees	<p>(3) No person who is appointed to manage, sell, lease or otherwise dispose of surrendered lands or who is an officer or 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 surrendered lands. R.S., c. 149, s. 53.</p>
Assignments	<p>54. Where surrendered lands have been agreed to be sold or otherwise disposed of and letters patent relating thereto have not issued, or where surrendered lands have been leased, the purchaser, lessee or other person having an interest in the surrendered lands may, with the approval of the Minister, assign his interest in the surrendered lands or a part thereof to any other person. R.S., c. 149, s. 54.</p>
Surrendered Lands Register	<p>55. (1) There shall be kept in the Department a register, to be known as the Surrendered Lands Register, in which shall be entered particulars in connection with any lease or other disposition of surrendered lands by the Minister or any assignment thereof.</p>
Conditional assignment	<p>(2) A conditional assignment shall not be registered.</p>
Proof of execution	<p>(3) Registration of an assignment may be refused until proof of its execution has been furnished.</p>
Effect of registration	<p>(4) An assignment registered under this section is valid against an unregistered assignment or an assignment subsequently</p>

registered. R.S., c. 149, s. 55.

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 him to sign such certificates. R.S., c. 149, s. 56.

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 ;

(a) prescribing the penalty not exceeding one hundred dollars or imprisonment for a term of three months, or both, that may be imposed on summary conviction for violation of any regulation made under this section; and

(e) providing for the seizure and forfeiture of any timber or minerals taken in violation of any regulation made under this section. R.S., c. 149, s. 57.

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 such land and employ persons therefor, and authorize and direct the expenditure of so much of the capital funds of the band as he considers necessary for such 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 such land for agricultural or grazing purposes or for any purpose that is for the benefit of the person in possession ; and

(c) where the land is not in the lawful possession of any individual, grant for the benefit of the band a lease of such land for

agricultural or grazing purposes.

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

Lease at request
of occupant

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

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

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

(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 upon or under lands in a reserve, or, where such 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 upon or under lands in a reserve, renewable only with the consent of the council of the band, and the proceeds of such transactions 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. R.S., c. 149, s. 58; 1956, c. 40, s. 14.

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 sale, lease or other disposition of surrendered lands or a lease or other disposition of 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. R.S., c. 149, s. 59.

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 upon the band under subsection (1). R.S., c. 149, s. 60.

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 upon 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. R.S., c. 149, s. 61.

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. R.S., c. 149, s. 62.

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. R.S., c. 149, s. 63.

Expenditure of capital moneys with consent **64.** 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 water courses on the 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. R.S., c. 149, s. 64; 1956, c. 40, s. 15.

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. R.S.,

c. 149, s. 65.

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 his opinion 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 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.

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. R.S., c. 149, s. 66; 1956, c. 40, s. 16.

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. 1956, c. 40, s. 17.

Maintenance of
dependants

68. (1) Where the Minister is satisfied that a male Indian
(a) has deserted his wife or family without

sufficient cause,

(b) has conducted himself in such a manner as to justify the refusal of his wife or family to live with him, or

(c) has been separated by imprisonment from his wife and family,

he may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of the wife or family or both the wife and family of that Indian.

Idem

(2) Where the Minister is satisfied that a female Indian has deserted her husband or family, he may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of her family.

Illegitimate children

(3) Where the Minister is satisfied that one or both of the parents of an illegitimate child is an Indian, he may stop payments out of any annuity or interest moneys to which either or both of the parents would otherwise be entitled and apply the moneys to the support of the child, but not so as to prejudice the welfare of any legitimate child of either Indian. R.S., c. 149, s. 67.

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. R.S., c. 149, s. 68.

LOANS TO INDIANS

Loans to Indians

70. (1) The Minister of Finance may from time to time 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. R.S., c. 149, s. 69; 1952-53, c. 41, s. 4; 1956, c. 40, s. 18; 1968-69, c. 28, s. 105; 1969-70, c. 2, Sch. vote L50a. [See 1969-70, c. 24, Sch. vote L53b.]

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 such profits in any way that he considers to be desirable to promote the progress and development of the Indians. R.S., c. 149, s. 70.

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 the band and for the payment of which the Government of Canada is responsible, may be paid out of the Consolidated Revenue Fund. R.S., c. 149, s. 71.

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;
- (a) 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.

Penalty (2) The Governor in Council may prescribe the penalty, 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 violation 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. R.S., c. 149, s. 72; 1956, c. 40, s. 19.

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 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. R.S., c. 149, s. 73; 1956, c. 40, s. 20.

