

# Shining Mountains Living Community Services

## 5th in Series



## First Nations



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## Background

Before the coming of Europeans, there were over 1,000 First Peoples Communities, Tribes or Bands with an estimated total population of over one million people. Spread across the land which we now call Canada, the Tribes were organized by geography and language similarities into Nations. These Nations, each had cultural ways of living adapted to the land they lived on. Originally their language, laws, style of housing, clothing, foods, medicines, spiritual beliefs and ceremonies were distinct to each Nation.

A commonality between them was the fact that each Nation, lived with respect and harmony to the land their inhabited. They practised good harvesting or land management skills. Trading between the groups and Nations was important and respected.

Then came the lost sailors in large ships, and life changed. The first wave of sailors caused little damage or impact. The Nations of the East coast, fed them, healed them and traded with them and they sailed back home. BUT, they took with them stories of a vast uninhabited land the “No One Owned” and the second wave came to explore, trade and exploit the resources of the land, especially the wood and animals. European people began coming to North America in the 16<sup>th</sup> and 17<sup>th</sup> centuries, often the first ones got along with the original peoples they encountered. Fur Traders and trappers were not interested in taking over the lands or in settlement on it. They were more interested in getting along well in order to obtain access to the best furs and trading options.

The third wave brought increasing numbers of Europeans, hungry for free land, with vastly different cultures from the First Peoples. This wave brought in increasing numbers of immigrants, especially British who were more interested in obtaining and controlling the lands than in getting along well with the First Peoples.

The coming of Europeans began to change the lives of the First people of the land. Prior to the ever increasing numbers of European people, First Nations people dominated the population and the new comers largely adapted to the communities they were exploring or hunting in. However, the constant arrival of newcomers began to shift the balance of population.

Traders and explorers brought infected blankets and materials that spread diseases for which the Native populations had no immunity. Priests or missionaries began undermining and manipulating the spiritual beliefs and leaders. Immigrants or Settlers began to appear, bringing with them wives and children.

The French and the English began a battle to control the New Land. Both nations engaged Indigenous warriors to assist them in their efforts, in a type of warfare that was unknown, for concepts that were unknown.

At the end of the French – English war, and a new form of government started to take control. Europeans, whether settlers, missionaries or government officials, considered all the Indigenous

peoples as inferior to themselves, in need of protection at best or elimination at worst. The First Nations cultures and control of their own lives became under attack over time in various ways.

The Royal Proclamation of 1763 was established because of the relationships of the English, French and First Peoples and because of the English thinking about Indigenous peoples. It set aside land outside of the existing colonies (Upper and Lower Canada) for the use of Indians and declared that it was “Indian Territory” that could only be sold to the government. At the same time, the proclamation denied that Native people had rights as nations and claimed that ONLY Europeans had rights as nations

### European Dominance 1849 – 1869

A continuation of this same perception or way of thinking gave birth to the Indian Act as it was brought into existence in an ongoing attempt to solve the “Indian Problem. The Indian Act was first passed in 1876 and last revised in 1951. The plans of the Colonial Government for Indigenous peoples were PROTECTION, ADVANCEMENT AND ASSIMILATION.

**Protection:** Even in the 1670’s the Colonial Government (British) passed laws to protect Indians from unscrupulous whites and make the government the protector of the Indians. Some of the ways of establishing this protection included placing Native peoples in protected places, aka reserves and establishing protected education aka residential schools. It is difficult to determine whether the government was truly trying to protect Indigenous or European interests

**First** the Colonial government created a registry of First Nation (aka Indian) peoples and devised a distinction between “Status Indians” who were on the list or registry and “Non Status Indians” who were not listed. This list was used to only identify Indian families with male heads of households.

**Second**, the Colonial government created a “Department of Indian Affairs”, which defined Indian bands, in some cases the bands corresponded to the First Nations tribes or nations but in many cases they did not.

