

Parliamentary Research Branch

PRB 99-23E

THE *INDIAN ACT*

Prepared by:
Mary C. Hurley
Law and Government Division
4 October 1999

TABLE OF CONTENTS

1876-1996: A VERY BRIEF HISTORY

1993-1999: LONG-TERM OBJECTIVE AND INTERIM REFORM

ISSUES FOR PARLIAMENT

SELECTED REFERENCES

THE *INDIAN ACT*

1876-1996: A Very Brief History

The *Constitution Act, 1867* granted the federal Parliament legislative authority over "Indians, and Land Reserved for the Indians." In 1876, the first consolidated *Indian Act* reflected the government's preoccupation with land management, First Nations membership and local government, and the ultimate goal of assimilation of Canada's Aboriginal population. Today, despite numerous legislative changes ^¾ notably in 1951 and 1985 ^¾ the 1876 framework has been preserved fundamentally intact. The *Indian Act* remains the principal vehicle for the exercise of federal jurisdiction over "status Indians," and governs most aspects of their lives. It defines who is an Indian and regulates band membership and government, taxation, lands and resources, money management, wills and estates, and education.

The deficiencies of the *Indian Act* have been well documented. Aboriginal peoples

object to its inherent paternalism. Government officials also acknowledge the Act's limitations as a framework for relations with First Nations. While serving as an instrument of assimilation, however, the Act has also provided certain protections for First Nations. These conflicting roles, together with the differing views of Aboriginal self-government adopted by federal authorities and First Nations in the modern constitutional context, intensify the complexities of *Indian Act* reform.

1993-1999: Long-Term Objective and Interim Reform

Throughout the 35th Parliament, the former Minister of Indian Affairs stated his commitment to eventual abolition of the *Indian Act*. Negotiations toward that end have been underway in Manitoba, the "pilot" province, since 1994. Notwithstanding this objective, in December 1996, Bill C-79, the Indian Act Optional Modification Act, proposed significant "interim" modifications to the *Indian Act* in several areas, including band governance, by-law authority and legal capacity, and regulation of reserve land and resources. First Nations opposed the legislative process from the start. To a degree, the bill as tabled responded to this opposition, both in its reduced scope from that of initial proposals, and in its unusual "all or nothing" optional scheme whereby the bill was to apply only to First Nations that elected to be governed by it, rather than to all First Nations, as had originally been envisaged.

Despite these adjustments, an apparently strong majority of First Nations across the country either remained firmly opposed to Bill C-79 in its entirety, or found it seriously flawed. The bill was criticized as an unwanted initiative, based on inadequate consultations, that ignored the recently released Report of the Royal Commission on Aboriginal Peoples, and its authors' caution against piecemeal reform of the *Indian Act* as a viable policy. First Nations spokespersons also objected to the bill as a potential threat to the inherent right of self-government, as well as to other Aboriginal or treaty rights, and as a perpetuation of government paternalism.

Bill C-79 died on the order paper prior to second reading with the dissolution of Parliament in April 1997. No analogous legislation has since been introduced.

Parliament has, however, modified the scope of application of the land management regime in the *Indian Act*. In February 1996, 13 First Nations from British Columbia, Alberta, Saskatchewan, Manitoba and Ontario entered into a Framework Agreement on Land Management with the Minister of Indian Affairs. A fourteenth First Nation from New Brunswick joined at a later date. The agreement was intended to give the First Nations control over reserve lands and resources and thus end ministerial discretion under the *Indian Act* over land management decisions on reserves. Enabling legislation to give effect to the Framework Agreement was enacted by Parliament in June 1999. Under the *First Nations Land Management Act*, land-related provisions of the *Indian Act* cease to apply to signatory First Nations that have enacted a land code in accordance with the terms of the *FNLMA*.

Issues for Parliament

In May 1999, then Minister of Indian Affairs Jane Stewart expressed unwillingness to proceed with unilateral changes to the *Indian Act*, an approach that had been tried and found wanting. The current Minister, Robert Nault, has expressed the government's

openness to dismantling the Act, suggesting that decisions on significant modernizing changes to refashion the relationship between government and First Nations could be made during the coming parliamentary session. First Nations reaction to a renewed legislative initiative may be expected to hinge largely not only on the nature and scope of the reform *per se* but on the extent of their involvement in designing any reform package.

Priority areas of ongoing concern to Aboriginal groups under the present *Indian Act* are also worth noting. These include issues associated with 1985 amendments to membership rules aimed at eliminating gender-based discrimination, ensuing population increases, land and other resource shortages; governance and electoral issues; land management issues; taxation; the scope of application of provincial legislation to First Nations; and legislative gaps in matrimonial property matters.

Selected References

Moss, Wendy and Elaine Gardner-O'Toole. *Aboriginal People: History of Discriminatory Laws*. BP-175E. Parliamentary Research Branch, Library of Parliament, Ottawa, November 1991.

Wherrett, Jill. *The Indian Act: Proposed Modifications*. BP-433E. Parliamentary Research Branch, Library of Parliament, Ottawa, January 1997.