Eligibility

75. (1) No person other than an elector who resides in a 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 unless his nomination is moved and seconded by persons who are themselves eligible to be nominated. R.S., c. 149, s. 74.

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 shall 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 make provision for secrecy of voting. R.S., c. 149, s. 75.
- Eligibility of voters for chief **77.** (1) A member of a band who is of the full age of twenty-one 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 twenty-one 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. R.S., c. 149, s. 76.
- Tenure of office **78.** (1) Subject to this section, chiefs and councillors hold office for two years.
- Vacancy (2) The office of chief or councillor 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 meetings of the council for three consecutive meetings 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 for a period not exceeding six years.
- Special election (4) Where the office of chief or councillor 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. R.S., c. 149, s. 77.

Governor in Council may set aside election

79. The Governor in Council may set aside the election of a chief or a councillor 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 violation 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. R.S., c. 149, s. 78.

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 the meeting to constitute a quorum. R.S., c. 149, s. 79.

POWERS OF THE COUNCIL

By-laws

81. 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; (a) 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 water courses, 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 such 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 and 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 upon the reserve or frequenting the reserve for prescribed purposes;
- (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 hundred dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section. R.S., c. 149, s. 80.

Copies of by-laws to be sent to Minister

82. (1) A copy of every by-law made under the authority of 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. R.S., c. 149, s. 81.

Money by-laws

83. (1) Without prejudice to the powers conferred by section 81, where the Governor in Council declares that a band has reached an advanced stage of development, the council of the band may, subject to the approval of the Minister, make by-laws for any or all of the following purposes, namely

- (a) the raising of money by
 - (i) the assessment and taxation of interests in land in the reserve of persons lawfully in possession thereof, and
 - (ii) 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 maybe approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a);
- (e) the imposition of a penalty for non-payment of taxes imposed pursuant to this section, recoverable on summary conviction, not exceeding the amount of the tax or the amount remaining unpaid;
- (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) No expenditure shall be made out of moneys raised pursuant to paragraph (1)(a) except under the authority of a by-law of the council of the band. R.S., c. 149, s. 82; 1956, c. 40, s. 21.

Recovery of taxes

84. Where a tax that is imposed upon 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. R.S., c. 149, s. 83.

Revoking of
authority to make
money by-laws

85. The Governor in Council may revoke a declaration made under section 83 whereupon that section no longer applies to the band to which it formerly applied, but any by-law made under the authority of that section and in force at the time the declaration is revoked shall be deemed to continue in force until it is revoked by the Governor in Council. R.S., c. 149, s. 84.

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. R.S., c. 149, s. 85.

TAXATION

Property exempt
from taxation

87. Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection (2) and to section 83, the following property is exempt from taxation, namely:

- (a) the interest of an Indian or a band in reserve or surrendered lands; and
 - (b) the personal property of an Indian or band situated on a reserve;
- and no Indian or band is subject to taxation in respect of the ownership, occupation,

possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property 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, being chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the Estate Tax Act, on or in respect of other property passing to an Indian. R.S., c. 149, s. 86; 1958, c. 29, s. 59; 1960, c. 8, s. 1.

LEGAL RIGHTS

General provincial laws applicable to Indians

88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, 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 such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act. R.S., c. 149, s. 87.

Property on reserve not subject to alienation

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.

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. R.S., c. 149, s. 88.

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 Parlia-

ment 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. R.S., c. 149, s. 89.

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.

Penalty

(4) A person who violates this section is guilty of an offence and is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months. R.S., c. 149, s. 90.

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 given under this section.

Penalty

(3) A person who violates subsection (1) is guilty of an offence and is 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. R.S., c. 149, s. 91.

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 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. 1956, c. 40, s. 22.

Sale of intoxicants

94. A person who directly or indirectly by himself or by any other person on his behalf knowingly

(a) sells, barter, supplies or gives an intoxicant to

- (i) any person on a reserve, or
- (ii) an Indian outside a reserve,
- (b) opens or keeps or causes to be opened or kept on a reserve a dwelling-house, building, tent, or place in which intoxicants are sold, supplied or given to any person, or
- (c) makes or manufactures intoxicants on a reserve,

is guilty of an offence and is liable on summary conviction to a fine of not less than fifty dollars and not more than three hundred dollars or to imprisonment for a term of not less than one month and not more than six months, with or without hard labour, or to both fine and imprisonment. R.S., c. 149, s. 93.

Possession of
intoxicants off a
reserve

95. An Indian who

- (a) has intoxicants in his possession,
- (b) is intoxicated, or
- (c) makes or manufactures intoxicants, off a reserve, is guilty of an offence and is liable on summary conviction to a fine of not less than ten dollars and not more than fifty dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment. R.S., c. 149, s. 94.

