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S867
1955
C.1

**Summary of Indian treaties : discussion of
amendments to Indian Act**

[Ottawa : Department of Citizenship and Immigration],
1955-56.

Claims and Historical Research Centre: X.80

X.80

E92 S867 1955 C1

Appendix 7

(CHR # X-80)

Notes on the Federal Position with respect to Native People in Newfoundland and Labrador

1949

During negotiations leading to Newfoundland's entry into Confederation the federal government's constitutional jurisdiction and responsibility for native people in that province was left aside for future consideration. At that time, the legal disabilities suffered by Indians and Inuit throughout Canada did not obtain in Newfoundland. Communities were integrated and most natives had mixed blood. The province delivered the same services to natives as to other Newfoundlanders. Since the situation was more benevolent to native people in Newfoundland than in Canada and since provincial responsibility, integration and assimilation were federal policy thrusts, the federal government did not move to assume responsibility. The province did not encourage the federal government to assume responsibility as it wished to maintain the homogeneity and harmony of its mixed communities. No special mention of natives was made in the Terms of Union.

1950-1954

The province agreed to carry on administration of services to native people in Labrador provided that the federal government supplied a reasonable grant for that purpose.

- The federal deputy minister of Justice provided a legal opinion (attached) stating that the federal government has exclusive legislative and executive authority to formulate policy and enact legislation with respect to Indians and the responsibility to carry out those policies including providing any necessary funds.

This legal opinion was doubted in some circles.

As a stop measure, a temporary ad hoc arrangement was entered into with the province between 1950 and 1954 to provide relief and health programs for Indians and Inuit in Labrador.

Negotiations to re-examine the issue began in 1953. Walter E. Harris, Minister of Citizenship and Immigration stated the federal position that the government was under no legal requirement to assume responsibility.

1954-1959

On April 12, 1954 J.W. Pickersgill, the Secretary of State for Canada wrote to the Newfoundland Minister of Public Welfare offering to re-imburse the province for health and capital expenditures for native people in Labrador for ten years. The province was to re-assume its obligation to provide relief. This was seen as a terminal obligation which in no way recognized constitutional responsibility. The move to terminate payment was concurrent with the government's policy of enfranchisement in other parts of Canada.

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1959, Newfoundland exhausted its allocation for capital and asked for an increased allocation. This request was immediately acceded to because of continuing debate on the degree of federal responsibility.

A letter from Ellen Fairclough, Minister of Citizen and Immigration to J. W. Pickersgill, Solicitor General dated March 21, 1962 (attached) reflected that it had been the traditional federal position since 1949, that is that Indians in Newfoundland were enfranchised and that without specific mention in the Terms of Union there was no jurisdiction nor responsibility lying with the federal government. The provision of funds was considered a special measure for Newfoundland. Later memoranda in departmental files assume that this position had been accepted by both parties to the constitutional negotiations and label payments to the province as "ex gratia assistance to a depressed area".

On October 15, 1963 Myles Murray, Newfoundland Minister of Public Welfare wrote to Judy Lamarsh, Minister of National Health and Welfare and Guy Favreau, Minister of Citizenship and Immigration (copies attached) requesting renewal of the 1954-64 health agreement and re-imburement for capital expenditures between 1959 and 1964 and reimbursement for future capital expenditures.

In his February 25, 1964 letter to G.A. Frecker, Newfoundland Minister of Education, (copy attached) J.W. Pickersgill suggested that the situation of Indians at Northwest River be re-examined "in light of the constitutional obligations of the government of Canada". In the months following this Cabinet colleagues did not go as far as to recognize a constitutional obligation. They declined to act on a recommendation to refer the jurisdiction issue to the Supreme Court of Canada, preferring neither to assert nor deny jurisdiction.

On March 23, 1964 Premier Smallwood wrote to Prime Minister Pearson (copy attached) asking that the federal government either assume complete responsibility for native people in Labrador or provide the same per capital payments to the Newfoundland government as would be made by the federal government for Indians and Inuit in the rest of Canada. The first alternative was considered an abrupt departure from the earlier provincial position and was seen as a bargaining point only. On August 10, 1964 Prime Minister Pearson responded (copy attached) by confirming continuing financial support and expressing the desire to maintain provincial administration. The general thrust in federal native policy was towards increased provincial participation in the form of delegated administrative authority. Newfoundland was considered to be at the terminus of this process which was just beginning in other provinces. Memoranda at that time suggested it would be a backward step for the federal government to assume administrative authority in Newfoundland.

In preparing the submission to Cabinet to enter into new arrangements with Newfoundland, a further legal opinion on the federal government's

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sought from the deputy minister of Justice. His reply
1, 1964 (copy attached) confirmed the 1950 opinion of
that the federal government had legislative jurisdiction
that whether the government chose to exercise that
by formulating and carrying out policies was a policy
than legal issue, hence creating no obligation.

Annual Cabinet submission suggested that native people in Labrador
likely Indians within section 91(24) and that it would be unfair
treat them as enfranchised or Metis as they had never had the choice
relinquish status. It recommended increased financial assistance
to the province.

1965-1970

A five year agreement to re-imburse the province of Newfoundland for
medical and hospital services for native people in Labrador and to
cost share certain previous capital expenditures and future community
development programs was entered into through an exchange of letters
dated May 25, 1965 and June 2, 1965, ratified by order-in-council
-- PC 1965-1298 (copies attached). As the cost share ratio varied for
Inuit and Indian communities, owing to the mixed population of the
Inuit communities those communities were listed in the letters of
agreement: being Hopedale, Postville, Nain and Makkovik. From
previous experience it was understood that the Indian communities
covered were North West River and Davis Inlet in Labrador. This
agreement was not considered to be a precedent for future action.
Renegotiation after five years was to permit de-escalation.

In 1968 the letters of agreement were amended by order-in-council
-- PC 1968-598 (copy attached) to cover the Inuit community of Rigolet.

1970-1980

Both the health and community development agreements were renewed for
-- five years by order-in-council PC 1969-2081 (copy attached).
In 1972, the mixed Inuit community of Black Tickle was added to the
agreement coverage by a further exchange of letters between Premier
-- Moores and Prime Minister Trudeau (copies attached). In 1973, the
annual maximum contribution by the federal government under the
community development agreement was increased from \$1 million to \$1.5
million by Treasury Board Minute 722116.

Also in 1973, the Indian community of Conne River on the island of
Newfoundland was added to coverage of the agreement by an exchange of letters
with costs to be shared on an 85:15 basis to reflect the non-Indian
population in the community. More information on this is
-- provided in the attached appendix.

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maximum annual federal contribution for the community agreement was increased to \$4.5 million, the health and development agreements were extended until March 31, 1980. The Indian community of Mud Lake was added by Treasury Board Minute 77661 (copy attached).

present

The health agreement was split off from the community development agreement for separate treatment. By Treasury Board Minute 771320 and order-in-council PC 1980-2/1868 the community development agreement was extended from April 1, 1980 to September 30, 1980 (copies attached). By Treasury Board Minute 774199 and order-in-council PC 1980-3/3393 the community development agreement was further extended to February 28, 1981. (copies attached). A further extension of one month to March 31, 1981 was authorized by Treasury Board Minute 776365 and order-in-council PC 1981-5/862.

By Treasury Board Minutes 778081 and 778082 and orders-in-council PC 1981-1844 and PC 1981-1845 authorization was given to enter into the present agreements for Labrador and Conne River respectively. The reasons for splitting the community development agreement into two are discussed in the attached appendix which deals with Conne River. Coverage of Black Tickle and Mud Lake was dropped after a re-examination of the level of native population. Both Agreements were signed on July 4, 1981 retroactive to April 1, 1981.

The new formal Agreements are a departure from the previous exchange of letter arrangements. The province was desirous of a more formal agreement and the federal government wanted a more effective version of the previous arrangements. The federal government wanted the agreements to reflect the new policy thrusts of Native input and participation in program development and delivery and of promotion of Native local government. -- (copies of both Agreements are attached).



CANADA

PLEASE QUOTE

FILE 9001-1
(Est.)

Director
W.S.B.

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

Ottawa , January 12, 1956.

MEMORANDUM TO R.T.:

The draft Bill you showed me this morning was my first intimation that amendment to Section 4 of the Indian Act was to be made as indicated.

My previous discussion in the Deputy Minister's office was based on the proposed amendments dated November 4th, 1955, in which no mention is made that Sections 42 to 52 were not to apply.

May I suggest for your consideration the following:-

1. Who is to determine whether a person is "ordinarily resident" on a Reserve - and what does it mean?
2. Can see difficulty in keeping proper track of land sales or maintaining proper records of transfers, etc.
3. If the Minister is not to have the jurisdiction who has? The Provincial Courts, and if so, by what authority if Section 44 does not apply.
4. If descent and distribution provided by the Indian Act is not to apply in these cases, consider Section 48. Provincial intestacy laws are different; vary according to the province, and do not provide the protection afforded by the Indian Act to widows and children, whether legitimate or otherwise.
5. Take away the Minister's approval as provided for in Sections 49 and 50 and you will have confusion.
6. Without Section 52 many difficulties could arise - separation of spouses, children on the Reserve, etc.
7. The discretionary power of the Minister has been eliminated.

While I am in accord with what I believe to be the intention, it is my opinion the present wording of the proposed amendment

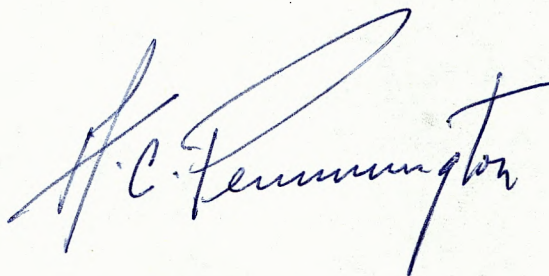
MEMORANDUM TO R.T. (Cont'd)

January 12, 1956.

would create greater problems in estates and land matters than any benefits which might accrue.

Other points I might mention for consideration are -

- (a) The Interpretation Section should be amended to provide for the proposed amendment to Section 16 and state -
 - 2(b) "child" includes an adopted Indian child.
- (b) I do not see any reference to the Minister's authority to partition, as was approved by the Deputy Minister during the interview above mentioned.
- (c) The effect of the Star Chrome and related cases should be the subject of further review by our Legal Adviser before the Bill dealing with the elimination of Sections 42 - 52 in certain cases is approved.



A. C. Pennington,
Estates Section.

Enfranchisement

The interpretation to be given sections 108 to 111 inclusive of the Act has been studied, and it is agreed the sections as worded are somewhat contradictory and leave something to be desired.

Section 110 appears to be the one requiring clarification. Regardless of its wording the intention was to provide that if the council of a band consented, an Indian, on enfranchisement, could retain his land holding on the reserve on payment at the date of his enfranchisement of an amount representing the band interest in the land on condition that he would not receive title in fee simple until ten years after the date of his enfranchisement. It was intended that subsections (1) and (2) of this section would apply only to individual enfranchisements under section 108. Section 111 was intended to be something entirely different wherein the question of patenting lands, payment of funds, etc., would be covered by the plan approved by the band. In short, section 111(1) was intended to be more or less of an omnibus section which would fit the differing circumstances in the case of different bands.

It is therefore recommended that whatever steps are necessary be taken to clarify section 111 to show that it is not subject to the provisions of sections 108 or 110.

It is further recommended that section 110 be revised, and the following revision is suggested:-

Section 110

(1) Subject to the provisions of subsection (2) upon the issue of an order of enfranchisement made under section 108 any interest in land..... determine.

(2) Upon the issue of an order of enfranchisement under section 108 the Minister 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 or over which he exercised rights of ownership shall cease to be Indian reserve lands provided the enfranchised Indian pays to the funds of the band within sixty days of the date of the order 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, such payment in all cases to constitute a charge against any moneys payable to the enfranchised Indian under the provisions of section 415.

(3) When the provisions of an order made under subsection (2) have been met, the enfranchised Indian is entitled to occupy such lands, and at the end of a ten-year period from the date of his enfranchisement the Minister shall cause a grant of the lands to be made to him or to his legal representatives.

Comment

The suggested new section embodies several changes and new ideas:-

1. It states clearly that the provisions of section 110 apply only to cases of enfranchisement under section 108.

2. It clarifies the disposition of the land holdings of an Indian who is enfranchised by indicating that unless the council agrees to give him title to his lands, they must be sold.

3. As the present section stands, the wording of subsection (2) implies the necessity of having two orders in council, one, the enfranchisement order and second, an order concerning the lands. The revised section suggests "Minister" be substituted for "Governor in Council" in making the order concerning the land.

4. The present subsection (3) is so worded that it could be argued the payment per acre can be made at any time during the ten-year period. This was never the intention, and we have incorporated the payment idea in the new subsection (2) and are suggesting it be inserted as a condition to the order so that in the event payment is not made the order will lapse and subsection (1) of section 110 becomes operative. We have suggested sixty days as a sufficient period for the payment as in nine cases out of ten, the payment will be made from funds coming to the Indian on his enfranchisement. It will be noted we have added words to make this payment a charge on the moneys payable to the Indian under section 115. This idea was in the former Indian Act in subsection (8) of section 110.

5. It is difficult to see why it was necessary to state in former subsection (3) that the enfranchised Indian was entitled to occupy the lands "for ten years". Actually, he can occupy them forever, the ten year period only being material as the date on which he secures fee simple. We are therefore suggesting the words be deleted and that the first part of subsection (3) be incorporated with subsection (4).

6. We have included in subsection (2) lands over which an Indian is exercising rights of ownership. This will bring it in line with subsection (1).

B I L L

An Act to amend the Indian Act.

R.S. c.149
1952-53,
c. 41.

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

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

Application
of Act.

"4. (1) A reference in this Act to an Indian does not include

(a) any person of the race of aborigines commonly referred to as Eskimos ~~or~~

(b) any person who is ~~not a Canadian citizen, does not come within paragraph (f) of section 11 and, on the coming into force of this paragraph, was not registered.~~"

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

"(3) Sections 42 to 52 and ^{in any case sections} 113 to 122 do not apply to or in respect of any Indian who does not ordinarily reside on a reserve or on lands belonging to Her Majesty in right of Canada or a province."

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

"may, by notice in writing to the Registrar, containing a brief statement of the grounds therefor, protest the inclusion, omission, addition, or deletion, as the case may be, of the name of that person, and the onus of

To be re-written
Certain sections inapplicable to Indians living off reserves.

except where otherwise ordered by the Minister

establishing those grounds lies on the person making the protest."

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

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."

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

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

(2)

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

Protest re illegitimate child.

"(1a) The addition to a Band List of the name of an illegitimate child of a female person may be protested at any time within twelve months after the addition and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under paragraph (e) of section 11."

described in para (e) of sec 11

Coming into force.

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

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

Admission to band and transfer of membership.

"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."

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

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

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

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.

new sub-sec 3 to cover cases in which → ~~(3)~~ (4) 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). *By sub-sec. 3*

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

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."

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

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.

✓
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."

9. amend (2) of 28

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

"39. (1) A surrender is void unless

How
surrender
made.

- (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."

10. Section 40 of the said Act is repealed and the following substituted therefor:

Certification of surrender.

Not necessary

"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 Minister for acceptance or refusal."

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

Deceased Indian may be deemed to have been lawfully in possession of land.

"(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 or after the coming into force of this Act."

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

"Child" defined.

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

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

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,"

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

"(j) to construct houses for members of the band, to make loans to members of the band for building purposes with or without security and to provide for the guarantee of loans made to members of the band for building purposes, and".

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

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."

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

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,".

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

Recovery of moneys expended or raising or collecting Indian moneys.

"66A. Where money is expended by Her Majesty for the purpose of raising or collecting Indian moneys, the Minister may authorize the recovery of the amount so expended from the moneys of the band."

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

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

~~17.~~ (2) Subsection (5) of section 69 of the said Act is repealed and the following substituted therefor:

Limitation.

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

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

✓ (m) for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes."

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

Elected Councils.

"73. (1) Whenever he deems it advisable for the good government of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act.

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."

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

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

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."

*Suggested change
will be discussed with
Minister by Mr. Coates.*

O.K.

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

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

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

Removal of
material
from
reserve.

" Removal of material from Reserves.

92. A person who, without the written permission of the Minister or his duly authorized representative,

(a) removes or permits anyone to remove from a reserve

(i) minerals, stone, sand, gravel, clay or soil, or

(ii) trees, saplings, shrubs, underbush, timber, cordwood or hay, or

(b) has in his possession anything removed

from a reserve contrary to this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment."

22. Sections 93 to 97 of the said Act are repealed and the following heading and sections substituted therefor:

" Intoxicants.

Sale or
manufacture
of
intoxicants.

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

(a) 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

(b) 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.

Provincial
laws
applicable.

94. (1) Subject to the provisions of sections 93 to 97, all laws of general application relating to intoxicants from time to time in force in any province are applicable to and in respect of Indians in the province.

Operation of
95 to 97.