**Third**, Indigenous traditional territory was confined and reduced into “reserves”

**Fourth**, confining First Nations people onto the reserves making it difficult and often illegal for them to move around to use different resources throughout the various seasons, especially as eventually Non Indigenous people “owned” or assumed control of all land off the reserves

**Fifth**, the Department of Indian Affairs instituted a system of government that was foreign to any Nation. It was not based on traditional respect for knowledge, skills or courage, nor on “inheritance” of chieftainship. The government system devised by the Department was based on the European model of a town mayor and council, with each band elected a chief and council. Only registered male members of a band had a voice, only males could be elected.





**Sixth,** Indigenous children (First Nations, Metis and Inuit) were apprehended and sent away to residential schools where they were forbidden to speak their own languages or practise their spirituality and where they were isolated by gender.

**Seventh,** First Nations communities were forbidden to practice their own traditions, customs and spirituality by outlawing the practices such as the Sun Dance or Potlatch.

The Indian Act gave very little control to any Indigenous peoples but gave protection to Europeans from Indigenous threats or actions for change. These methods to solve the “Indian Problem” weakened Indigenous power, control and identity and created a situation which continued to exist and worsen for over two hundred years.

**Advancement:** Europeans had consistently viewed all Indigenous people to be inferior to them as they didn’t speak the correct language, have the proper government structures, have the proper ideas about laws, women, land ownership, religious beliefs and practices. Europeans had the power (under the Royal Proclamation) to act as if their ideas about Indigenous peoples were right, so they passed laws to “HELP” Indigenous people advance. In 1837, the British Colonial Secretary, said that the British plan was to “protect and cherish this helpless race and to raise them in the scale of Humanity”. In 1857, a law was passed called “An Act to encourage the gradual civilization of the Indian Tribes”. Advancement meant that Natives were to become English speakers, Christian believers and farmers, this was to supposed to occur on the “protected” Indian places, aka the reserves and residential schools. The land roots of Indigenous identity, connection and society were starved and systematically, legally stamped down. Indigenous languages, laws and spiritual beliefs forbidden, and disease decimated the Indigenous populations by more than half. Foreign names were assigned to bands and to people, family relationships destroyed.

**Assimilation:** The goal of advancement was to make Indians and their cultures disappear, since the measure of advancement was how much like a European an Indian had become. When Indians had become indistinguishable from Europeans and all Indians had “advanced” then the ways of controlling them and advancing them (residential schools, DIA, Indian Act etc) would also disappear. The clearest example of the government’s plan to assimilate Indians is the program of “enfranchisement”. “Enfranchisement” means getting the right to vote. Until 1960, this was only one of the rights denied to Indigenous peoples. Many people gave up their Indian status in order to gain the right to vote or gain other “human” rights including:

- The right to buy or homestead land off-reserve
- The right to hold business licenses
- The right to borrow money
- The right to raise money by getting a share of band funds
- The right to buy alcohol
- The right to a better education in public schools
- The right to fight for their country
- The right to have a bank account with more than \$3.00

The Department of Indian Affairs encouraged enfranchisement, because it meant giving up Indian status and moving off reserve. This was also a way of breaking up reserve land. In The 1930s and 1940s DIA practices “forced enfranchisement”, DIA could decide that an Indian was at a high enough stage of advancement to be declared “Non-Indian”. So restricting Indian rights lead many Indians to enfranchise and if an Indian “advanced” despite these restrictions, he or she was declared non Indian. In 1985, most of these “enfranchisements” were removed.

## What does the Indian Act Do?

The Indian Act guarantees government rights, not Indigenous rights. It is almost totally concerned with government’s powers to regulate the lives of Indigenous peoples. It says the government MAY given Indians and Indian bands certain rights, but it also says that the government CAN take them (rights) away. The Indian Act did the following things:

- Sets up the Department of Indian Affairs or DIA (this name has been changed several times) aka INAC (Indian and Northern Affairs Canada) and then that department Indigenous and Northern Affairs and in 2020 its name changed once again into \*\*\*\*
- Defines who is an Indian, sets up a registration system and band membership lists. It set up rules for giving up Indian status
- Makes rules for managing reserves
- Makes rules concerning Indian and band money
- Set up rules for the election of Chiefs and Councillors and outlines their powers and responsibilities
- Governs Indian wills and inheritance
- Set out the rules for Indian education

Although the Indian Act also did the following things, DIA may or may not chose to do them:

- Give the right to be a registered Indian
- Protect Indian land and property on reserve
- Protect the reserve from trespassers
- Gave band councils the right to make by-laws and collect taxes \*\* (sometimes)

## More Importantly the Indian Act does not:

- Protect many Indian rights, the only rights mentioned are those given by the Canadian government. It says nothing about land claims, so Nations go to court to ensure their land claims are upheld
- Does not protect hunting, fishing and trapping rights as they are NOT protected in the act. In fact section 88 says that the provincial laws may take them away. Nations have had to go to court to ensure their rights to hunting, fishing and trapping.
- Does not guarantee social services, welfare, education or economic development, DIA may provide these things but it is not legally obligated to do so. Again Nations, have been going to court to change these issues and have been widely successful.



## INDIAN ACT – A SUMMARY

### Plain Language Summary - Descriptions of the Sections of the Act

#### Section - Summary

3. Administration – The Act is administered by the Minister of Indian Affairs
- 4 Application of the Indian Act. The act does not apply to Inuit (Eskimos)  
The government can decide that any part of the act except the parts dealing with land surrenders does not apply to some Indians or reserves. Indians who live off reserve are not covered by the education and inheritance sections
- 5-16 Definition and Registration of Indians. Concerns Band Lists, protesting additions or deletions to the Band Lists. Defines who is or who is not a status Indian. Describes the transfer of band membership when a woman marries a man of another band. Describes what happened when a person become enfranchised (chooses to give up his/her Indian status)
- 17 New Bands and Amalgamations: DIA can make new bands by splitting or joining together old ones. It decides how the money and lands of old bands are to be given to the new ones.
- 18 – 19 Reserves: Reserve lands are land which the Government has legal title and which have been set aside for the use and benefit of Bands. The Government and NOT the Band decides exactly how the reserve land is to be used, it can choose to use the Band lands for schools, administration offices, burial grounds, health projects. It can use land for other purposes with the permission of the Band.
- 20 - 29 Band Members: Legal Rights to the Reserve Land. In order to own a piece of reserve land, an Indian must have permission of the Band Council and DIA. Describes Certificates of Possession and Certificates of Occupation and transfer of land from one Band member to another. Non -Band members cannot own band land, but if the Band Council agrees, DIA can allow a non-band member to live on or use reserve land for up to a year. Reserve lands cannot be taken to pay off a court judgement.
- 30 – 31 Trespass on Reserves: Fines and court actions in such cases.
- 32 – 33 Sale or Barter of Farm Produce (Prairie Provinces Only)
- 34 Roads and Bridges: Bands are to look after roads and bridges, if they don't DIA can do this work and charge it to the Band. DIA can decide where roads are to go and direct the construction.
- 35 Reserve Land Taken for Public Purposes: When by law, the province or a municipality or a corporation can take land without the owner's consent, then reserve land can be taken in the say way if the Government consents. Any money goes to the Band or Indian who has lost the land.

- 36 Special Reserves: Land set aside for the use and benefit of a Band but not a reserve, is considered a reserve as far as the Indian Act goes.
- 37 – 41 Surrenders of Reserve Lands: Bands can surrender their rights to reserve lands if a majority of Band members (voters) agree at a Band meeting or be referendum. The land can only be surrendered to the Government (even though the Government may then transfer it to someone else).
- 42 – 44 Property of Indians Who Have Died: When a person living on reserve dies, DIA looks after his or her estate.
- 45 – 47 Wills: Indians can make wills, but the will must be accepted by DIA or by a court. DIA can decide that a will or part of it is not valid if the will either gives away band land, was made under force, inflicts hardship on the family of the deceased, is against the public good or was made by a person not of sound mind.
- 48 – 50 Property of Indians Who Die Without Wills: Outlines how money and property are passed on if there is no will.
- 51 Property of Mentally Incompetent Indians: DIA has control over the property of people judged to be mentally incompetent
- 52 Guardianship: If a person under 21 inherits or is otherwise entitled to some property, DIA looks after it until the person is 21.
- 53 – 59 Management of Reserves and Surrendered Lands: Describes DIA's management of surrendered reserve lands. Deals with leases of land for timber, minerals, grazing, farming etc
- 60 Band Control of Reserve Land: If a Band asks for it, and the Government thinks it is desirable the Government can give the Band the right to the amount of control over its lands that the Government deems appropriate. The Government can also cancel any right to control land that it gives to the Band.
- 61 – 69 Management of Indian Moneys: Indian moneys shall be spent only for the benefit of the Band and the Government not the Band decides what is or is not for the benefit of the Band. This section outlines the various ways the DIA, with Band Council approval, can spend Band money (buy land, equipment, make loans to Band members, build houses etc). And what the Band council can spend money on (essentially reserve upkeep). The Government can allow Bands to control their own revenue money, but it can also revoke that control.
- 70 Loans to Indians. Outlines how the Minister of Finance can give money to DIA for loans and what the loans are to be used for (largely economic development)
- 71 Farms on Reserves: DIA can operate farms on reserve, hire people to teach farming and spend farm profits to promote Indian progress and development.
- 72 Treaty Money