Coming into
force of this
section

96. (1) Subsection (2) or subsection (3) comes into force, or ceases 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.

Exception to
offences

(2) No offence is committed against subparagraph 94(a)(ii) or paragraph 95(a) 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.

Idem

(3) No offence is committed against subparagraph 94(a)(ii) or paragraph 95(a) 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. 1956, c. 40, s. 23.

Possession of
intoxicants on a
reserve

97. A person who is found

(a) with intoxicants in his possession, or
(b) intoxicated,
on a reserve, is guilty of an offence and is liable on summary conviction to a fine of not less than ten dollars and not more than fifty dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment. R.S., c. 149, s. 96.

Coming into force of this section

98. (1) Subsection (2) comes into force, or ceases 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.

Exception to offences

(2) No offence is committed against paragraph 97(a) if intoxicants are had in possession by any person in accordance with the law of the province where the possession is had.

Referendum

(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.

Regulations

(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.

When proclamation may issue

(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 96(3) 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.

Further
exception to
offences

(6) Where subsection (2) is in force in a reserve no offence is committed against subparagraph 94(a)(ii) or paragraph 95(a) 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. 1956, c. 40, s. 23.

Exception where
intoxicant used
for sickness

99. The provisions of this Act relating to intoxicants do not apply where the intoxicant is used or is intended to be used in cases of sickness or accident. R.S., c. 149, s. 97.

Onus of proof

100. In any prosecution under this Act the burden of proof that an intoxicant was used or was intended to be used in a case of sickness or accident is upon the accused. R.S., c. 149, s. 98.

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. R.S., c. 149, s. 99.

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. R.S., c. 149, s. 100.

FORFEITURES AND PENALTIES

Seizure of goods

103. (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, 90, 93, 94, 95 or 97 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.

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 under this Act in respect of such offence are undertaken, in which case the goods and chattels may be further detained until such 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 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. R.S., c. 149, s. 101; 1952-53, c. 41, s. 5; 1956, c. 40, s. 24.

Disposition of fines

104. Every fine, penalty or forfeiture imposed under this Act belongs to Her Majesty for the benefit of the band with respect to which or to one or more members of which the offence was committed or to which the offender, if an Indian, belongs, but the Governor in Council may from time to time direct that the fine, penalty or forfeiture 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. R.S., c. 149, s. 102.

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 person or Indian referred to therein is the name given to, or the name by which the person or Indian is known by, the person who issues the order, writ, warrant, summons or proceedings, 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 proceedings, it is sufficient if the person or Indian is described in any manner by which he may be identified. R.S., c. 149, s. 103.

Jurisdiction of
magistrates

106. A police magistrate or a stipendiary magistrate has and may exercise, 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. R.S., c. 149, s. 104.

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 and may exercise the powers and authority of two justices of the peace with regard to

- (a) offences under this Act, and
- (b) any offence against the provisions of 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. R.S., c. 149, s. 105; 1956, c. 40, s. 25.

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 *ex officio* commissioners for the taking of
oaths. R.S., c. 149, s. 107.

ENFRANCHISEMENT

Enfranchise-
ment of Indian
and wife and
minor children

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

Enfranchise-
ment of married
women

(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.

Where wife
living apart

(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 (1) 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 the minor children are enfranchised.

Order of
enfranchisement

(4) A person is not enfranchised unless his name appears in an order of enfranchisement made by the Governor in Council. R.S., c. 149, s. 108; 1956, c. 40, s. 26.

Enfranchised
person ceases to
be Indian

110. 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. 1956, c. 40, s. 27.

Sale of lands of
enfranchised
Indian

111. (1) Upon the issue of an order of enfranchisement, any interest in land and improvements on an Indian reserve of which the enfranchised Indian was in lawful possession or over which he exercised rights of ownership, at the time of his enfranchisement, may *be* disposed of by him by gift or private sale to the band or another member of the band, but if not so disposed of within thirty days after the date of the order of enfranchisement such land and improvements shall be offered for sale by tender by the superintendent and sold to the highest bidder and the proceeds of such sale paid to him; and if no bid is received and the property remains unsold after six months from the date of such offering, the land, together with improvements, shall revert to the band free from any interest of the enfranchised person therein, subject to the payment, at the discretion of the Minister, to the enfranchised Indian, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Grant to
enfranchised
Indian

(2) When an order of enfranchisement issues or has issued, the Governor in Council may, with the consent of the council of the band, by order declare that any lands within a reserve of which the enfranchised Indian had formerly been in lawful possession shall cease to be Indian reserve lands.