(2) Sections 95 to 97 cease to be in force in a reserve if declared by proclamation of the Governor in Council to be no longer in force therein, but are again in force in such reserve if declared by further proclamation of the Governor in Council to be in force therein.

Issue of
proclamation.

(3) A proclamation shall be issued under subsection (2) in accordance with a request of a majority of the electors of the band, ^{acting as a} made by referendum, that sections 95 to 97 cease to be in force or be brought into force, as the case may be.

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 this section ^{and of sec 95 to 97} to consist of one or more reserves or any part thereof, or any area occupied by a band or a group of Indians.

Sale on a reserve.

95. A person who directly or indirectly by himself or by any other person on his behalf knowingly sells, barter, supplies or gives an intoxicant to any person 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.

Possession
on a reserve.

96. 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.

Exception.

97. The provisions of this Act relating to intoxicants on a reserve do not apply where the intoxicant is used or is intended to be used in cases of sickness or accident."

1952-53,
c.41, s.5.

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

" Forfeitures and Penalties.

Seizure
of goods.

101. (1) Whenever a peace officer or a superintendent or a person authorized by the Minister believes on reasonable grounds than an offence against section 33, 89, ~~93, 94 or 98~~ ^{92, 93, 95 and 96} has been committed, he may seize all goods and chattels by means of or in relation to which he reasonably believes the offence was committed."

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

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,

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

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

"(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage and on the recommendation of the Minister may by order declare that all or any of her children are enfranchised as of the date of the marriage or such other date as the order may specify."

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

Enfranchised
person ceases
to be Indian.

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

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

Schools.

"113. (1) The Governor in Council may authorize the Minister, in accordance with this Act, to enter into agreements on behalf of Her Majesty for the education in accordance with this Act of Indian children, with

- (a) the government of a province,
- (b) the council of the Northwest Territories,
- (c) the council of the Yukon Territory,
- (d) a public or separate school board, and
- (e) a religious or charitable organization.

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

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

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

Repeal.

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

INDIAN CONFERENCE
Wednesday, December 14, 1955

MAIN POINTS DISCUSSED

ENFRANCHISEMENT:

1. Mr. Paull and Chief Crowe requested that all applications for enfranchisement should go to the council for their approval or rejection. They were assured that all individual applications for enfranchisement would be brought to the attention of the band council for their opinion.
2. A number of delegates spoke against compulsory enfranchisement as provided by Section 112. The delegates were unanimously against the provisions of this section. They were advised that their opinion would be brought to the attention of the Minister.

EDUCATION:

1. There was considerable discussion on education, particularly with respect to the role of residential and day schools and joint education in public schools. Mr. Paull requested more residential schools for British Columbia. Mr. Calder also mentioned the need for a residential school for the Prince Rupert area. The delegates were advised of the present practice with respect to day and residential schools and the entering into agreements for the education of children in non-Indian schools. They were also informed of the Survey Committee established to look into educational matters.
2. Section 117: Some delegates wanted to have Section 117 interpreted and stated the parents should have the right to send their children to a school of their choice regardless of faith.

They were informed that Section 117 was being studied carefully from an administrative point of view concerning its application.

3. Section 118-122: The question of truancy was raised by two delegates. A local problem on one reserve was to be looked into by the Regional Supervisor.

SECTION 67:

1. Chief Carlow stated that there should be something in the Act to enable land belonging to an individual Indian to be used for the benefit of the family in cases of desertion. He asked that this be looked into and considered for amendment.

2. Loans to Indians: Chief Crowe asked that consideration be given to assisting Indians to become established in agriculture where the band has insufficient funds to do so.

2. There was also considerable discussion regarding loans to Indians on grain stored on the reserve. The procedure it is hoped to work out with the banks was outlined to the delegates.

3. There was also a request from Chief Carlow to find some means of realizing on loans made by the band to individual members many years ago which are in default. He was advised that this matter would be studied.

SECTION 66:

1. Mr. Paul claimed that Indians living on reserves and earning their income off the reserves could not be taxed legally and asked that the tax money be returned. He wanted to know whether they could initiate a test case and use band funds on the same basis as used in the Jay Treaty case. He was advised that his request would be brought to the attention of the Minister.

HUNTING, TRAPPING AND FISHING:

There was considerable discussion on hunting, trapping and fishing and some local problems noted.

MEDICAL:

In the afternoon Dr. Moore and Dr. Proctor, Indian Health Services, discussed health matters with the delegates.

RE AMENDMENTS TO THE INDIAN ACT
POINTS ARISING DURING DISCUSSION AT INDIAN CONFERENCE

SECTION 4

There was some discussion on whether proposed subsection (1) (b) would be retroactive and it was agreed that it should not be.

SECTION 4 - Proposed subsection (3)

Mr. Paull objected to this on the grounds that it would cause hardship to some Indians.

SECTION 9

Chief Beauvais suggested that there should be a further appeal than just to the county court judge, and several other delegates agreed with him. However, Chief Beauvais also suggested that he would be agreeable to having the final decision made by the Minister. This point was to be brought up later in the meeting, but no further discussion took place on whether there should be an appeal from the county court judge.

SECTION 11 (e) AND SECTION 12

The following vote was recorded on the proposed amendment to section 11 (e) and section 12:

- (1) In favour of the Act as it now stands - 5;
- (2) In favour of the proposed amendment - 17.

Note: Chief Barker voted twice for both No. 1 and 2.

- (3) In favour of the proposed amendment, subject to a waiting period of three months between birth and registration on a band list - 5.

Mr. Paull and Chief Garlow were in favour of these provisions being made retroactive.

SECTION 11

Councillor McDougal, Alberta, cited the case of an Indian woman who is enfranchised with her children. She later marries an Indian and thereby gains Indian status, but her children are considered non-Indian. He asked whether there could be a change to allow such children to enter the band. The Minister indicated that possibly this would come within the proposed amendment to Section 108 and suggested that it be brought up later. However, Councillor McDougal did not raise the point when Section 108 (2) was dealt with.

SECTION 18 (2)

It was suggested by Councillor Herkimer and generally agreed by all present that the Minister should be able to authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs and Indian health projects and, with the consent of the council of a band, authorize the use of lands in a reserve for any other purpose for the general welfare of the band.

SECTION 20

Mr. Paull objected to the power given to the Minister under subsection (4) to set conditions when a Certificate of Occupation is given. He stated that this was a restraint on personal liberty and suggested that any conditions that the Minister might be able to impose should be set out in the Act.

SECTION 50

Chief Beauvais asked that consideration be given to having something in the Act to ensure that property inherited by a person not entitled to reside on the reserve is sold. The case he cited had to do with property inherited before 1951. He was advised that this matter would be studied.

SECTION 58 (3)

There was considerable discussion with respect to individual leases, and it was suggested by Chief Garlow and agreed to by some other delegates that the council should have an opportunity of passing upon all leases before they are made. It was suggested to him that rather than amend the Act the matter could be taken care of

This not quite correct - refers to woman who marries & has property -

administratively by having all leases brought before the band council so that they would have an opportunity to comment on the lease before it is finally approved.

Councillor McDougal, Southern Alberta, on three different occasions spoke of the difficulty young Indians had in getting started in farming because of lack of machinery, quota on wheat, and other handicaps. He suggested that a clause be put in to enable bands to lease land where there are no allotments and have the proceeds set aside for individual Indians so that they could start up farming later. This suggestion was not dealt with further.

SECTION 64

Chief Carlow raised the question of collecting on loans that were made from band funds years ago. He advanced the idea that the council should be able to take over the property of an Indian in default and rent the property using the proceeds to retire the loan. What in effect he seemed to want was some authority to put land of Indians in debt to band funds into receivership. The Minister indicated that the law would be looked into to see what could be done.

Chief Crowe suggested that the amount of security required under paragraph (h) was too high.

SECTION 66 (2)

It was generally agreed that the wording of the proposed amendment with respect to payment of Unemployment Insurance contributions was not too clear; that all that was necessary was a provision to enable contributions to be made on behalf of persons employed by a band. This point was to be taken up with Justice for rewording.

SECTION 74

Chief House asked that Section 74 be changed to permit the filing of nomination papers. He was told that this could be done by regulation under Section 75 and would be considered.

SECTION 76

There was considerable discussion on the interpretation to be placed on "ordinarily resident" with respect to members of a band voting

in band elections. The Minister stated he would be prepared to consider an amendment to the Act or the regulation to provide that if a band wanted all members to vote, they could do so.

SECTION 77

There were two views expressed: (1) that the term of office of two years was too short; and (2) that a term of one year should be permitted where a band desire to have a shorter term. The Minister indicated that he was prepared to consider some permissive amendments if there was evidence of the Indians really wanting a longer term.

LIQUOR PROVISIONS

There was considerable discussion with respect to the application of the law when amended in treaty areas. With respect to bringing liquor on reserves, the Minister indicated that in those areas where the treaties make reference to prohibition of liquor on reserves a vote of the electors of each band would be taken as a matter of course. Whether this should be written into the Act or left as a matter of administrative policy might be worth considering.

There is another point and that is the possible legal sale of liquor on a reserve where the Indians can bring it onto the reserve. The Minister indicated that for the time being he was not in favour of liquor outlets being established on a reserve.

The third point arising out of the discussion was whether the Minister should have some authority to prohibit the sale to and consumption of intoxicants by Indians in areas where they have no reserves--the nomadic Indians who live on Crown land.

SECTION 101

Mr. Paull objected to the words: "or is about to be committed" as being too indefinite and may be open to abuse. The Minister agreed that the point made by Mr. Paull would be taken up with Justice, but if such wording was used in other statutes, then a similar wording should be included in the Indian Act.

SECTION 108

Councillor McDougal, Councillor Herkimer and Chief Crowe raised the question of children being enfranchised with their parents. They were of opinion that the children should be able to decide for themselves when they grow up whether to become enfranchised or remain a member of the band. They considered it was unjust to deprive the Indian children of their Indian heritage without having some say themselves.

SECTION 112

There was considerable discussion on enfranchisement under this section. There was general opposition to this section on various grounds, such as dislike for compulsion and also that the Indians are not yet ready for group enfranchisement. Councillor Herkimer suggested that the Indians are not yet ready for enfranchisement under this section and accordingly the section should be dropped, and if later on the Government deems it advisable to have such a provision, then it could always be re-enacted.

Ottawa, December 23, 1955.

MEMORANDUM FOR

THE MINISTER

I have now had an opportunity of reviewing the suggested amendments to the Indian Act with Colonel Jones, Mr. Brown, and Mr. Fairholm of the Indian Affairs Branch, and Mr. Couture.

In reviewing the suggested amendments we have taken into consideration the comments made by the Indians at their meeting in Ottawa last week.

Regarding clause 1 (1) amending section 4 (1) of the Indian Act, the Indians had no objection to this amendment and suggested that it should not be retroactive. Of course, an amendment is not retroactive unless it is especially specified to be and, consequently, the proposed amendment would only concern cases coming to our attention after the new amendment comes into force.

Concerning clause 1 (2) amending section 4 (3), this amendment was favourably received by the Indians generally, except for Andy Paull who stated that, in the case of estates, it might be a cause of hardship to some Indians. We really cannot see how this would cause hardship and besides the Minister already has jurisdiction under section 44 of the Indian Act to have Indian estates administered in the same way as non-Indian estates. You will agree with me that Mr. Paull's objection was not too serious and, therefore, I recommend that the suggested amendment be approved.

Regarding clause 2 (1) dealing with section 9 (1) (c), this amendment was approved by the Indians.

The amendment in clause 2 (2) adding subsection (5) to section 9 has also been agreed to by the Indians.

Regarding section 9, you will recall that Chief Beauvais suggested that there should be an appeal from the county court decision and several other delegates agreed with him. Chief Beauvais even stated that the final decision should rest with the Minister. Although there may be some merit in this suggestion, it is felt that it might prove to be quite costly to the Indians and I think we had better wait to see how the courts will handle the protests before making a further change to this section.

O.K. When reviewing section 9 yesterday, it was suggested that paragraph (3) of section 9 should be amended. As you will realize, by amending section 9 (1) as suggested the onus of proof rests on the person making the protest. However, if the decision of the Registrar was referred to the county court judge, it could be that the person asking for the reference might not be the person who would have made the protest. Therefore, it would seem logical to suggest an amendment to paragraph (3) of section 9 to affirm that the person who would ask for the case to be referred to the county court judge to have the onus of proof. If you agree, I will ask the Department of Justice to draft the necessary amendment.

Regarding clause 3 dealing with the amendment to section 11 (e) and adding subsection (1a) to section 12, it may be said that after considerable discussion the amendment was agreed to by a vote of 17 against 5. I would, therefore, recommend that the amendment as suggested be accepted.

It will be suggested to Justice that in subsection (1a) of section 12 the words "or inclusion in" in the first line be deleted as this would not apply to this type of case.

I may add en passant that Andy Paull suggested that this amendment be retroactive in view of the large number of illegitimate children - 200 I believe he mentioned - on his reserve. You will be interested to know that Mr. Brown reports that since 1951 only 17 illegitimate children have been registered as Indians. This amendment should not be retroactive and should apply only to persons born after the coming into force of this amendment.

I agree
P.

There were no objections from the Indians to clauses 4 and 5 suggesting amendments to sections 13 and 17 of the Act. I would, therefore, recommend that these amendments be approved.

With regard to clause 6 dealing with subsection (2) of section 18, the Indians objected stating that the words "for any other purpose....." were too broad and suggested that they would have no objection to the Minister authorizing the use of lands for Indian schools, administration or health projects or for any other specified purpose, but they felt that it was giving the Minister quite a broad authority in saying "for any other purpose" for the general welfare of the band. They have, therefore, suggested that this subsection be amended to read:

"(2) The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian health projects or, with the consent of the Band Council, for any other purpose....."

O.K.

We have agreed to this suggestion. When reviewing this section further yesterday, it was felt that, in view of past difficulties, we should add after the words "the administration of Indian affairs" the words "burial grounds and". It is felt that this is necessary as some majority groups might decide against giving lands for cemetery to minority church groups and I do so recommend.

Regarding clause 7 suggesting an amendment to section 20(5) after discussing the proposed amendment with those mentioned on the first page, it was felt that we would make quite a drastic change in the Act by changing the word "shall" to "may". If you take a look at section 20 you will note that the Council of a Band may allot land to an Indian. The Minister, upon receiving such a recommendation, may under subsection (2) issue a certificate of possession and ^{SUB} section 5 provides that if he does not issue a certificate of possession he shall issue a certificate of occupation. If "shall" was changed to "may", it would mean that the Minister could refuse to take action as recommended by the Council of a Band and the allotment system would, as a consequence, become non-operating. The word "shall" is required in ^{SUB} section 5 in view of the fact that ^{SUB} section 2 gives discretion to the Minister to refuse a certificate of possession.

When the Act was revised in 1951, this was done purposely in order to encourage more and more the allotment system in Indian Bands. The Indians slowly accept this new system which certainly served as an incentive to individual Indians to work their land as allotment is equivalent to ownership and improve the land allotted to them. I, therefore, recommend that no amendment be made to section 20.

I concur
P.

We had no amendment suggested to section 25, but you will recall that Chief Beauvais raised the problem of Indian women who, prior to 1951 married non-Indians and became non-Indians and are still in possession of land. I would hesitate to disturb a person who, under the previous Act, was in lawful possession of a piece of land on a reserve. However, if this were necessary, it could be done, according to Mr. Couture, under section 31 as, under the new Act, section 25 states that Indian women who marry white men and are now enfranchised are certainly not entitled to reside on a reserve. I would, therefore, recommend no amendment to section 25.

O.K.
P.

Regarding clause 8, the Indians have accepted the suggested amendments to sections 26 and 27 and I recommend that the amendments as drafted by Justice be approved.

O.K.
P.

Regarding clause 9 dealing with an amendment to section 39 the Indians have also approved the suggested amendment and I recommend that the amendment as drafted by Justice be approved.

I may point out here that you reported to me that Mr. Harris was somewhat disappointed with the drafting of this section. If you read section 39(2) you will note that there is reference to a meeting pursuant to section 51 of the Act which was in force prior to 1951. This was to cover the cases of Six Nations and Cockshutt Farm Equipment Limited. In other words, it means that the meeting held prior to 1951 could be looked upon as a first meeting and the Minister could now call a second one and the electors present at such a meeting would decide whether or not there should be a sale to Cockshutt Farm Equipment, Limited. I believe this covers the point raised by Mr. Harris.

O.K.
P.

Clauses 10, 11 and 12 suggesting amendments to sections 40, 42 and 48 were agreed to by the Indians and I recommend that the amendments as drafted by Justice be approved.

O.K.
P.

Regarding clause 13 amending section 58(1), the suggested amendment was agreed to by the Indians. However, they raised the question of cultivating or leasing the farm of certain individual Indians when the land has not been allotted under section 20 and give the profits to individual Indians. The officials of the Branch feel that it would be a mistake to agree to this suggestion, which, by the way, was made by Councillor McDougal, because this would also destroy the allotment system as provided in section 20. If the Bands do not feel that it is appropriate to allot band lands, as they look at it as communal property, they should then accept to lease or farm lands which may be occupied by an individual, but the profits should be turned over to the Band.