- 73 Regulations the Government can Make: The Government can regulate reserve hunting, fishing, trapping, traffic, health services, building and house inspections and even “pool rooms and dance halls”
- 74 – 80 Election of Chief and Band Councils: Describes the way DIA can regulate the elections of Band Chiefs and Councillors. How Chiefs and Councillors can lose their offices. When an election is invalid and who can vote. Once voted in, the Chief and Councillors are accountable to the DIA not the Band members.
- 81 – 86 Regulations the Band council can Make: Bands can, IF DIA AGREES, regulate the health services and disease control, traffic, building division of Band lands, hunting, fishing, trapping etc. Section 83 says that a Band that has according to the government, reached an “advanced stage of development”, can raise money through taxes and licenses, make by-laws governing Band employees. The Government can, if it chooses, cancel any by-laws made by the Bands.
- 87 – 90 Taxation and Special Legal Rights: Describes the taxes, borrowing rights and responsibilities in case of debts of Band Members. All provincial laws apply to Indians except when they contradict the Indian Act or another Federal Act.
- 91 – 92 Trading with Indians: No person can get ownership of an on-reserve grave house, grave pole, totem pole, house post or rock painting without DIA approval, unless these things were made for sale.
- 93 Removal of Materials from Reserves: DIA permission is needed to take gravel, sand, minerals, oil, wood etc from a reserve.
- 94 – 102 Liquor: It was against the law to provide Indians with liquor or for Indians to possess liquor or to be drunk off reserve. This section is no longer in force because of the “DryBones” court case.
- 103- 104 Confiscated Goods: If the police or a DIA employee finds someone selling Band property (section 90) or taking grave items, wood etc (Section 93O off a reserve he can confiscate the goods.
- 105 – 108 Legal Procedures and Jurisdictions: Describes procedures for dealing with cases arising out of the Indian Act.
- 109 – 113 Enfranchisement: Describes how one was to apply for enfranchisement, DIA procedures and the parceling out of the Band lands and funds. This section is no longer in force to due enfranchisement being rescinded with the passing of Bill C-31.
- 114 – 123 Schools and Education: DIA can make agreements with Provincial governments, public or separate school boards, and religious or charitable organizations for the education of Indian children. It can regulate virtually all aspects of schools, require Indian children between 6 to 16 to attend school and appoint truant officers.

## CHANGING TIMES


The traditional First Nations belief systems, especially those on the prairies were also set up to deal almost exclusively with the family groups that lived, traveled and hunted together, and not with larger groups for extended periods of time. The degree of closeness and the number of people involved in a family or even tribal group varied from nation to nation. Many prairie nations such as the Cree, Blackfoot or Blood lived most of the trapping and hunting year in small family groupings or bands, getting together for summer gathering's with other bands of the Nations. These summer gatherings were for trading, socialization, finding marriage partners, renewal of kinship ties and sharing knowledge of outside events. These gatherings led to the formation of ethics or ways of conduct for wider groups of people but did not include more formal rules of behavioral conduct with large groups of people for a sustained time or for total strangers (outsiders). Even a century after contact with Europeans, many northern and western areas had little sustained contact with them. Only after immigrants or settlers started pushing ever westward into Manitoba, Saskatchewan and finally Alberta did the Nations here begin to require protocol for contact with outsiders.