Reimbursing
funds of the
band

(3) When an order has been made under subsection (2), the enfranchised Indian is entitled to occupy such lands for a period of ten years from the date of his enfranchisement, and the enfranchised Indian shall pay to the funds of the band, or there shall, out of any money payable to the enfranchised Indian under this Act, be transferred to the funds of the band, such amount per acre for the lands as the Minister considers to be the value of the common interest of the band in the lands.

Grant of lands

(4) At the end of the ten-year period referred to in subsection (3) the Minister shall cause a grant of the lands to be made to the enfranchised Indian or to his legal representatives. R.S., c. 149, s. 110.

Enfranchise-
ment of band

112. (1) Where the Minister reports that a band has applied for enfranchisement, and

has submitted a plan for the disposal or 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.

Majority vote
required

(2) An order for enfranchisement may not be made under subsection (1) 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.

Agreements with
provinces or
municipalities

(3) The Governor in Council may, for the purpose of giving effect to this section, authorize the Minister to enter into an agreement with a province or a municipality, or both, upon such terms as may be agreed upon by the Minister and the province or municipality, or both.

Financial
assistance

(4) Without restricting the generality of subsection (3), an agreement made thereunder may provide for financial assistance to be given to the province or the municipality or both to assist in the support of indigent, infirm or aged persons to whom the agreement applies, and such financial assistance, or any part thereof, shall, if the Minister so directs, be paid out of moneys of the band, and any such financial assistance not paid out of moneys of the band shall be paid out of moneys appropriated by Parliament. R.S., c. 149, s. 111.

Committee of
inquiry

113. (1) Where a band has applied for enfranchisement within the meaning of this Act and has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, the Minister may appoint a committee to inquire into and report upon any or all of the following matters, namely:

- (a) the desirability of enfranchising the band;
- (b) the adequacy of the plan submitted by

it; and

(c) any other matter relating to the application for enfranchisement or to the disposition thereof.

Composition

(2) A committee appointed under subsection (1) shall consist of

(a) a judge or retired judge of a superior, surrogate, district or county court,

(b) an officer of the Department, and

(c) a member of the band to be designated by the council of the band.

1960-61, c. 9, s. 1.

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 Northwest Territories,

(c) the Commissioner of the Yukon Territory,

(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. 1956, c. 40, s. 28.

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. R.S., c. 149, s. 114.

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. R.S., c. 149, s. 115; 1956, c. 40, s. 29.

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. R.S., c. 149, s. 116; 1956, c. 40, s. 30.

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. R.S., c. 149, s. 117.

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

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

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 upon whom the notice was served is guilty of an offence and is liable on summary conviction to a fine of not more than 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 the provisions of this Act, and whenever such 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, such person is guilty of an offence and liable to the penalties 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. R.S., c. 149, s. 118.

Where child
deemed juvenile
delinquent

120. An Indian child who
(a) is expelled or suspended from school,
or
(b) refuses or fails to attend school
regularly, shall be deemed to be a juvenile
delinquent within the meaning of the
Juvenile Delinquents Act. R.S., c. 149, s.
119.

Denomination
of teacher

121. (1) Where the majority of the mem-
bers of a band belongs 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. R.S., c. 149,
s. 120.

Minority
religious
denominations

122. 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. R.S., c. 149, s.
121.

Definitions
"child"

123. In sections 114 to 122
"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" includes a day school,
technical

"school"

"truant officer"

school, high school and residential school;
"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.
R.S., c. 149, s. 122.

PRIOR GRANTS

Prior grants and
sales deemed
authorized

124. Where, prior to the 4th day of September 1951, a reserve or portion of reserve was released or surrendered to the Crown pursuant to Part I of the *Indian Act* chapter 98 of the Revised Statutes of Canada 1927, or pursuant to the provisions of the statutes relating to the release or surrender of reserves in force at the time of the release or surrender, and

(a) prior to that date Letters Patent under the Great Seal were issued purporting to grant a reserve or portion of a reserve so released or surrendered, or any interest therein, to any person, and the Letters Patent have not been declared void or inoperative by any Court of competent jurisdiction, or

(b) prior to that date a reserve or portion of a reserve so released or surrendered, or any interest therein, was sold or agreed to be sold by the Crown to any person, and the sale or agreement for sale has not been cancelled or by any Court of competent jurisdiction declared void or inoperative,

the Letters Patent or the sale or agreement for sale, as the case may be, shall, for all purposes, be deemed to have been issued or made at the date thereof under the direction of the Governor in Council. 1952-53, c. 41 s. 6.