O.K.
P.

Councillor McDougal also raised the question of difficulties encountered by the Indians in selling their wheat and you will recall that I promised him we would look into this matter administratively. If after investigation, there was a real problem, we could always use section 4(2) of the Act and exempt any individual Indian from the provisions of section 50.

Clauses 14 and 15 suggesting amendments to sections 64 and 66 - The Indians have agreed to these amendments as drafted by Justice.

Regarding section 64, you have pointed out that instead of being paragraph (ii) it should be paragraph (j) and (j) would be (k). I have passed this information to Justice officials.

Regarding clause 15 (2) suggesting an amendment to section 66 (3), after reviewing the suggested amendment, if it is agreeable to you, we will recommend to Justice that an amendment be made to subsection (2) of section 66 which would add at the end of the sub-paragraph the following words: "and to pay contributions under the Unemployment Insurance Act on behalf of employees paid out of band funds". I believe that this suggested amendment would be clearer and would meet the problem which has been reported from Six Nations where the Bands was neglecting or refusing to pay the contributions under the Unemployment Insurance Act for their employees.

O.K.
P.

Regarding clause 16 adding paragraph 66A, the Indians agreed to the suggested amendment. In reviewing this amendment yesterday, it was felt that it would be preferable to delete at the end of the paragraph the words "raised or collected" and replace them by the following: "of the Band." This change is suggested so that the Branch could immediately reimburse itself of moneys expended without having to wait for the income received from the projects.

O.K.
P.

Regarding clause 17 suggesting an amendment to subsection (5) of section 69, this suggestion was approved by the Indians readily. Personally, I wonder if the amount of one million dollars would be sufficient. As you know, we are working with the Central Mortgage in order to obtain loans for Indians to build houses, but such loans would only be available to Indians belonging to a Band who already has Band funds. If we were to lend money to Indians belonging to a Band without funds more money would certainly be required.

We can
always add
in estimates.

When again studying section 69, we feel that we might require another amendment to this section. In you read sub-paragraphs (a) and (b) of subsection (1) you will note that the purposes for which loans could be made are all specified. It is difficult to foresee exactly all the purposes where it would be advantageous to make loans to Indians or to Bands of Indians and, for this reason, I am recommending that section 69 be further amended by adding a sub-paragraph (c) to subsection (1) which would read:

"(c) and for any other purpose that may be prescribed by Regulations of the Governor in Council".

C.K.
P.

If this amendment were agreed to we would not need to amend section 69 by an Act of Parliament every time we have new projects which appear to be worthwhile supporting.

Clauses 18, 19 and 20 suggesting amendments to sections 72, 73 and 82 were agreeable to the Indians and I, therefore, recommend that the draft as prepared by Justice be approved. I have already mentioned to Justice that you would prefer further amending section 82 to provide that the new sub-paragraph be (f) and that the present sub-paragraph (f) be (g).

O.K.
P.

As for clause 21 and the suggested new sections 92, 93, 94, 95, 96 and 97, the only change there is is to provide that the Indians would have the privilege of intoxicant liquors. However, as you know these amendments create quite a problem. At the conference you agreed that, whenever a treaty would make reference to liquor, the suggested law would not apply until the Band had taken a vote. I have already mentioned to you that it might not be advisable to give that vote only to Bands who have a treaty referring to liquor. Besides, there are Indians who claim to have treaties with white men which were signed before 1759. I think that all Bands having a reserve should first vote before these liquor privileges are accorded to them. This could be done because the Bill, as prepared by Justice, mentions

that these sections shall only come into effect on the day fixed by the proclamation of the Governor in Council. You could, without making any mention of it in the bill, promise to the House that this proclamation would not be issued until the Indians, living on reserves, have had an opportunity of voting in favour or against having liquor on their reserve.

There is also another question on the question of voting which applies to Indians with treaties as well as Indians without treaties. We have Indians who are not living on a reserve, most of them are living in northern or remote areas. Should they be given the right of deciding the same as those living on a reserve whether members of their Band will or will not have the right to have liquor in their possession? After considerable discussion, it is our view that if Indians on reserves have the right to decide if they are to have liquor or not, the same privilege should be given to those not living on reserves. If this were agreed to, the sections dealing with liquor would have to be further amended to refer not only to Indians living on reserves but also to Indians residing on "lands belong^{ing} to Her Majesty in right of Canada or of a province". In other words, those living in non-organized territories.

I may mention that this will create quite a difficult situation as far as the implementation of the law is concerned as it will be very difficult for a police officer to determine if an Indian belongs to a group who has voted "dry" or to one who has voted "wet". However, notwithstanding these difficulties, I recommend that the privilege of deciding whether or not members of a Band are to profit from the new liquor provision be decided upon by a vote.

I agree
P.

The Indians have agreed to the suggested amendment to the present section 98(2) being section 98 of the bill.

No point
see my notes
on Bill & Act

Regarding the suggested amendment to section 101, you will recall that Andy Paull objected to the words "or is about to be committed" in the new sub-paragraph (4). Mr. Couture assures me that this provision appears in many penal statutes. Personally, I believe that this wording should be retained as after all we are trying to protect the honest citizens and punish the guilty ones.

I agree
P.

The Indians have accepted the suggested amendments to sections 105, 108 and 109. With regard to section 108, I have asked Mr. Couture to obtain an opinion from Justice as, in my opinion, the draft amendment does not accomplish what we had in mind. If you read carefully the addition made by Justice, you will note that the wording would indicate that children

would have to be enfranchised but that the Governor in Council could defer the enfranchisement. What we had in mind was that, at the time of marriage of an Indian woman to a white man, the children would not only be exempt from the automatic enfranchisement as it might exist, but could be exempt from enfranchisement. For instance, if the children are to follow their mother, I would think they should be enfranchised. On the other hand, if the mother has neglected her children and they are living happily with relatives or other members on the reserve, I do not think that they should be enfranchised on account of their mother's marriage. Also, the children could have been adopted by Indians, and, in such cases, I do not think they should be enfranchised. Mr. Couture argued that the wording of the amendment would give the Minister the necessary discretion to decide whether or not the children are to be enfranchised. However, I am not of the same opinion. Mr. Couture is seeking an opinion from the Department of Justice.

I agree
with the
D.M.

Anyway
it shd
be clear
P.

Regarding the amendment to section 109, there will be a slight amendment there to replace, in the third line, the word "thereof", as this word would indicate the date of the order rather than the date specified in the order. The latter should be the effective date.

When discussing the amendments to sections 108 and 109, I was informed of a problem met by the Indian Affairs Branch under section 15 subsection (3). It is to be noted that, under this section, where there are moneys payable on the enfranchisement of a minor, the moneys may be paid to the parents, guardian or to any other person having the custody of the child or it may be withheld. In some cases, the Branch had reason to refuse to pay the moneys to the parents or to the guardian with the result that we are now administering moneys for non-Indians. This means that we are called to pay for clothes, schooling, etc. A suggestion has been made and I recommend that it be approved, that sub-paragraph (a) of subsection (3) of section 15 be amended to include a provision whereby such moneys could be remitted to a provincial public trustee. I understand that this had been the practice of the Branch in many cases, but, since the new Act, the Auditor has advised the Branch that they did not have the necessary authority to turn over such moneys to a public trustee.

I agree
P.

As the Indians have agreed to the suggested amendments to sections 113, 115 and 116 I recommend that they be approved.

O.K.
P.

During the conference, the Indians raised other points. For instance, under section 64 (h) Chief Crowe suggested that the security required was too high. However, as these are Band funds, I believe it is advisable to require an appropriate security when making such loans.

and even be defined by and councils

There was also the question of "ordinarily resident", but it is felt that this can be covered by regulations.

Some delegates suggested that the term of office of two years mentioned in section 77 should be reduced or increased. At the time, you indicated that you would consider an amendment if there was evidence that the Indians really wished a change in the Act. This is a question which has been raised at the 1953 conference and was raised at our meetings last summer. It is felt that section 77 should not be amended at this time, as the Indians have not yet had sufficient experience with the elective system. It must be remembered that they used to appoint their chiefs for life. They are still not trained in conducting an election and I believe, for the best administration of the Bands, two years allow a chief and councillors to prove their ability and can be re-elected if they decide to run. This term of two years is generally the term in our cities and municipalities.

think the Minister would have power to approve a shorter or longer term if requested by a Band Council

O.K.

P.

Laval Fortier.

P.S.: Since dictating the above memorandum, I had the opportunity of discussing with you the liquor provision of the bill. I have also discussed your views with Mr. Couture and it is felt that it would be preferable to give discretion in the proposed section 92 to the Minister to make regulations for the taking of a vote and also to make regulations to define reserves for this special purpose of voting for or against possession of liquor in Indian homes. If this were agreeable to you and if Justice could draft the appropriate section, it would be advantageous to leave that to regulations rather than to statutory law as we would be able to cover cases of Bands not living on reserves as known in the Indian Act and Indians living on contiguous reserves, etc., and I recommend that this be done by regulations rather than by law.

Let us discuss further P.

For your ready information, I am attaching some notes which have been remitted to me by the Indian Affairs Branch on points raised by the Indians at the conference.

December 12, 1955.

Suggested amendments to the Indian Act

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

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

"4. (1) A reference in this Act to an Indian does not include

(a) any person of the race of aborigines commonly referred to as Eskimos; or

(b) any person who is not a Canadian citizen and does not come within paragraph (f) of section 11."

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

"(3) Sections 42 to 52 and 113 to 122 do not apply to or in respect of any Indian who does not ordinarily reside on a reserve or on lands belonging to Her Majesty in right of Canada or a province."

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

"may, by notice in writing to the Registrar, containing a brief statement of the grounds therefor, protest the inclusion, omission, addition, or deletion, as the case may be, of the name of that person, and the onus of establishing those grounds lies on the person making the protest."

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

"(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."

*add another amendment
end of sub. sec 3
re onus before judge*

X

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

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

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

"(1a) The addition to or inclusion in a Band List of the name of an illegitimate child of a female person may be protested at any time within twelve months after the addition or inclusion and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under paragraph (e) of section 11."

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

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

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

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

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

Paul & Gordon work this retroactive to 1951 - Act in favour of being retroactive.

x

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

"(2) Where pursuant to subsection (1) a new band has been established from an existing band or any part thereof, such portion of the reserve lands and funds of the existing band as the Minister determines shall be held for the use and benefit of the new band.

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

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

"(2) The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, ^{Indian Residential Schools} the administration of Indian affairs, Indian ^{Indian Residential Schools} health projects, or 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."

*with the council of the Band.
Andy Paul
& Mr. Herkimer*

7. Subsection (5) of section 20 of the said Act is repealed and the following substituted therefor:

"(5) Where the Minister withholds approval pursuant to subsection (4), he may 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."

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

"26. Whenever a Certificate of Possession or Occupation or a Location Ticket issued under the Indian Act, 1880, or any statute relating to the same subject matter was, in the opinion of the Minister, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer, or wrong description of any material fact therein, the Minister may cancel the Certificate or Location Ticket and issue a corrected Certificate in lieu thereof.

27. The Minister may, with the consent of the holder thereof, cancel any Certificate of Possession or Occupation or Location Ticket referred to in section 26, and may cancel any Certificate of Possession or Occupation or Location Ticket that in his opinion was issued through fraud or in error."

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

"39. (1) A surrender is void unless

(a) it is made to Her Majesty,

(b) it is assented to by a majority of the electors of the band

(i) at a general meeting of the band called by the council of the band,

(ii) at a special meeting of the band called by the Minister for the purpose of considering a proposed surrender, or

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

(c) it is accepted by the Minister.

(2) Where a majority of the electors of a band did not vote at a meeting or referendum called pursuant to subsection (1) of this section ~~or~~ pursuant to section 51 of the Indian Act, chapter 98 of the Revised Statutes of Canada, 1927, the Minister may, if the proposed surrender was assented to by a majority of the electors who did vote, call another meeting by giving thirty days' notice thereof or another referendum as provided in the regulations.

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

10. Section 40 of the said Act is repealed and the following substituted therefor:

"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 Minister for acceptance or refusal."

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

"(2) The Governor in Council may make regulations for providing that a deceased Indian who at the time of his death was in possession of land in a reserve shall, in such circumstances and for such purposes as the regulations prescribe, be deemed to have been at the time of his death lawfully in possession of that land.

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

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

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

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

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

14. Section 64 of the said Act is amended by deleting the word "and" at the end of paragraph (i) thereof and inserting, immediately after paragraph (i) thereof, the following paragraph:

To be re-written

"(ii) 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".

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

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

(2) Subsection (3) of section 66 of the said Act is further amended by striking out the word "and" at the end of paragraph (e) thereof, by inserting the word "and" at the end of paragraph (f) thereof and by adding thereto the following paragraph:

To be re-written

"(g) the payment of contributions under the Unemployment Insurance Act on behalf of members of a band who are employed on a reserve, and on behalf of persons employed by a band."

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

re-written

"66A. Where money is expended by Her Majesty for the purpose of raising or collecting Indian moneys, the Minister may authorize the recovery of the amount so expended from the Indian moneys raised or collected."

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

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

add new (c)

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

"(m) for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes."

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

"73. (1) Whenever he deems it advisable for the good government of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act.

(2) Unless otherwise ordered by the Minister, the council of a band in respect of which an order has been made under subsection (1) shall consist of one chief, and one councillor for every one hundred members of the band, but the number of councillors shall not be less than two nor more than twelve and no band shall have more than one chief."

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

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

"(4) A reserve shall for voting purposes consist of one electoral section, except that where the majority of the electors of a band who were present and voted at a referendum or a special meeting held and called for the purpose in accordance with the regulations have decided that the reserve should for voting purposes be divided into electoral sections and the Minister so recommends, the Governor in Council may make orders or regulations to provide that the reserve shall for voting purposes be divided into not more than six electoral sections containing as nearly as may be an equal number of Indians eligible to vote and to provide for the manner in which electoral sections so established shall be distinguished or identified."

20. Subsection (1) of section 82 of the said Act is amended by striking out the word "and" at the end of paragraph (e) thereof and by adding thereto, immediately after paragraph (e) the following paragraph:

"(ee) the raising of money from band members to support band projects; and".

21. (1) Sections 92 to 99 of the said Act are repealed and the following headings and sections substituted therefor:

" Intoxicants.

92.(1) Sections 93 to 95 are not in force in any reserve unless the Governor in Council by proclamation has declared those sections to be in force in that reserve.

(2) No proclamation shall be issued under subsection (1) unless

- (a) a majority of the electors of the band have by a vote taken at a meeting or by a referendum held in accordance with the regulations requested that sections 93 to 95 be brought into force in that reserve; or
- (b) the Minister has recommended that the bringing into force of these sections in the reserve would be conducive to the welfare of the band.

93. 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 any person on 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.

94. 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.

✓ 95. The provisions of this Act relating to intoxicants on a reserve do not apply where the intoxicant is used or is intended to be used in cases of sickness or accident.

✓ 96. 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.

✓ 97. 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 prima facie 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.

Penalties

X 98. A person who, without the written permission of the Minister or his duly authorized representative,

- (a) removes or permits anyone to remove from a reserve
 - (i) minerals, stone, sand, gravel, clay or soil, or
 - (ii) trees, saplings, shrubs, underbrush, timber, cordwood or hay, or
- (b) has in his possession anything removed from a reserve contrary to this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment."

(2) This section shall come into force on a day to be fixed by proclamation of the Governor in Council.

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

"101. (1) Whenever a peace officer or a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section. 33, 89, 93, 94 or 98 has been committed, he may seize all goods and chattels by means of or in relation to which he reasonably believes the offence was committed,"

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

"(3) Where a person is convicted of an offence against the sections mentioned in subsection (1), the convicting court or judge may order that the goods and chattels by means of or in relation to which the offence was committed, in addition to any penalty imposed, are forfeited to Her Majesty and may be disposed of as the Minister directs.

(4) A justice who is satisfied by information upon oath that there is reasonable ground to believe that there are upon a reserve or in any building, receptacle or place any goods or chattels by means of or in relation to which an offence against any of the sections mentioned in subsection (1) has been, is being or is about to be committed, may at any time issue a warrant under his hand authorizing a person named therein or a peace officer at any time to search the reserve, building, receptacle or place for any such goods or chattels."

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

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

X
"(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 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."

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

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

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

X
"113. (1) The Governor in Council may authorize the Minister, in accordance with this Act, to enter into agreements on behalf of Her Majesty for the education in accordance with this Act of Indian children, with
(a) the government of a province,
(b) the council of the Northwest Territories,
(c) the council of the Yukon Territory,
(d) a public or separate school board, and
(e) a religious or charitable organization.
(2) The Minister may, in accordance with this Act, establish, operate and maintain schools for Indian children."