Nations such as the Anishinaabe on the east coast and the Coast Salish on the west had rules of conduct or behaviour with larger extended groups of people due to their ways of living in longhouses or smokehouses, especially during the winter months, as their villages were more permanent settlements. These nations had very formalized and structured rules of behaviour for the family group, the extended family ie in-law relationships and for Bands/Nations with which they had developed strong trading ties. These communities had formed naturally over time and so had developed inter-family behavior expectations, justice systems and social network groups.

The First Nations on the prairies were suddenly faced with the loss of a very specific sense of personal freedom as well as all of the other impacts affecting them in a very short period of time. The bands that lived a hunter-gatherer lifestyle were thrust into communal society (reserve life) with little if any warning and definitely without the time required to adapt and integrate social expectations and rules of interactions. Living in and with nature, requires that one adapts to and follows the demands of nature, most of a family's time spent in acquiring the resources to meet basic daily needs, it requires inter-cooperation and not direct competition with each other.

Living in contemporary communities now requires that individuals submit to an almost never ending and constantly increasing sense of limitations, rules, regulations, determined and imposed by "others: with constant interference, advice and commands being issued. These restrictions have become so much a part of "normal" society for so long that we seldom if ever think about them. Things like stop signs, traffic lights, sidewalks, speed limits, laws against riding in the back of pickups, drinking and driving, are not seen as restrictive but as necessary for communal safety and efficient movement of traffic (either by foot or vehicle) Laws governing our health care system, who may practices medical care and to what degree, who may dispense medicine and what type, are all viewed by modern society as necessary for our own benefit. Contemporary society seemed to believe that the Government needed to protect us against our own poor judgement in these matters.





On reserves, chief and band councils (as designated by the Indian Act) began to determine who would get jobs, administer those jobs, decide who would get houses, where they would be and what they would look like. Parents were told where and when their children would go to school as well as what and how the children would be taught. More and more restrictions were placed on people who had always been in charge of their own affairs, decisions and consequences. Police, social workers, judges, lawyers, doctors, nurses and teachers took over, regulating more and more of each person's life. Decisions were often made by people, groups or agencies that had seldom if ever been on a reserve and certainly not lived on one. Most, if not all bands and urban Aboriginal communities, realized that something must be done to stem the tide of substance abuse, domestic violence, suicide, poverty and disease that affected many reserves. However, many band councils were also reluctant to enact their own laws and thereby contribute to the already existing deprivation of individual freedoms.

It has taken time to adapt thinking to allow for the necessary changes to see laws and law making as promoting community well-being and safety as opposed to increased restrictions and free choice. It has also taken time for First Nation people to go to university and earn degrees in administration, law, medicine, education and social work, but they have done it. Slowly but surely, educated and professional chiefs, council members, educators, medical staff and band social workers have become predominately First Nations on many reserves.

First Nation people living on reserves are becoming more involved and expecting accountability and transparency from their elected leaders. News media outlets of all kinds are being utilized by band members to pressure both the Federal and Band governments to become more responsive to the needs and demands of the people. First Nation doctors are incorporating traditional medicine and western medicine together to give the best of services to their clients. First Nations schools are teaching their own languages, traditions and values. Many other changes too many to name are coming into being, that are improving life on reserves.

Although the Indian Act is still enforce, the gender biases have been largely removed and more power and control has been exerted by Chiefs and councils across Canada.

Bands are exerting their independence and increased self-esteem by regaining their traditional names, negotiating successful land claim settlements and using the court systems to hold the Federal and provincial governments accountable to honoring the treaties. Traditional chiefs and councils such as seen in B.C. are exerting their traditional rights to determine activities and development on traditional lands.

DIA has been renamed and restructured in 2020 into two departments, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and Indigenous Services Canada. The Federal Government has instituted Nation to Nation discussions on a formal and regular basis with national First Nations and Metis Nation governments. The changes are not easy, tidy or clear cut for anyone but there is progress and growth.



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