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

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

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

15 (3) to be amended to include
Public Trustee.

0/113-2-4.

DEPARTMENT OF JUSTICE

MEMORANDUM

22, X/1, 55.

To Director

Inman affairs
branch

Re: Proposed Amendments
to Inman act

Please note hereunder

and return to me.

Lay

Ottawa,
November 29, 1955.

MEMORANDUM TO THE LEGAL ADVISER

I wish to acknowledge your memorandum of November 22nd forwarding for my consideration a copy of your memorandum to Mr. Driedger re amendments to the Indian Act.

As requested, I am returning it herewith together with a copy of a memorandum I have forwarded to the Deputy Minister.

Original Signed by

H. M. JONES

H. M. Jones,
Director.

LLB:AM
Encl.

(REC → F. A.)
0/113-2-4(S.A.)

Ottawa,
November 28, 1955.

MEMORANDUM TO THE DEPUTY MINISTER

Re: Amendments to the Indian Act

I have reviewed Mr. Couture's memorandum to Mr. Driedger, Assistant Deputy Minister of Justice, dated November 22nd, suggesting various changes in the draft amendments arising out of the discussion that took place with you and Branch officials on November 18th. As it does not seem to agree in a few instances with our recollection of the discussion, as several points were left undecided and as one or two additional points have come to light since, I thought it advisable to give you our observations.

Mr. Couture's memorandum

1. We cannot understand the suggestion contained in the final sentence nor do we believe there was agreement that such an amendment should be requested. There seems to be some confusion between two unrelated matters; (a) the original recommendation of amending Section 87 to define the Federal responsibility as regards Indians living off reserves and (b) the possibility of disentitling from membership Indians who have acquired citizenship in foreign countries and possibly those who have established permanent residence in foreign countries.

I was not aware that we had reached any decision to amend the Act as suggested by Mr. Couture. It was our understanding you intended to discuss the point with the Minister. I do not recall either that there was any suggestion Indians living off reserves in Canada be disentitled.

3. We do not consider that the amendment suggested by Mr. Couture meets the requirements. The original recommendation was that the Act be amended to provide that the onus of proof in any protest case should be on the person making the protest. I believe that it was agreed that Mr. Driedger's proposed amendment covered only one type of case, protests on exclusion. Mr. Couture's amendment appears open to the same criticism in that it covers only protests of inclusions. It is suggested that the amendment suggested

by the Branch "the onus of establishing that a name was improperly included, omitted, added or deleted from a Band or General list, as the case may be, lies upon the person who makes the protest" covers the point and that an amendment along those lines is essential.

4. While Mr. Couture has dealt with the suggestion that the provision for a twelve month period for protesting the registration of an illegitimate child of an Indian woman be included in Paragraph (e) of Section 11, our comment that the words "deletion of" were superfluous does not seem to have been given consideration. We are unable to see how there can be a protest of a deletion in the case of illegitimate children when under the proposed new practice the names of such children are automatically registered and are only deleted following a protest. To allow the words to stand in the amendment would open the door to a double protest.

Mr. Couture comments briefly on Paragraph (c) of Section 11 but makes no recommendation and states that he received no instructions. It was our recollection that after considerable discussion we agreed that the Paragraph was necessary in the 1951 Act to preserve what had been done in the past but that it was not desired to permit illegitimate children of Indian fathers by non-Indian mothers to be registered in the future and that therefore the Paragraph should be deleted. In short, it was felt that the paragraph had served its purpose, sets a principle that is not now acceptable and therefore should be repealed.

20. We pointed out at the meeting that Mr. Driedger's draft, Section 99, did not incorporate our original recommendation that Section 92 of the Act be amended to provide that it is an offence to sell for removal as well as an offence to remove. We understood Mr. Driedger would be asked to insert this amendment, but it is not mentioned by Mr. Couture.

It also appears that Section 94 as referred to in Paragraph (a) of Subsection (2) of the new Section 26 should read "Section 93".

24. While Mr. Couture's recommendation substantially meets the criticism of Mr. Driedger's draft amendment, we wonder if it goes far enough. Under the suggested wording if the Governor in Council enfranchised the woman without her children and did nothing subsequently, it would mean that the children would continue in Indian status. The original recommendation was that the enfranchisement of the children be postponed temporarily to permit our social workers, in co-operation with welfare organizations, to place unwanted children in good foster homes or arrange for their adoption. It was not intended that these children should remain Indians unless adopted legally by Indians. Consideration might be given therefore to enlarging the amendment

to provide that in any event the children shall be enfranchised when they reach the age of twenty-one years or on their marriage before that time.

Matters left undecided

1. The question of non-entitlement to membership of persons who have become citizens of foreign countries or who have taken up residence there: It is our understanding you intended to discuss this with the Minister.

2. The amending of Section 12 of the Act to add a further class of people, namely, Indian children who are legally adopted by non-Indians: We do not recall there was any finality to the discussion on this point.

3. The question of providing for the leasing of Band land for agricultural purposes with the consent of the Band Council rather than following the surrender in accordance with Section 39: We are not sure whether you indicated this would be considered further. You will recall our original comments that such a provision would facilitate the administration, would be welcomed by many Band Councils and would not, in our opinion, be objected to by Indians generally if it was restricted to applying to fairly short-term leases.

New matters

1. Various recommendations have been made to amend the sections of the Act dealing with the administration of estates. One of these is that Section 12 of the Indian Estates Regulations be incorporated in the Act. In reviewing these Regulations it seems logical to suggest that Sections 13 and 15 and possibly 14 should also be placed in the Act rather than in the Regulations, and you may wish to consider this suggestion.

2. Section 109 of the Act contains a provision stating that a person who has been enfranchised by an Order in Council is no longer an Indian within the meaning of the law. However, the wording of the Section confines it to persons enfranchised under Section 108 whereas it would seem that it should cover persons enfranchised under Sections 111 and 112 as well. It is suggested the problem be met by deleting the words "Section One hundred and eight" from Section 109.

3. The enfranchisement practice under the former Act was that in cases where the moneys payable to minor children exceeded \$500, we paid the children's money to the Official Guardian or Public Trustee of the Province if there was such an official. It was considered that Subsection (10) of Section 110 of the revised Indian Act provided our authority for doing so.

This practice was continued under the present Act until it was questioned by a representative of the Auditor General who expressed the doubt that Subsection (3) of Section 15 of the present Act provides similar authority. We are inclined to agree that the wording of Subsection (3) of Section 15 does prevent this practice, and if the Department of Justice agrees, it is suggested the Subsection be amended to give us authority to pay the moneys to a Public Trustee, Official Guardian or such other Provincial official as may ordinarily be charged with the custody of moneys of minor non-Indian children. This is a particularly important point in view of the proposed enfranchisement of the Michel Band, for the per capita share will be approximately \$1,000, and there are a large number of minor children in the Band. Once we have enfranchised Indians I do not believe we should be holding moneys for them, and we consider that it is in the interest of all that Provincial officials should assume the supervision of minor shares of enfranchisement moneys.

4. While I am rather reluctant to introduce this subject at this late date, we have been considering the effect of Subsection (2) of Section 110 on enfranchisement generally and wondering whether it has much value and may not, in fact, be discouraging enfranchisement.

It will be recalled that Section 110, Subsection (2) of the old Act provided that an Indian could be enfranchised and have issued to him Letters Patent for the land he held on a reserve. As a matter of policy, applications under this Section had been refused for a great many years, and when revising the Act, the Section was changed to require that an enfranchised Indian could only be given land with the consent of his Band Council and that he could not receive full title until ten years after the date of his enfranchisement.

In view of our recent discussions concerning the desirability of encouraging Indians and Bands to become enfranchised it seems rather strange that in 1951 we repealed a section that might have been used very conveniently in the future and substituted therefor a new section which offers very little inducement for an Indian to be enfranchised with his land and makes the enfranchisement contingent upon the consent of his Band Council who could be expected, in the majority of cases, to refuse the application.

Under the present Act if the Indians of Canada are to be integrated fully and cease to come within the provisions of the Indian Act, we must think in terms of enfranchisement of Bands. The difficulty in following this approach is that while a substantial minority of a Band might be in favour of enfranchisement, the will of the majority would govern, and unless action was taken to compulsorily enfranchise the Band, those in favour would be held back from achieving their aim unless they left the reserve and started

a new life outside. This is not always easy for an Indian to do for he can rarely realize much from the sale of his reserve holdings to other Indians. One of the major problems standing in the way of enfranchisement generally today is that there is little inducement for an Indian to become enfranchised. This was not true years ago, but Indians are now receiving the full benefits of social legislation, have been given limited liquor privileges and may shortly be given full privileges, and have been given the Provincial franchise in some instances. We are also endeavouring at the present time to bring to them the advantages of the National Housing Act, P.F.A.A., P.F.R.A., better education and so on. While at one time Indians could and did say that they wished to be enfranchised in order to secure rights and benefits not available to them as Indians, this reasoning is not applicable today, and it is difficult to see why any Indian would apply for enfranchisement.

It seems to us if our long-range policy is to gradually integrate Indians with the non-Indian population, there must be some added inducement that can be offered, and the most obvious would be to enable the Indians to get title to their land and either hold it or dispose of it following their enfranchisement, using the sale proceeds as they wish. The first objection to this, and it was an objection made by the Indians to Section 110 of the old Act, was that it would checkerboard the reserve which would no longer be a solid block. We cannot see that this is a valid objection. In fact, the checkerboarding should facilitate the integration of the Indians with their non-Indian neighbours. We have several reserves such as Oka and Alnwick where non-Indians are interspersed between Indian families, and this type of holding does not give rise to any difficulties. The second objection might be that such a proposal would gradually reduce the size of a reserve. That is true, but we do not know of any law that states a reserve must be retained at its original size. Thirdly, it could be stated that if we permit Indians to be enfranchised with their lands, many will apply, sell their lands for a song to some unscrupulous non-Indian and in a short time become the responsibility of a municipality. Unless careful screening of applications was made there would be such cases certainly. However, there are also, we consider, many Indians living on reserves today who, if they could realize the value of their holdings, would be willing to apply for enfranchisement and leave the reserve to seek their living elsewhere. It must not be overlooked that we are educating the Indian today, often in non-Indian schools, to a degree parallel with the non-Indians, and they are becoming accustomed to a better standard of living than they can find on the average Indian reserve. Despite changing conditions on reserves there are still very few that can compare with the surrounding communities, and there are Indians who would like to avail themselves of the advantages to be found by living in organized and developed non-Indian communities. This point was rather forcibly brought to Mr. Brown's attention during his recent discussion of enfranchisement with members of the Michel

Band. Several members who are amongst the better farmers on the reserve and making an adequate living therefrom made it quite clear that if they were enfranchised and given title to their lands, they intended to sell the land at the first opportunity and use the proceeds to resettle in other parts of the Province and continue farming activities. In reply to an inquiry as to why they would not wish to stay on their land, they gave the answer that the reserve was too isolated, ill-served by roads, power, stores, etc. and that they wished to live where these services would be available to them.

It was our understanding that Subsections (3) and (4) of Section 110 meant that an Indian could be given his land on enfranchisement but would not receive title thereto until ten years from the date of his enfranchisement. As I recall it, the intention was to discourage Indians from applying for enfranchisement with their land when their object was merely to get the title and sell it. In discussing the Section with Mr. Couture he has offered the opinion that the wording of the Subsections is open to a different interpretation, namely, that the Indian has ten years to pay back to his Band the amount per acre considered to be the value of the common interest of the Band and that the former Indian may apply for his grant at any time, within the ten year period, once he has made the payment aforementioned. We cannot read this interpretation into the wording of the Subsections, but if there is any doubt as to their meaning and their principle is to remain in the Act, then you may wish to consider having them reworded to more clearly set out the principle.

As stated above, I hesitated to bring up a matter of such importance so late in our deliberations of amendments to the Act but considered it should be brought to your attention as the change from the old Act to the present one does not seem too consistent with our present thinking concerning enfranchisement of Indians.

Original Signed by
H. M. JONES

H. M. Jones,
Director.

LLB:AM

NOTES ON DISCUSSION REGARDING SUGGESTED AMENDMENTS TO INDIAN ACT

November 18th, 1955.

Present: Col. Fortier Col. Jones
 L. L. Brown L. A. Couture
 A. C. Pennington C. I. Fairholm

Section 2(1)(o)

With respect to suggestion that the definition of reserve be clarified to provide that a "tract of land" includes a body of water, it was the opinion that the word reserve as defined already covers a body of water.

Section 2(1)(p)

With regard to the suggestion that Assistant Regional Supervisors be included in definition of Superintendent, it was decided that no amendment would be necessary as this could be done by an order of the Minister, similar to what is done in appointing employees as Commissioners for Oaths.

Section 3(2)

The suggestion that there be a further delegation to an officer in the department to sign vouchers with respect to the expenditure of band funds, it was the view of the Legal Adviser that this was not necessary as by a transfer of power the Director could have for example the Superintendent of Reserves and Trusts sign for him. In other words all vouchers would be signed e. g. W. C. Bethune for H. M. Jones, Director of Indian Affairs.

Section 4(1)

It was decided that it was not necessary to amend Section 4(1) to make clear that Eskimos are subject to the penalties provided in the Indian Act.

Section 9

It was the general view that the proposed draft by Justice did not meet what was intended. It was suggested that a provision be added at the end of Section 9(4) making it mandatory for the Registrar to act according to the Judge's decision and once this action has been taken no further protest or appeal may be made.

It was also decided that a provision should be included putting the onus of proof on the Band Council or persons making the protests.

Section 10

The Deputy Minister expressed the view that minor children in Section 10 does not include illegitimate children and should not be amended to include them.

Section 11

After considerable discussion it was the view that the proposed draft of Section 11(e) did not reflect what was intended. The following suggestions were to be embodied in a new draft:

- (1) to preserve what has been done in the past.)
- (2) to provide that in future all illegitimate children of an Indian woman be automatically placed on a band list.
- (3) if the band council or a specified number of electors of a band have grounds for believing that the father of the child was not an Indian a protest could be made to the Registrar within 12 months against the addition of the name of the child to the list
- (4) the onus of proof in such cases would be on the council or electors making the protest.

Section 11(c)

There was no decision reached as to whether the illegitimate male children of an Indian father should be put on a band list or whether this provision should be repealed.

Section 13

It was agreed that the proposed amendment did not incorporate in full the suggestion that had been made. The following suggestions to be incorporated in a new draft:

- (1) the consent of the council of the band to be the normal procedure.
- (2) provision for discretionary power to the Minister to direct that the consent of the band is required.

Section 20

It was agreed that the proposed draft to Section 20(5) was acceptable.

With respect to the suggestion that the Minister be given authority to extend a Certificate of Occupation for a further period beyond the two plus two years, it was the view of the Legal Adviser that he already had this authority. In effect he could grant any number of two year extensions.

Section 39

The first suggestion to provide for the taking of a surrender by a referendum was fully covered in the proposed draft. The second suggestion to change the word "members" in Section 39(3) to read "electors" was to be brought to the attention of Justice and the change made.

Section 42

There was considerable discussion on whether the Minister has all the necessary authority to deal with petitions, make orders, etc., as a result of his jurisdiction and authority in relation to matters and causes testamentary. The Legal Adviser expressed the view that the Minister has all necessary powers but it was decided that an opinion should be obtained from the Deputy Minister of Justice on the question.

Section 43

The proposed draft with respect to possession of land for estate purposes was discussed at length. It was decided that the suggested draft be changed to correspond with the wording now included in the Indian Estate Regulations.

Section 48

It was decided that it would be advisable to give the Governor in Council power to make regulations with respect to the administration of Indian estates, listing the subject matter on which regulations could be made, basing such subjects on the matters already covered in the Estate regulations.

Section 58(1)

It was suggested that the wording in the proposed draft be changed by striking out "or in the opinion of the Minister could be put to better agricultural use" so that the new draft would read "where land in a reserve is uncultivated or unused the Minister may, with the consent of the Council of the Band".

Section 64

It was the view that the proposed draft did not fully cover what was intended. It was decided that the expenditure of money should be made for the following purposes:

- (1) to make repayable loans without security to individual members of the band to construct houses.
- (2) to construct houses for individual members of the band.
- (3) to guarantee loans made to individual members of the band for housing purposes.

Ancillary to this there should be a provision to give Councils the power to borrow money. This would probably come in under a new section.

Sections 65 and 66

It was decided that the proposed change in Section 66 did not cover all the cases where administrative costs are involved in the sale of reserve assets. It was decided that authority to charge administrative costs incurred in the sale, lease, etc., of Indian assets should be made from either capital or

Section 69

It was decided that the proposed amendment with respect to loans for housing purposes should be dropped. The amount of money to be made available to be increased to \$1,000,000.

Section 73(2)

The first suggestion which was not dealt with in the proposed draft was discussed and it was decided that some provision be added to give discretion to the Minister in determining the size of Band Councils. The present composition of Councillors to remain as the Act contemplates at present unless the Minister otherwise directs.

Section 73(3)(c) and (4)

The intent of the proposed recommendation was not fully covered in the draft amendment.

It was suggested that the following change be made:

Section 73(3)(c) to read "that a reserve shall for voting purposes consist of one electoral section"

Section 73(4) to read "where the Minister is satisfied that a majority of the electors of a Band do not desire to have the reserve consist of one electoral section the Minister may order 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"

Section 82

It was suggested that the proposed draft be reworded to read "the raising of money from Band members to support Band projects". It was felt that the wording in the proposed draft was restrictive to a Band project.

Section 87

The view was expressed that the proposed change did not meet what was intended. The Legal Adviser was to take up with Justice as to whether this could be reworded.

Section 92

The Legal Adviser was to take up with Justice the imposition of a penalty on an Indian who sells goods from a reserve illegally, as well as impose a penalty on the person who removes the goods.

Sections 93 to 99

It was generally felt that the proposed change reflected what was intended. However, the Deputy Minister asked that consideration be given to whether the wording could be simplified.

Section 101

There was considerable discussion on the suggestion that search warrants be required. It was decided to have the Legal Adviser consult with the Royal Canadian Mounted Police to find out why power was given to the police to search without a warrant and what steps could be taken to have a search warrant made mandatory.

Section 105(b)

The point was raised whether this was any longer necessary as the provisions in the Criminal Code have been repealed.

Section 108

It was the view that the proposed change was not too clear. It was the intention to give the Minister discretion to recommend whether a child of an Indian woman who marries a non-Indian should be enfranchised with her as of the date of her marriage.

Section 115(a)

The question of requiring Indian children who have attained the age of six years to attend school was raised. It was suggested this could be accomplished by changing the word "permit" to read "require".

Section 116(b)

The proposed amendment is satisfactory.



CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

Ottawa, November 30, 1955

MEMORANDUM FOR - DIRECTOR
Indian Affairs Branch

I have to refer to your memorandum of the 29th instant and to thank you for sending back copy of my memorandum to Mr. Driedger. I am sorry that this last mentioned memorandum was not corrected before it was sent to you: reference to the clause numbers was not exact in all instances.

I now wish to deal with your memorandum of the 28th instant to the Deputy Minister concerning the amendments to the Indian Act.

With respect to your comments on Section 1 of my memorandum I wish to point out that I appreciate that there is quite a distinction between the applicability of the Act under Section 87 and entitlement of a person to be registered as an Indian. I wish to point out also that my instructions provided as follows: (the following is taken from a memorandum prepared by the Deputy Minister for the Minister) --

"The Indian Act could possibly be amended to indicate that it would apply only to Canadian Indians while residing on the reserves or in a non-organized territory. Such amendment would clearly indicate to the provinces and municipalities that an Indian who is not an ordinary resident of a reserve or of a non-organized territory is the responsibility of the municipality, township, etc., or provincial governments.

It has been the policy of the Branch and the Indian Health Services to extend welfare only to Indians on the reserves or to those who have not been residing outside the reserves for more than twelve months".

To provide as I was instructed to attempt to do, would require a proclamation under ss (2) of Section 4 or an express restricting of the Act either by an amendment to the definition of "Indian" or an amendment to Section 11 in the case of Indians living off reserves But I do not see how Section 87 can be made to restrict the Federal's responsibility with respect to Indians by attempting to place it on the province where independently of said Section 87, the Federal is responsible. What will have to be sought to be done is to relieve the Indian Affairs Branch by removing certain Indians from the ambit of the Act (in the hope that thereby the province will assume in the respect of such persons the responsibility it assumes with respect to all residents in a province).

With reference to Section 3 of my memorandum I wish to point out that I had understood the Deputy Minister to say that in any event the onus of establishing entitlement would have to remain on the Registrar or on the person claiming entitlement and that accordingly the only thing that was required to be set out under Section 9 was that the onus of establishing that a person is not entitled to be registered lies upon the person who makes the protest. I wish to point out that there can be no protest with respect to an omission unless you amend Section 9. There was a six months' delay within which to protest inclusion. This delay expired sometime in March 1952 and so there could not be protests of inclusions. In any event this matter should be discussed more fully later on.

I believe that the amendment to be made to Section 9 will prevent two protests with respect to any addition or deletion. I have put in a deletion in the case of Section 11 (e) since there is a possibility in theory that an illegitimate child might have been placed on the list between the years 1951 to 1955 and thereafter that child's name deleted in which event there should be a possibility of a protest against such deletion. I believe that this is a minor detail which can be looked into more fully when you have the final draft before you. I had raised this point with Mr. Driedger, none the less.

With respect to the deletion of paragraph (c) of Section 11, I wish to point out again that I have had no

instructions and that in so far as I could determine the Deputy Minister intended that this matter be cured administratively as you have been doing all along.

I should like to deal immediately with the question of adoptions by non-Indian parents of Indian children and adoption of non-Indian children by Indian parents. The Deputy Minister has suggested that this matter not be opened for discussion at this time in view of the fact that the main cure is being brought to this situation by an amendment of ss (6) of Section 48.

With reference to your original recommendation that Section 92 of the Act be amended, I wish to advise that this matter will be looked into.

I would recommend that the amendment to Section 108 be discussed when we have the final text. I believe that the working out of 108 (in the light of the amendment to be made to ss (2) thereof) will meet your desiderata.

The question of entitlement to membership by persons who have become citizens of foreign countries or who have taken up residence there will be looked after in the draft to be submitted by Mr. Driedger. I have already discussed this matter with him. I believe that your third suggestion with respect to matters left undecided, at page 3 of your memorandum, will be looked after through the amendment to Section 58.

With respect to the Sections of the Act dealing with the administration of estates, I wish to point out that there will be two subsections added to Section 42, the one to provide for the making of regulations to cover prescription as in Section 12 of the Indian Estates Regulations and another subsection to provide that the regulations of the Governor-in-Council shall apply to all estates whether they opened before or after the commencement of the Act. Thereby the problem raised in Section 15 and Section 17 of the Indian Estates Regulations will be fully covered also. I do not think that it would be appropriate to cover matters dealing with the administration of estates more fully in the Act in view of Section 87.

There will not be any provision with respect to revocation of wills by marriage where such wills made prior to marriage were not in contemplation thereof. This matter is deemed to be covered by reason of Section 87 and I will forward a memorandum on this point very shortly.

The reference to Section 108 in Section 109 will be discussed with Mr. Driedger on December 1st.

I have already discussed the problems raised by Section 110 with the Deputy Minister. He does not appear to favour an amendment. I ^{have to} point out, however, that his first reaction to ss (3) of Section 110 was identical to mine. He added, however, that by reason of Section 110, the Minister was not bound to make the grant before the expiry of 10 years from the date of the enfranchisement. I would suggest that you discuss the "Michel Band" problems with the Deputy Minister prior to ^{the} meeting to be held with the Indians on December 12th.



L.A. Couture
Departmental Legal Adviser.

Amendments to the Indian Act

The amendments proposed by the Branch and the drafts prepared by Mr. Bridger of the Department of Justice were discussed on November 19th with the Deputy Minister at a meeting attended by Col. Jones, Mr. Pennington, Mr. Fairhelm, Mr. Brown and Mr. Couture. Listed hereunder are those amendments on which there was discussion or which were suggested for change together with comments made concerning them.

1. Section 2(b)

The Branch recommendation was approved, and the Justice draft of a proposed new subsection to be part of Section 46 was approved.

2. Section 2(1)(c)

No amendments needed as Justice consider present definition includes land under water.

3. Section 2(p)

Branch recommendation not concurred in by Justice who consider that it is preferable to have the Minister appoint the employees to be Superintendents for the purpose of the Act rather than amend the Act to bring in virtually all classes of our field staff.

4. Section 3 (2)

The Cabinet Committee on Legislation was opposed to the Branch recommendation, apparently on the grounds that ministerial powers should not be widely delegated and that the present delegations to the Deputy Minister and Director were about as far as delegating could go.

However, despite the fact that this problem has been bothering us for some years we were surprised to learn from Mr. Couture that apparently the same object can be achieved by a different approach to the problem, namely, transferring signing authority rather than delegating authority. Mr. Couture's view, and he was apparently expressing the Justice opinion, was that there was nothing to prevent the Director authorizing selected members of his senior staff to sign on his behalf. This is not a delegation of authority for the action will be taken in the name of the Director.

Applying this theory to the issue of Permits under Section 26 it would mean that the Director could, in writing, authorize the Superintendent of Reserves and Trusts or a Regional Supervisor to issue Permits which they would sign "for Director, Indian Affairs Branch".

It was made quite plain that any transfer of signing authority should be set out in writing and signed by the Director.

It was agreed by all that in view of this opinion there was no necessity of amending Section 3 (2).

5. Section 9

The three recommendations made by the Branch were dealt with as follows:-

(a) Double Appeal: It was agreed the Justice draft amendment did not meet the problem exactly. A new draft prepared by the Branch seemed to be preferable and was referred to Mr. Couture for consideration.

A suggestion that in view of the new addition it would be necessary to amend subsection (1) to commence "subject to subsection (3)....." was not concurred in by Mr. Couture who considered this unnecessary.

(b) Onus of Proof: Apparently Justice confused the problem of onus of proof generally with the particular type of onus of proof that arises under Section 11(e).

It was agreed that it would be preferable to amend Section 9 to provide for onus of proof in all cases and a draft subsection prepared by the Branch was approved in principle and referred to Mr. Couture for consideration.

(c) Protest of Names on new Band Lists: The Justice amendment to cure this problem was approved as was the Justice suggestion that the amendment appear as subsection (5) of Section 17.

6. Section 10

No amendment was approved as it was considered the word "children" in this Section could not include illegitimate children.

7. Section 11

Two amendments were recommended by the Branch and were dealt with as follows:-

(a) Paragraph C, although recommended for amendment, was apparently overlooked by Justice. Following lengthy discussion on the principle of permitting illegitimate male children of a non-Indian mother by an Indian father to be entitled to membership, it was agreed by the Deputy Minister that Paragraph C should be deleted from the Act on two grounds; (1) that it appeared to make an unfair distinction between male and female children and (2) that it was not consistent with modern social legislation whereby the child is given the status of the unmarried mother.

There is considerable doubt at this date as to why this paragraph was included in the Act. It seems probable that basically it was intended to legalize the membership of persons on the Lists in 1951 who traced their descent from an unmarried Indian father and non-Indian mother. That there were many such cases in the 1900's when it was difficult in many localities to find anyone to marry people is known, and if such legislation did not appear in the Act, there was the possibility that many Indians could have been protested despite the fact that they and their ancestors had been on the Band Lists for several generations. While agreeing with this principle, the group also agreed that there was no reason in the future to permit children of such a background to be registered as Indians. At this date there can be no protest of any of the cases arising before 1951, and there have been no admissions of this class of child since 1951. Therefore, the Section no longer seems to be of any value and should therefore be repealed.

(b) It was considered the Justice draft of Section 11(e) did not reflect our intention, and it was agreed that the draft should be amended to provide that in future all illegitimate children of an Indian woman be registered automatically at birth and that only in the event of a subsequent protest would the Registrar be required to make an investigation to ascertain whether the father of the child was of non-Indian status.

In view of the inclusion in Section 9 of a new subsection covering the onus of proof in all protest cases it was agreed there was no necessity to provide for a special onus of proof in Section 11(e).

Justice had recommended adding to Section 11 a new subsection (2) providing for protests of additions to or deletion from a Band List under paragraph (e). It was considered that the amendment should be worked into paragraph (e) rather than be a new subsection and that the words "deletion from" were superfluous.

8. Section 13

It was agreed that the Justice draft amendment did not meet the original recommendation, and it was agreed the proposed amendment should be revised to provide that the normal procedure would call for the Council of the Band to give consent while retaining in the Minister discretionary powers to direct that in any particular case the consent of a Band rather than the Council of the Band be secured.

9. Section 20

We recommended originally that subsection (c) be amended to enable the Minister to extend the Certificate of Occupation period for more than the four years presently provided.

Justice is of the opinion that the present wording of the subsection is not a bar to this as it might be if the phrasing was "for one further period" rather than "for a further period". In short, Justice considers the Minister may, at his discretion, extend a Certificate for various periods, no extension to exceed two years. In view of this advice it was agreed the subsection did not require amendment.

10. Section 39

It was agreed that the Justice amendment was satisfactory with one change, namely, the substitution of the word "electors" for "members" in subsection (b).

11. Section 42

No attempt was made by Justice to meet the original recommendation to give the Minister broader powers somewhat similar to those he held under Section 32 of the revised Indian Act. There was a lengthy discussion as to whether this amendment was required, and Mr. Couture expressed the view that the Minister had these very wide powers. It was agreed that this matter should form the subject of a reference to the Deputy Minister of Justice so that the Act can be amended if the forthcoming opinion shows the necessity for an amendment.

12. Section 43

The proposed amendment by Justice was questioned as to its meaning, and it was recommended Justice consider a redraft to correspond more closely with the wording of a similar clause presently in the Statutes Regulations.

Subsequent discussion has revealed that the new section has intended to regularize cases where a Location Ticket or a Certificate of Possession was issued years ago and the present holder of the property is unable to show a clear chain of title. The question arises whether the section should also be so worded as to establish an interest in land which may be conveyed to an heir by an Administrator in those cases where no Location Ticket or Certificate of Possession was ever issued, the effect being to simply place the heirs in the same position as the deceased in so far as claiming the right to the use of the property and title to the improvements.

13. Section 45

It was suggested that there be provision in Section 45 whereby wills made prior to marriage but not in contemplation of marriage are revoked by a subsequent marriage.

Query whether Section 15 of the Estates Regulations should not be incorporated in this section as well.

14. Section 48

The amendment suggested by Justice was approved, but it was agreed consideration should be given to the advisability of inserting a clause giving the Governor in Council power to make regulations with respect to specified subject matters which may arise in the administration of Indian estates.

15. Section 52

It was agreed the Justice draft amendment should be amended by deleting therefrom the words "in the opinion of the Minister could be put to better agricultural use".

16. Section 64

Our first recommendation was that provision be made for realizing on security taken under paragraph (h). The Legal Adviser expressed the opinion that this was unnecessary in that the wording of the Section by implication conveyed such right. He was satisfied a procedure could be worked out administratively without the requirement of any additional words in the Act. On the strength of this assurance it was agreed no amendment should be made.

The second recommendation was for a special provision to permit the making of repayable unsecured loans for housing purposes, and it was agreed that the Justice amendment did not cover this point as well as it might. There was further discussion arising out of the suggestion that Indians or Bands can qualify for loans under the National Housing Act. The idea is that an Indian should borrow with the Band guaranteeing the loan from Band Funds.

In view of the possibility of such an arrangement it was agreed that the Section should be amended to provide for the following:-

- (1) the making of repayable loans to Indians without security for house construction purposes;
- (2) the construction of houses for members of the Band;
- (3) the guaranteeing of loans for house construction secured by Indians from sources other than Band Funds;

It was also recommended that consideration be given to drafting of new Section to give Bands the power to borrow money from the Government or other sources and pledge Band Funds as security for the loan.

17. Section 65

It was agreed that the Justice amendment did not meet our original recommendation although it was pointed out that since making it, the desirability of an additional change had become apparent.

The Minister should have the power to use both Capital and Revenue moneys for paying the administration costs of managing resources although ordinarily the cost should be paid first out of Revenue if funds are available. It was agreed Justice should be asked to amend its suggested Section accordingly.

It was also agreed that the phrase "for the purpose of raising or collecting revenue moneys" did not accurately describe the action taken by the Department. Certainly the word revenue should not appear in any such phrase, for in many cases the moneys raised are capital. Actually the expenditure arises out of the management of a resource and the subsection might better be changed to meet that concept.

18. Section 73(3)

The Justice amendment did not deal with our first recommendation that more flexible means of determining the number of Councillors be provided. It was agreed that this was necessary and that Justice should be asked to add a provision giving the Minister discretion in determining the size of Band Councils.

19. Section 73(3)(c) and (4)

It was considered that the proposed amendment did not fully cover the original recommendation that the provisions with respect to the section system be brought in line with actual practice.

Following discussion it was agreed that subsection (3)(c) should be amended to read "that a reserve shall for voting purposes consist of one electoral section" and that Section 73(4) should be amended to meet the new amendment being made to subsection (3).

20. Section 82

It was agreed that the draft amendment was satisfactory with one minor change, namely, the pluralising of "Band project".

21. Section 87

It was agreed that the proposed change did not meet the original recommendation which briefly was that the Act be amended to define exactly the circumstances in which the Federal Government will assume responsibility and those in which it will not.

The constitutional validity of such an amendment was discussed, and it was agreed it might be impossible to define the respective responsibilities of the Federal and Provincial Governments in such a matter. It was agreed that the Legal Advisor should discuss the problem with Justice to ascertain if in their view such an amendment should and could be made.

22. Section 92

This Section becomes Section 99 under the proposed amendment, but Justice apparently overlooked our recommendation for a revision to provide a penalty against an Indian selling materials from the reserve. It was agreed that Justice should be asked to meet the recommendation.

23. Liquor Sections

It was considered that the draft amendments reflected the original recommendation, but that while the wording might be legally sound, it would be difficult for lay men and Indians to understand the exact meaning of these new

sections. It was agreed Justice should be asked to consider a redraft in more simple and understandable wording.

It was pointed out that the proposed subsection (2) of Section 99 was out of place in that it referred to the Liquor Sections, not to Section 99.

It was also pointed out that in paragraph (a) of subsection (2) of proposed Section 96 the wording "Section 94" should be changed to "Section 93".

24. Section 101

There was considerable discussion on the question of Search Warrants as it was pointed out that the Justice amendment did not meet the recommendation that a Search Warrant should be required. It was pointed out that the time factor was an important element in determining whether a Search Warrant was required following the commission of an offence and the possibility of having Blanket Warrants was also raised. It was agreed that the Legal Adviser would arrange to discuss the possibility further with Justice and the R.C.M.P.

25. Section 105(b)

It was proposed for the first time that this paragraph be deleted from the Act as the offences referred to are no longer in the Criminal Code. It was agreed this step should be taken.

26. Section 108

It was agreed the proposed amendment did not meet our problem exactly and left something to be desired in its wording. The possibility exists that once the Governor in Council had made an Order regarding a woman and some of her children, there was no authority to make Orders at a later date concerning the remaining children.

It was agreed Justice should be asked to amend its draft to provide that the initial Order concerning the woman and some of her children may be followed by another Order or Orders at a later date regarding the remaining children. Query whether there should be some limit to the discretionary period. If there is not, it would mean that by taking no action the Governor in Council might permit some of the children to remain Indians forever. It is doubtful whether this was the intention, and it might be advisable to provide that in any event the child or children shall be enfranchised as of the date of their marriage or attaining their majority, whichever event shall occur first.

27. Section 115(a)

It was agreed to request Justice to amend this subsection by changing the word "permit" to read "require".

LEGAL DIVISION

Ottawa, December 7, 1955.

MEMORANDUM FOR THE DEPUTY MINISTER:

1. Herewith is the final Bill to Amend the Indian Act.
2. Mr. Driedger asks that it be sent to Mr. Ollivier for printing immediately.
3. I would suggest that this be done immediately; it is always possible (and very often easier) to change the printed Bill.
4. Might I suggest also that it might not be advisable to circulate copies to the Indians at the meeting to avoid discussions on words or wording.
5. It might be best also to forward copy of the final Bill to Mr. Jones and Mr. Brown so that the notes prepared for the Minister might check with the "explanatory notes" prepared by Mr. Driedger.
6. I believe that you will find that the Bill embodies the changes you wanted to make though perhaps not in the same manner or language as contemplated in all cases. I would like to submit, however, that most of your purposes have been achieved.
7. I believe that you will be interested in having an amendment made to the definition of "Indian" or again to subsection (1) of section 4 to the effect either that Indian shall not include such person where such person is not ordinarily resident on a reserve for all purposes under sections 32, 42 to 50, 51, 52 and 113 to 122 of this Act or "and sections 32, 42 to 50, 51, 52 and 113 to 122 inclusive shall not apply in


/the case

the case of and with respect to Indians who are not ordinarily resident on a reserve. I believe that the second suggestion is the best.

8. I believe that the amendments to sections 9 and 11 do implement what you had in mind even though this might be the subject of discussions in the course of the forthcoming meeting and even though it does not appear to be exactly what some officers of the Indian Affairs Branch had in mind. Please note that the addition of paragraphs (c) and (d) to subsection (1) of section 12 has the following effects:

1. of rendering your section 11(e) provision as you had wished it and
2. of disentitling an Indian who is a member of an American Band (Tribe) of Indians.

9. You will agree, I believe, with the proposals made to amend the other sections of the Indian Act. With respect to repeal of paragraph (b) of section 116, I should like to point out that Mr. Driedger considers it a drafting requirement that the other paragraphs not be renumbered or relettered.



L.A. Couture,
Departmental Legal Adviser.

Ottawa, December 8, 1955.

MEMORANDUM:

Re: Amendments to the Indian Act

1. It is suggested that the following words be added to subsection (1) of section 4:

"or to an Indian who is not a Canadian citizen." *except in the case of the alien wife of an Indian*

2. It is also suggested that there be an added provision in section 4 to provide that:

"sections 32, 42 to 52 inclusive and 113 to 122 inclusive shall not apply in the case of and with respect to Indians who are not ordinarily resident on a reserve." *on public unoccupied Crown land*

3. It is suggested that subsection (1) of section 9, the following words be added:

"or within twelve months where the name of a person has been added pursuant to paragraph (e) of section 11."

4. It is also proposed that there be added to section 9 a provision to the effect simply that

"where a protest is made, the burden of proof lies upon the person making the protest."

5. It is also suggested that there not be added a subsection (2) to section 11 and that there not be added paragraph (c) and paragraph (b) to subsection (1) of section 12, but that paragraph (a) of section 11 read as follows:

"11.(a) is the illegitimate child of a female person described in paragraph (a), (b) or (d), unless it is established following a protest that the father was not an Indian."

6. Finally it is suggested that paragraph (a) of subsection (2) of section 92 provide as follows:

"92.(2) (a) a majority of the electors of the band have by a vote taken at a meeting or by a referendum held in accordance with the regulations, requested that sections 93 to 95 be brought in to force in that reserve; or"

B I L L

An Act to amend the Indian Act.

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

R.S. c. 149;
1952-53, c. 41.

One reference
only.

Onus.

1. Section 9 of the Indian Act is amended by adding thereto the following subsections:

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

"(6) Where the name of a person has been added to a Band List or a General List and the addition has been protested under this section, the onus of establishing that the person is not entitled to have his name so added lies on the person making the protest."

no

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

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

no

(2) Section 11 of the said Act is further amended by adding thereto the following subsection:

"(2) Notwithstanding subsection (1) of section 9, a protest in respect of the addition to or deletion from a Band List or General List of the name of any person described in paragraph (e) of subsection (1) may be made within twelve months after the addition or deletion."

no

Special time
for protest.

3. Subsection (1) of section 12 of the said Act is amended by striking out the word "and" at the end of paragraph (a) thereof and by adding thereto, immediately after paragraph (b) thereof, the following paragraphs:

"(c) a person described in paragraph (e) of subsection (1) of section 11 if such person was born after the 4th day of September, 1951, and the father of such person was not an Indian, unless, being a woman, such person is the wife or widow of an Indian; and

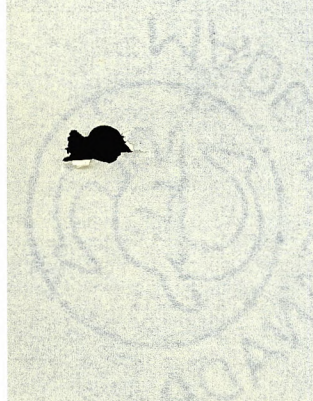
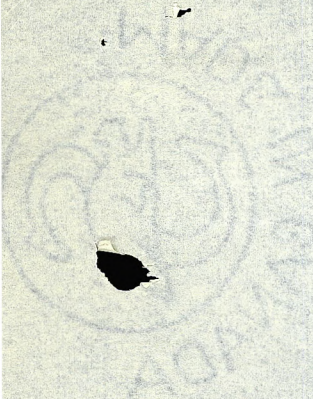
no

(d) a person who is an Indian as defined in the laws of the United States relating to the protection of Indians."

no

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

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



- (a) a person whose name appears on a General List may be admitted into membership of a band with the consent of the council of the band; and
- (b) a member of a band may be admitted into membership of another band with the consent of the council of the latter band."

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

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)."

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

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 health projects or 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."

7. Subsection (5) of section 20 of the said Act is repealed and the following substituted therefor:

Certificate of Occupation.

"(5) Where the Minister withholds approval pursuant to subsection (4), he may 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."

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

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.

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."

How surrender
made.

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

"39. (1) A surrender is void unless
(a) it is made to Her Majesty,
(b) it is assented to by a majority of the electors of the band
(i) at a general meeting of the band called by the council of the band,
(ii) at a special meeting of the band called by the Minister for the purpose of considering a proposed surrender, or
(iii) by a referendum as provided in the regulations, and
(c) it is accepted by the Minister.

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."

Certification
of surrender.

10. Section 40 of the said Act is repealed and the following substituted therefor:

"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 Minister for acceptance or refusal."

Deceased
Indian may be
deemed to have
been lawfully
in possession
of land.

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

"(2) The Governor in Council may make regulations for providing that a deceased Indian who at the time of his death was in possession of land in a reserve shall, in such circumstances and for such purposes as the regulations prescribe, be deemed to have been at the time of his death lawfully in possession of that land.

Application of
regulations.

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

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

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

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

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

Uncultivated or unused lands.

14. Section 64 of the said Act is amended by deleting the word "and" at the end of paragraph (i) thereof and inserting, immediately after paragraph (i) thereof, the following paragraph:

"(ii) 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".

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

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

(2) Subsection (3) of section 66 of the said Act is further amended by striking out the word "and" at the end of paragraph (e) thereof, by inserting the word "and" at the end of paragraph (f) thereof and by adding thereto the following paragraph:

"(g) the payment of contributions under the Unemployment Insurance Act on behalf of members of a band who are employed on a reserve."

Expenditure of revenue moneys with authority of Minister.

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

"66A. Where money is expended by Her Majesty for the purpose of raising or collecting Indian moneys, the Minister may authorize the recovery of the amount so expended from the Indian moneys raised or collected."

Recovery of moneys expended for raising or collecting Indian moneys.

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

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

Limitation.

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

"(m) for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes."

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

Elected Councils.

"73. (1) Whenever he deems it advisable for the good government of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act.

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."

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

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

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."

20. Subsection (1) of section 82 of the said Act is amended by striking out the word "and" at the end of paragraph (e) thereof and by adding thereto, immediately after paragraph (e) the following paragraph:

"(ee) the raising of money from band members to support band projects; and".

21.(1) Sections 92 to 99 of the said Act are repealed and the following headings and sections substituted therefor:

" Intoxicants.

Operation of ss. 93 to 95.

92.(1) Sections 93 to 95 are not in force in any reserve unless the Governor in Council by proclamation has declared those sections to be in force in that reserve.

Idem.

(2) No proclamation shall be issued under subsection (1) unless

(a) a majority of the electors of the band have by a referendum held in accordance with the regulations requested that sections 93 to 95 be brought into force in that reserve; or

Sale or
manufacture
of intoxicants
on a reserve.

- (b) the Minister has recommended that the bringing into force of these sections in the reserve would be conducive to the welfare of the band

93. 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 any person on 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.

Possession
of intoxicants
on a reserve.

94. 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.

Medicinal
purposes.

95. The provisions of this Act relating to intoxicants on a reserve do not apply where the intoxicant is used or is intended to be used in cases of sickness or accident.

Onus of
proof.

96. 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.

Certificate
of analysis.

97. 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 prima facie 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.

Penalties.

Removal of material from reserve.

98. A person who, without the written permission of the Minister or his duly authorized representative,

(a) removes or permits anyone to remove from a reserve

(i) minerals, stone, sand, gravel, clay or soil, or

(ii) trees, saplings, shrubs, underbrush, timber, cordwood or hay, or

(b) has in his possession anything removed from a reserve contrary to this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment."

Coming into force.

(2) This section shall come into force on a day to be fixed by proclamation of the Governor in Council.

1952-53, c. 41, s. 5.

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

Seizure of goods.

"101. (1) Whenever a peace officer or a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section 33, 89, 93, 94 or 98 has been committed, he may seize all goods and chattels by means of or in relation to which he reasonably believes the offence was committed."

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

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."

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

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

"(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage and 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."

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

Enfranchised
person ceases
to be Indian.

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

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

Schools.

"113. (1) The Governor in Council may authorize the Minister, in accordance with this Act, to enter into agreements on behalf of Her Majesty for the education in accordance with this Act of Indian children, with
(a) the government of a province,
(b) the council of the Northwest Territories,
(c) the council of the Yukon Territory,
(d) a public or separate school board, and
(e) a religious or charitable organization.
(2) The Minister may, in accordance with this Act, establish, operate and maintain schools for Indian children."

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

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

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

November 4, 1955.

An Act to amend the Indian Act.

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

1. Section 9 of the Indian Act is amended by adding thereto the following subsection:

"(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."

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

"(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d), unless the father of the child was not an Indian; or"

(2) Section 11 of the said Act is further amended by adding thereto the following subsections:

"(2) Notwithstanding subsection (1) of section 9, a protest in respect of the addition to or deletion from a Band List of the name of any person by reason of paragraph (e) of subsection (1) may be made within twelve months after the addition or deletion.

(3) The onus of establishing that a person is entitled to be registered lies upon the person who claims to be so entitled."

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

"13. Subject to the approval of the Minister, and if the Minister so directs,

should be in 9 -

(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."

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

"(2) Where pursuant to subsection (1) a new band has been established from an existing band or any part thereof, such portion of the reserve lands and funds of the existing band as the Minister determines shall be held for the use and benefit of the new band.

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

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

"(2) The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian health projects or 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."

6. Subsection (5) of section 20 of the said Act is repealed and the following substituted therefor:

"(5) Where the Minister withholds approval pursuant to subsection (4), he may 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."

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

"26. Whenever a Certificate of Possession or Occupation or a Location Ticket issued under the Indian Act, 1880, or any statute relating to the same subject matter was, in the opinion of the Minister, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer, or wrong description of any material fact therein, the Minister may cancel the Certificate or Location Ticket and issue a corrected Certificate in lieu thereof.

27. The Minister may, with the consent of the holder thereof, cancel any Certificate of Possession or Occupation or Location Ticket referred to in section 26, and may cancel any Certificate of Possession or Occupation or Location Ticket that in his opinion was issued through fraud or in error."

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

"39. (1) A surrender is void unless

(a) it is made to Her Majesty,

(b) it is assented to by a majority of the electors of the band

(i) at a general meeting of the band called by the council of the band,

(ii) at a special meeting of the band called by the Minister for the purpose of considering a proposed surrender, or

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

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

(2) Where a majority of the electors of a band did not vote at a meeting or referendum called pursuant to subsection (1) of this section or pursuant to section 51 of the Indian Act, chapter 98 of the Revised Statutes of Canada, 1927, the Minister may, if the proposed surrender was assented to by a majority of the electors who did vote, call another meeting by giving thirty days' notice thereof or another referendum as provided in the regulations.

(3) Where a meeting is called pursuant to subsection (2) and the proposed surrender is assented to at the meeting or referendum by a majority of the members 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."

9. Section 43 of the said Act is amended by adding thereto the following subsection:

"(2) Where a deceased Indian at the time of his death was in possession of land in a reserve and had been in possession of that land for a period of at least thirty years, he shall be deemed for the purposes of this Act, to have been at the time of his death lawfully in possession of that land."

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

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

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

and "(1) Where land in a reserve is uncultivated or unused or in the opinion of the Minister could be put to better agricultural use, the Minister may, with the consent of the council of the band,"

12. Section 60 of the said Act is repealed and the following substituted therefor:

"60. (1) The Minister 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 Minister considers desirable.

(2) The Minister may at any time withdraw from a band a right conferred upon the band under subsection (1)."

13. Subsection (1) of section 61 of the said Act is repealed and the following substituted therefor:

"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 Minister 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."

14. Section 64 of the said Act is amended by deleting the word "and" at the end of paragraph (i) thereof and inserting, immediately after paragraph (i) thereof, the following paragraph:

"(ii) to construct houses for members of the band, and".

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

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

(2) Section 66 of the said Act is further amended by adding thereto the following subsection:

"(4) Where money is expended by Her Majesty for the purpose of raising or collecting revenue moneys of a band, the Minister may authorize the recovery of the amount so expended from the revenue moneys raised or collected."

16. Paragraph (a) of subsection (1) of section 69 of the said Act is repealed and the following substituted therefor:

"(a) to make loans to bands, groups of Indians or individual Indians for the construction of houses, for the purchase of building materials, 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, or"

17. (1) Subsection (1) of section 73 of the said Act is repealed and the following substituted therefor:

"73. (1) Whenever he deems it advisable for the good government of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act."

(2) The portion of subsection (3) of section 73 of the said Act that precedes paragraph (a) thereof is repealed and the following substituted therefor:

"(3) The Minister may, for the purposes of giving effect to subsection (1), make orders or regulations to provide"

(3) Paragraph (c) of subsection (3) of section 73 of the said Act is repealed and the following substituted therefor:

"(c) that a 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, if the majority of the electors of the band at a referendum held and called for the purpose in accordance with the regulations so decide, and"

18. The portion of subsection (1) of section 75 of the said Act that precedes paragraph (a) thereof is repealed and the following substituted therefor:

"75. (1) The Minister may make orders and regulations with respect to band elections and, without restricting the generality of the foregoing may make regulations with respect to"

19. The portion of section 79 of the said Act that precedes paragraph (a) thereof is repealed and the following substituted therefor:

"79. The Minister 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"

20. (1) The portion of subsection (1) of section 82 of the said Act that precedes paragraph (a) thereof is repealed and the following substituted therefor:

"82. (1) Without prejudice to the powers conferred by section 80, where the Minister 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:"

(2) Subsection (1) of section 82 of the said Act is further amended by striking out the word "and" at the end of paragraph (e) thereof and by adding thereto, immediately after paragraph (e) the following paragraph:

/"(ee) the raising of money from band members to support a band project, and".

21. Section 84 of the said Act is repealed and the following substituted therefor:

"84. The Minister may revoke a declaration made under section 82 whereupon that section shall no longer apply 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 Minister."

22. Section 87 of the said Act is repealed and the following substituted therefor:

"87. 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

(a) to and in respect of Indians on a reserve 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; and

(b) to and in respect of Indians in the province off a reserve."

? ?

1

23. (1) Sections 92 to 99 of the said Act are repealed and the following heading and sections substituted therefor:

Intoxicants

92. Notwithstanding section 87, the laws in force in a province respecting intoxicating liquors do not apply on any reserve in which sections 93 to 95 are in force.

93. 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 any person on 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.

94. 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.

95. The provisions of this Act relating to intoxicants on a reserve do not apply where the intoxicant is used or is intended to be used in cases of sickness or accident.

96. (1) Sections 93 to 95 are not in force in any reserve unless the Governor in Council by proclamation has declared those sections to be in force in that reserve.

(2) No proclamation shall be issued under subsection (1) unless

(a) a majority of the electors of the band have by a referendum held in accordance with the regulations requested that sections 94³ to 97 be brought into force in that reserve; or

(b) the Minister has recommended that the bringing into force of these sections in the reserve would be conducive to the welfare of the band.

97. 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.

98. 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 prima facie 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.

Penalties

92

99. (1) A person who, without the written permission of the Minister or his duly authorized representative,

(a) removes from a reserve

(i) minerals, stone, sand, gravel, clay or soil, or

(ii) trees, saplings, shrubs, underbrush, timber, cordwood or hay, or

(b) has in his possession anything removed from a reserve contrary to this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment."

23 (2) []

(2) This section shall come into force on a day to be fixed by proclamation of the Governor in Council.

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

"101. (1) Whenever a peace officer or a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section thirty-three, eighty-nine, ninety-two, ninety-three, ninety-four or ninety-six 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, and he may enter, open and search any place or thing in or upon which he reasonably

believes any such goods or chattels may be found and such goods or chattels may be disposed of as the Minister directs."

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

"(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman and any of her children are enfranchised as of the date of her marriage."

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

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(1) ARTICLES OF CAPITULATION, 1760

"The savages or Indian allies of His Most Christian Majesty shall be maintained in the lands they inhabit, if they choose to reside there; they shall not be molested on any pretence whatever for having carried arms and served His Most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries".

(2) ROYAL PROCLAMATION, 1763

"And whereas, it is just and reasonable, and essential to our interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, or who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as not having been ceded to, or purchased by us, are reserved to them, or any of them, as their hunting grounds.

We do, therefore, with the advice of our Privy Council, declare it to be our Royal will and pleasure, that no Governor or Commander-in-Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any pretence whatever, to grant warrants, or survey, or pass any patents for lands beyond the bounds of their respective Governments, as described in their Commissions; as also, that no Governor or Commander-in-Chief, in any of our other Colonies or plantations in America, do presume for the present, and until our further pleasure be known, to grant warrants of survey, or pass patents for any lands, beyond the heads or sources of any of the Rivers which fall into the Atlantic Ocean from the west and north west, or upon any lands whatever; which not having been ceded to, or purchased by us, as aforesaid, and reserved to the said Indians, and any of them.

And, we do further declare it to be our Royal will and pleasure, for the present as aforesaid, to reserve under our sovereignty, protection, and dominion, for the use of the said Indians, all the lands and territories not included within the limits of our said three new Governments, or within the limits of the territory granted to the Hudson's Bay Company; as also the lands and territories lying to the westward of the sources of the Rivers which fall into the sea, from the west and north west, as aforesaid. And we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of the lands above reserved, without our special leave and license for that purpose, first obtained.

And we do further strictly enjoin and require all persons whatever, who have either wilfully or inadvertently seated themselves upon any land within the countries above described, or upon any other lands, which, not having been ceded to, or purchased by us, are still reserved to the said Indians, as aforesaid, forthwith to remove themselves from such settlements".

(3) ROYAL PROCLAMATION II, 1763

"And whereas, great frauds and abuses have been committed in the purchasing of lands of the Indians, to the great prejudice of our interest, and to the great dissatisfaction of the said Indians:

In order, therefore, to prevent such irregularities for the future, and to the end, that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent; We do, with the advice of our Privy Council, strictly enjoin and require that no private person do presume to make any purchase from the said Indians, of any lands reserved to the said Indians within those parts of our Colonies where we have thought proper to allow settlements; but, that if, at any time, any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians to be held for that purpose, by the Governor or Commander-in-Chief of our Colonies, respectively, within which they shall lie; and in case they shall be within the limits of any proprietary Government, they shall be purchased only for the use and in the name of such proprietaries, conformable to such directions and instructions as we or they shall think proper to give for that purpose".

(4) RIVER CREDIT SURRENDER, 1805-1806

"the sole right of the fisheries in the Twelve Mile Creek, the Sixteen Mile Creek, the River Credit and the River Etobicoke, the said right of fishery and reserves extending from the Lake Ontario up the said creeks the distance hereinafter mentioned, and no further.

And the right of fishery in the River Etobicoke from the mouth of the said River to the allowance for road between the first and second concessions south side of Dundas Street and no further".

(5) GUN SHOT TREATY, (between 1792 and 1810)

"When George III sent out Simcoe as his representative to govern Canada he made a treaty with the Indians at the Bay of Quinte, called the Gunshot Treaty. Thousands of Indians were present including the principal chiefs of the different tribes. The Government stated, although the Government wanted the land, it was not intended that the fish and game rights be excluded or that they were to be deprived of their privileges of hunting and fishing as it is the source of their living and sustenance. These provisions were to hold good as long as the sun shines, the grass grows, the waters run and as long as the British Government is in existence."

(6) ROBINSON TREATIES - SUPERIOR AND HURON, 1850

"And the said William Benjamin Robinson of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees to make or cause to be made the payments as before mentioned and further to allow the said Chiefs and their Tribes the full and free privilege to hunt over the Territory now ceded by them and to fish in the waters thereof, as they have heretofore been in the habit of doing; saving and excepting such portions of the said Territory as may from time to time be sold or leased to individuals or companies of individuals; and occupied by them with the consent of the Provincial Government."

(7) HUDSON'S BAY COMPANY DEED OF SURRENDER, 1868

"Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government, and the Company shall be relieved of all responsibility in respect to them".

(8) SPEECH FROM THRONE, 1870

"And furthermore, that upon the transference of the territory in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigine."

(9) TREATIES NO. 3 to 6, incl., 1871 - 1876

"Her Majesty further agrees with her said Indians, that they, the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered hereinbefore described, subject to such regulations as may from time to time be made by her Government of her Dominion of Canada, and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes, by her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefore by the said Government".

(10) TREATIES NO. 7 to 11, incl., 1877 - 1921

"And His Majesty the King hereby agrees with the said Indians that they shall have the right to pursue their usual vocation of hunting, trapping, and fishing throughout the tract surrendered as heretofore described subject to such regulations as may from time to time be made by the government of the country acting under the authority of His Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering or other purposes".

(11) CHIPPEWA AND MISSISSAUGA TREATIES, 1923

"Whereas the Chippewa Tribe above described having claimed to be entitled to certain interests in the lands of the Province of Ontario, such interests being the Indian title of the said tribes to fishing, hunting and trapping over the said lands, of which said rights His Majesty through His said Commissioners, is desirous of obtaining a surrender, and for such purpose has appointed the said Commissioners, with power on behalf of His Majesty, to enquire into the validity of the claims of the said tribes, and in the event of the said Commissioners determining in favour of the validity thereof, to negotiate a treaty with the said tribe for the surrender of the said rights upon the payment of such compensation therefore as may seem to the said Commissioners to be just and proper.

And whereas, the said Commissioners, having duly made the said enquiry, have determined in favour of the validity of the said rights".

(12) NATURAL RESOURCES TRANSFER AGREEMENTS, 1930

"In order to secure to the Indians of the Province continuance of the supply of game and fish for their support and subsistence Canada agrees that the laws respecting game enforced in the Province from time to time shall apply to the Indians within the boundaries thereof, provided however, that the said Indians shall have the right which the province hereby assures them, of hunting, trapping and fishing for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians have right of access".

(13) ST. CATHERINE'S MILLING CASE, (Privy Council, 14 Appeal Cases, 1888, Page 46)

"The fact that the power of legislating for Indians, and for the lands which are reserved for their use, has been entrusted to the Parliament of the Dominion is not in the least degree inconsistent with the right of the provinces to a beneficial interest in these lands, available to them as a source of revenue whenever the estate of the Crown is disencumbered of the Indian title.

The Treaty leaves the Indians no right whatever to the timber growing upon the lands which they gave up, which is now fully vested in the Crown, all revenues derivable from the sale of such portions of it as are situate within the boundaries of Ontario being the property of the province. The fact, that it still possesses exclusive power to regulate the Indians' privilege of hunting and fishing, cannot confer upon the Dominion power to dispose, by issuing permits or otherwise, of that beneficial interest in the timber which has now passed to Ontario".

(14) ST. CATHERINE'S MILLING CASE, (Privy Council, 14 Appeal Cases, 1888, Page 46)

"There was a great deal of learned discussion at the bar with respect to the precise quality of the Indian right, but their Lordships do not consider it necessary to express any opinion upon the point. It appears to them to be sufficient for the purposes of this case, that there has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a plenum dominium whenever that title was surrendered or otherwise extinguished."

(15) ATTORNEY GENERAL, CANADA vs. ATTORNEY GENERAL, ONTARIO (Privy Council, Appeal Cases, 1897, Page 199)

"In the course of argument the question was mooted as to the liability of the Ontario Government to carry out the provisions of the treaty so far as concerns future reservations of land for the Indians. No such matter comes up for decision in the present case. It is not intended to forestall points of that kind which may depend upon different considerations, and, if ever they arise, will have to be discussed and decided afresh.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. There will be no order as to costs".

(16) DOMINION-PROVINCIAL AGREEMENT, 1894 (Indian Treaties and Surrenders, Vol. 3, Page 133)

The main terms of this Agreement were:

1. Indian hunting rights were confined to unoccupied Crown lands.
2. Ontario agreed that full enquiry would be made of Indians before setting aside reserves.
3. In case of any dispute a joint commission representing the two governments would be appointed to settle and determine the question.
4. "That in case of all Indian Reserves so to be confirmed or hereafter selected, the waters within the lands laid out or to be laid out as Indian Reserves in the said Territory, including the land covered with water lying between the projecting headlands of any lake or sheets of water, not wholly surrounded by an Indian Reserve or Reserves, shall be deemed to form part of such Reserve including Islands wholly within such headlands, and shall not be subject to the public common right of fishery by others than Indians of the Band to which the Reserve belongs".
5. Dominion fishery law to apply on Indian reserves.
6. "That any future treaties with the Indians in respect of Territory in Ontario to which they have not before the passing of the said Statutes surrendered their claim aforesaid, shall be deemed to require the concurrence of the Government of Ontario".

(17) REX vs. EDWARD JIM (B.C., 1915, 22 BCR, Vol. 20, Page 106)

"In my opinion, this conviction must be quashed. The facts are not in dispute; the central fact being that the Defendant charged with an infraction of the Game Act was an Indian who killed a two-year-old buck upon a reserve upon which he was entitled to live, and was using the meat for his household use.

The question at once arises as to whether the Indian is within the scope of the prohibitions of the Provincial Game Act. In my opinion he is not".

(18) REX vs. MCLEOD (B.C., 1930, 2 WWR, Page 37)

"The Provincial Game Act will apply to an offence committed by a non-Indian on an Indian reserve. Such reserves are not by reason of the Dominion jurisdiction thereover, excluded from the application of provincial statutes which do not conflict with Dominion legislation".

(19) REX vs. RODGERS (Manitoba, 1923, 3 DLR, Page 414)

Indian killing animal on Reserve -- Disposal of pelt outside --

"In the absence of any declaration by the Superintendent General under S. 66 Indian Act, RSC, 1906, c 81, The Game Protection Act, 1916, (Man) C.44 does not apply to a treaty Indian who hunts and kills fur bearing animals upon his reserve, and in so doing, he is not a trapper within the meaning of the Provincial Act and is not required to have a permit, nor does he in disposing of the pelts of such animals outside the Reserve become a trapper within the meaning of the Act and a purchaser is not guilty of an offence under S. 20(4) in failing to obtain at the time of purchase his name and the number of his trapper's permit.

(20) REX vs. PADGENA AND QUASAWA (Ontario, 1930, not reported)

"The said Robinson Treaty is binding on both the Dominion of Canada and the Province of Ontario. The said treaty was made with the Province of Canada, which then included Ontario and Quebec, and the Province of Ontario cannot abrogate the said treaty.....I hold that the appellants are entitled under the terms of the said treaty to hunt on the lands belonging to the Crown within the said territory, and that the said Game and Fisheries Act and regulations thereunder do not apply to them and that the conviction herein should be quashed".

(21) REX vs. COMMANDA, (Ontario, 1939, 3 DLR, Page 635)

"The appellant Joe Commanda was convicted by the Police Magistrate of having in his possession during closed season parts of two moose and a deer contrary to the provisions of The Ontario Game and Fisheries Act. This Act specifically brings Indians within its scope by defining the word "person" as including Indians.

.....I am constrained to hold that in regard to the land ceded by the Indians there was no trust existing in respect thereof in their favour, nor did they have any interest other than that of the Province in the same".

(22) REX vs. WESLEY, (Alberta, 1932, 2 WWR, Page 337)

"Indians in Alberta entitled to the benefits of the articles of treaty made between the Queen and the Blackfeet, Stony and other Indians on September 12th, 1877, may (regardless of the provisions of a provincial Game Act) when hunting for food kill all kinds of wild animals regardless of age or size wherever they may be found on unoccupied Crown lands or other lands to which such Indians have a right of access, at all seasons of the year, and may hunt such animals with dogs or otherwise as they see fit and they need no licence beyond the language of Sec. 12, infra, to entitle them to do so. (Sec. 12 of the agreement was set forth in the Alberta Natural Resources Act, 1930, ch. 21 (Alta), approved by the Dominion Parliament, 1930, ch. 3, and confirmed by The British North America Act, 1930, ch. 26, (Imp), so interpreted)"

(23) REX vs. SMITH, (Saskatchewan, 1935, 2 WWR, Page 433)

"A Treaty Indian is bound by the provisions of the Game Act R.S.S. 1930 ch 208 sec 69 and prohibited thereby from shooting, hunting, trapping or carrying fire-arms within certain areas of Crown lands which are declared to be game preserves and which are particularly described in schedule B of the Game Act. This result following from the fact that the extent to which Indians are now exempted from the interpretation of par 12 of the Natural Resources Agreement of 1929 between the Province and the Dominion which was confirmed and given the force of law by Imperial Statute of 1930 ch 26. This paragraph says that the Indians are to have the right to hunt, trap and fish for food in all seasons 'on all unoccupied Crown lands' and on any other lands to which the said Indians have a 'right of access,' within the meaning of said paragraph; the right of access which they enjoy with respect to the preserves being only the privilege accorded to all persons to enter them without carrying fire-arms".

(24) REGINA vs. STRONGWILL, (Saskatchewan, 1953)

"In the Stated Case there is the fact that the area in question 'was open to any visiting hunters who have a licence and they are permitted to hunt over that area which is Crown land'. In my opinion, the accused, a treaty Indian, had a right of access to the said land, a right to hunt thereon for and kill the said moose for food, irrespective of the provincial Game Act

In my opinion the legislature has no power by unilateral action to define the language used nor amplify, extend, modify or alter the terms of the said Natural Resources Agreement, nor to derogate from the rights granted to the Indians by the said Agreement. These are constitutional rights which can only be amended or interpreted as provided for in The British North America Act 1867 and amendments thereto. Vide C.P.R. vs. Notre Dame de Bonsecours Parish (1899) A.C. p. 367.

In my opinion Subsection 2 of Section 13 of the Game Act Cap 76 1950 S.S. is ultra vires and has no application to the accused.

The appeal will be allowed and the conviction quashed with costs both here and in the Court below".

(25) PROMISES CONTAINED IN TREATIES

TREATIES 1 and 2 (Morris' Treaties of Canada, Page 29)

"When you have made your treaty you will still be free to hunt over much of the land included in the treaty. Much of it is rocky and unfit for cultivation, much of it that is wooded is beyond the places where the white man will require to go, at all events for some time to come. Till these lands are needed for use you will be free to hunt over them, and make all the use of them which you have made in the past. But when lands are needed to be tilled or occupied, you must not go on them any more. There will still be plenty of land that is neither tilled nor occupied where you can go and roam and hunt as you have always done, and, if you wish to farm, you will go to your own reserve where you will find a place ready for you to live on and cultivate."

Hon. James McKay,
Lieut. Gov. of Manitoba

NORTH WEST ANGLE TREATY NO. 3 (Morris' Treaties of Canada, Pages 58, 66, 67 and 75)

Governor: "It may be a long time before the other lands are wanted, and in the meantime you will be permitted to fish and hunt over them..... I think we should do everything to help you by giving you the means to grow some food, so that if it is a bad year for fishing and hunting you may have something for your children at home.....There is one thing that I have thought over, and I think it is a wise thing to do. That is to give you ammunition, and twine for making nets, to the extent of \$1,500 per year, for the whole nation, so that you can have the means of procuring food."

Chief: "Now you see me stand before you all; what has been done here to-day has been done openly before the Great Spirit, and before the nation, and I hope that I may never hear any one say that this treaty has been done secretly; and now, in closing this Council, I take off my glove, and in giving you my hand, I deliver over my birth-right and lands, and in taking your hand, I hold fast all the promises you have made, and I hope they will last as long as the sun goes round and the water flows, as you have said."

Hon. James McKay,
Lieut. Gov. of Manitoba.

QU'APPELLE TREATY, NO. 4 (Morris' Treaties of Canada, Page 95)

"We have come through the country for many days and we have seen hills and but little wood and in many places little water, and it may be a long time before there are many white men settled upon this land, and you will have the right of hunting and fishing just as you have now until the land is actually taken up".

Hon. James McKay,
Lieut. Gov. of Manitoba.

WINNIPEG TREATY, NO. 5 (Morris' Treaties of Canada, Page 162)

"They had heard of the terms granted the Indians at Carlton, and this acted most prejudicially at one time against the successful carrying out of my mission; but I at last made them understand the difference between their position and the Plain Indians, by pointing out that the land they would surrender would be useless to the Queen, while what the Plain Indians gave up would be of value to her for homes for her white children."

The Howard Commission

FORTS CARLTON AND PITT, TREATY NO. 6 (Morris' Treaties of Canada Pages 194-5)

"In connection with the aiding of the Indians to settle, I have to call attention to the necessity of regulations being made for the preservation of the buffalo. These animals are fast decreasing in numbers, but I am satisfied that a few simple regulations would

preserve the herds for many years. The subject was constantly pressed on my attention by the Indians, and I promised that the matter would be considered by the North-West Council. The council that has governed the territories for the last four years was engaged in maturing a law for this purpose, and had our regime continued we would have passed a statute for their preservation. I commend the matter to the attention of our successors as one of urgent importance".

Alexander Morris,
Lieut.-Governor

BLACKFEET TREATY NO. 7 (Morris' Treaties of Canada, Page 267)

"The Great Mother heard that the buffalo were being killed very fast, and to prevent them from being destroyed her Councillors have made a law to protect them. This law is for your good. It says that the calves are not to be killed, so that they may grow up and increase; that the cows are not to be killed in winter or spring, excepting by the Indians when they are in need of them as food. This will save the buffalo, and provide you with food for many years yet, and it shews you that the Queen and her Councillors wish you well".

David Laird,
Lieut.-Governor

LESSER SLAVE TREATY NO. 8 (Report of Commissioners, Page 4)

"Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it".

David Laird,
J.H. Ross,
J.A.J. McKenna
Indian Treaty Commissioners

JAMES BAY TREATY NO. 9 (Report of Commissioners, Pages 5 and 11)

"Missabay, the recognized chief of the band, then spoke, expressing the fears of the Indians that, if they signed the treaty, they would be compelled to reside upon the reserve to be set apart for them, and would be deprived of the fishing and hunting privileges which they now enjoy.

On being informed that their fears in regard to both these matters were groundless, as their present manner of making their livelihood would in no way be interfered with, the Indians talked the matter over among themselves, and then asked to be given till the following day to prepare their reply. This request was at once acceded to and the meeting adjourned.

The next morning the Indians signified their readiness to give their reply to the commissioners, and the meeting being again convened, the chief spoke, stating that full consideration had been given the request made to them to enter into treaty with His Majesty, and they were prepared to sign, as they believed that nothing but good was intended.....

Throughout all the negotiations we carefully guarded against making any promises over and above those written in the treaty which might

afterwards cause embarrassment to the governments concerned. No outside promises were made, and the Indians cannot, and we confidently believe do not, expect any other concessions than those set forth in the documents to which they gave their adherence".

Duncan C. Scott,) Canada
Samuel Stewart,)
Daniel G. MacMartin) Ontario

SASKATCHEWAN TREATY NO. 10 (Report of Commissioners, Pages 5 and 6)

"In the main, the demand will be for ammunition and twine, as the great majority of Indians will continue to hunt and fish for a livelihood. It does not appear likely that the conditions of that part of Saskatchewan covered by the treaty will be for many years so changed as to affect hunting and trapping, and it is expected, therefore, that the great majority of the Indians will continue in these pursuits as a means of subsistence,

The Indians were given the option of taking reserves or land in severalty, when they felt the need of having land set apart for them. I made it clear that the government had no desire to interfere with their mode of life or to restrict them to reserves....."

J.A.J. McKenna,
Commissioner.

MACKENZIE RIVER TREATY NO. 11 (Report of Commissioners, Page 1)

"The Indians seemed afraid, for one thing, that their liberty to hunt, trap and fish would be taken away or curtailed, but were assured by me that this would not be the case, and the Government will expect them to support themselves in their own way, and, in fact, that more twine for nets and more ammunition were given under the terms of this treaty than under any of the preceding ones; this went a long way to calm their fears. I also pointed out that any game laws made were to their advantage, and, whether they took treaty or not, they were subject to the laws of the Dominion."

H.A. Conroy,
Commissioner.

INDIAN SOCIAL LEADERS

TRAINING COURSE

GUIDE

INDIAN SOCIAL LEADERS
TRAINING COURSE GUIDE

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 1. Public libraries
 2. University libraries
 3. Y.W. & Y.M.C.A. publications
 4. Specific texts :

COYLE, Grace - Group Experience and Democratic Values, Woman's Press, 1947.

TRECKER, Harleigh - Social Group Work - Principles and Practices, Woman's Press, 1948.

WILSON & RYLAND - Social Group Work Practice, Riverside Press, 1949.

WITTENBERG, Rudolph - "So you want to Help People", Associated Press, 1947.



CANADA

DEPARTMENT OF
CITIZENSHIP AND IMMIGRATION

INDIAN SOCIAL LEADERS

TRAINING COURSE GUIDE

I. PURPOSE AND OBJECTIVE

1. For the Branch:

An effective social welfare program must necessarily be approached from two angles -- prevention and cure. Each is complementary to the other and neglect of either serves to nullify the work concentrated on the one. Until recently, social welfare programs (including that of the Indian Affairs Branch) have tended to be weak, with the result that an enormous job of curing social ills exists. The present Indian Affairs field staff is inadequate to cope with the situation and the only hope lies in enlisting the services of the provincial, municipal and private welfare organizations to deal with the problem of cure. In the meantime, it is proposed that certain Indian men and women should be trained, not as professional case workers, but as assistants to the social worker. In this capacity these individuals would "spot" possible social problems, operate as a liaison person between Indians and social worker, assist in certain cases where a simple type supervision is required, and interpret welfare programs to the Indian people.

Because it is hoped that these semi-trained individuals will become the leaders on the reserves of preventative programs, they are called Social Leaders. Their function primarily would be to stimulate interest in and action on social problem situations through the Band Councils, the Homemakers' Clubs and other organizations on the reserves. In this capacity they would be giving indirect leadership first by stimulating the interest of the people as a whole, secondly by guiding them to a fuller understanding, and thirdly by assisting in the working out of projects to alleviate, mitigate and prevent the development of problem conditions. It is further proposed that through their training they would be of value as direct leaders and advisers for Homemakers' Clubs and any other adult or youth recreation or welfare organization on the reserve.

2. For the Indian Trainees:

Although it is the intention to attempt only a limited program with a minimum of trainees at the inception of the project, if successful, the number of trainees and courses offered could be expanded each year until such time as a fairly representative proportion of the Indian population could have benefited from an introduction into welfare philosophy. This period of training would have the advantage of giving the trainees some insight into their own problems and how to deal with them, and it would be serving to initiate interest and concern on the part of the Indians for the welfare of their own people. It would also serve to stimulate the self-help philosophy, thereby discouraging the present prevalent attitude of turning to the non-Indian Civil Servant for moral surgery in time of pain.

II. SELECTION OF TRAINERS:

1. Screening trainees :

The success of the Social Leader program will depend largely on the success of the initial training course, and consequently it is of prime importance that the pioneer social leaders be carefully selected. Screening should be done on the basis of:

- a) qualifications
 - i) academic education
 - ii) experience in life situations
 - iii) displayed interest in the welfare of others
 - iv) time to devote to the work
- b) personality
 - i) reputation in the community -- well accepted, opinion highly regarded, tends towards being a "peacemaker" rather than a "trouble shooter"
 - ii) responsibility -- can be depended on to follow through with certain action
 - iii) integrity -- honest, not a gossip
 - iv) imagination & vision -- not overly dependent on direction
 - v) ability to accept supervision, recognize problems beyond personal ability, etc.

It is reasonable to expect that no one potential trainee will excel in all these desirable prerequisites, but they should be used as a guide in screening applicants for the course.

2. Method of approach :

Applicants should not be lured by prospects of a free trip and a good time. They should realize that the purpose of the course is to train them for a responsible role in their communities and consequently the time devoted to the training period will involve personal expenditure of effort. Assurance of a conscientious attitude might be obtained by requiring applicants to prepare for the course by writing a report on conditions, needs, etc. It is suggested that the Band Councils be approached first and given a full explanation of the purpose of the course, what it is intended to accomplish, how it can serve the Indian communities and the need for Band co-operation if the project is to succeed. Examples might be given to illustrate how certain non-Indian communities have engaged in similar programs to answer similar community needs. An effort should be made to build up the peoples' confidence in their own ability to undertake this task of self improvement through leadership rather than looking to a non-Indian "perfectionist" for direction. The interest of the Homemakers' clubs should be enlisted in the same manner with emphasis being placed on the value of co-operative male and female leadership, and "key" people approached individually if necessary.

3. Choosing a homogeneous group :

A homogeneous group is one of sufficiently uniform ideas and interests to allow for harmonious relationships between members, and is not necessarily dependent on uniformity of age or sex. It would seem advisable to endeavour to enlist both male and female trainees, and preferably in an age range between eighteen and forty. Where possible the group should be kept at one general age level, as this factor influences interests, academic background and experience in life situations, but if it is felt that a "younger" or "older" potential leader exists he or she should not be excluded solely because of age. For obvious reasons, individuals known to be of a contentious nature should be excluded, as internal group conflict hampers progress.

III. MECHANICS OF ORGANIZATION

1. General :

As this is an experimental project, it is suggested that a maximum of four pilot training courses of one week's duration only be organized the first year in four different localities. To avoid the problems and expense in transportation, it would seem practical to limit enrolment to trainees from the province in which the course is to be held, with possible exceptions in special cases where it is felt a particular individual would benefit from the training and be of immediate value to his or her reserve. It is proposed that two social workers together work on each program, collaborating on details by correspondence and allowing for one or two days work together prior to commencement of the course at which they would both be present. Trainees should be prepared and instructed to take notes during lectures and utilize their evenings for planned recreation or private study. The value of some free time should be considered. As these are test projects, it is of particular importance that a detailed report be submitted upon completion of the course outlining the lecture material, recreational activities, group participation and worker's accurate assessment and evaluation of the course, with recommendations for improvement.

2. Location :

In choosing a site for the training course the following factors should be taken into consideration :

- a) available trainees -- classes should be limited to approximately 12 trainees and those selected for the pilot courses should be preferably of superior ability, interest and intelligence, in order to increase the possibility of success. It would seem advisable to endeavour to select two trainees rather than just one from a reserve in order to give the individuals moral support in the work they will be expected to undertake when returning home. Where possible, transportation should be taken into consideration and trainees drawn from reserves in the same general locale. However, the latter consideration should be secondary to selection on the basis of qualifications.
- b) accommodation -- the housing of trainees and facilities for lecture rooms and recreational activities will be influential in choosing a site.
- c) community resources -- the number of people in the community who are available and willing to assist as lecturers, and resources such as recreation centres for illustrated tours, will determine the scope of variety in the program. As these are valuable assets to the success of the course, they should be given adequate consideration in selecting a site for the training centre.

An ideal location would be a reserve with a council hall suitable for lectures and recreational activities, adequate housing for billeting trainees, and one sufficiently close to a city or town which affords desirable resources for observation tours, guest lecturers, etc.

3. Flexibility :

Rather than attempt an all-embracing program which might have the effect of overwhelming the trainees, it is suggested that the lecture material be kept simple in content and phraseology. The information supplied should be treated merely as a guide to be adjusted according to the needs of the group and the resources of the community. In order to allow for originality of the lecturers, no attempt is made to supply more than a brief outline of suggested lecture material under the section Course Content (V).

IV. PROGRAM VARIATION

Since learning is so much an emotional experience involving the desire to learn and identification with the leader, the "climate" of the group experience will perhaps have more lasting value than the information given. This is particularly true for individuals who are less mature and therefore more subjective, as are many of the Indian people. If exposed to democratic conditions in the training period the individuals are more likely to find satisfaction in this type of leadership and consequently be better equipped for their intended role as leaders rather than authoritarians who would likely create hostility on the reserves. The attitude of the group leader, as well as the trainees participation in group projects, can contribute to this democratic feeling. It will be the leader's responsibility to help the trainees feel secure, accepted and of value by creating an atmosphere of warmth and friendliness as well as by offering considerable support during the opening sessions.

The aim of any training course is that the student will absorb into his thinking the content of the course so it will become synonymous with his own thoughts and convictions rather than merely an accumulation of memorized facts which he can recite. With this aim in mind the course should be planned so as to appeal to the trainee through as many of his senses as possible, and in such variety so as not to satiate any one sense, thereby nullifying its value. Consequently the basic tenets in planning a training course would be variety in subject matter and variety in activity. The following program is suggested for use in the Indian Social Leader Training Course : -

1. Recreation:

The first prerequisite in training for leadership is to create a group spirit within the training group itself. If the individuals can develop a feeling of oneness by experiencing fun together and learning together they will be better equipped to organize their communities in the same way. Therefore straight recreation is an important part of this course, but it should be utilized also as an educational experience, to illustrate not only ideas for recreation on the reserves but also techniques for stimulating and organizing such types of recreation. It is suggested that several evenings be devoted to this activity. As it is important that the trainees become acquainted with one another and overcome their shyness and reticence about group participation early in the training period, a party should be organized the first evening. Future recreational activities should be organized by the group itself in order to practice the techniques learned in the lecture courses.

Suggested evening recreations :

- a) parties -- dances, card games, etc.
- b) amateur programs
- c) sports -- hay rides, skating parties, badminton, volley ball, etc.

2. Lectures :

While it is desirable that the trainees learn by "doing", a certain amount of formal instruction is necessary to learn the right way to do it. Consequently any group participation should be introduced by a lecture period.

The section dealing with suggested time table illustrates how the four subjects listed under Course Content (section V.) can be divided into three lecture periods each and distributed over the six day training period. This allows for not only a daily variety in subject matter, but also time between each lecture for absorption of the ideas presented on the subject.

2. Lectures continued :

It should be noted that one and a quarter hours is allowed for each session dealing with one subject. It is suggested that this be broken down to allow for approximately one half hour introductory lecture, one hour of group participation to practice the techniques illustrated in the lecture, and fifteen minutes for constructive criticism of the group participation and general summary. A variety of lecturers also contributes to variety in the total program. The resources available in the community where the course is being held will necessarily determine and limit the number of different lecturers available. The lecturers should be fully acquainted with the total program, the purpose of the training course, the level of understanding of the group, what it is intended that they should learn from the lecture and the desire for group participation as a complement to the lectures.

3. Group participation :

The practical application of that which is learned in the lecture period can best be taught through participation under guidance in a sample experiences. For example, if the lecture deals with the subject of how a social leader can approach a band council to stimulate the latter to interest itself in a particular social problem on the reserve, it would be of help to utilize the drama technique in which the trainees take turns being the social leaders while the rest of the group plays the role of the band council. In this way the trainees would have an opportunity to practice what to say and how to say it in an effective manner. Comparative drama is also an effective tool and could be used to illustrate a good and bad Homemaker's club in action. Half the group would play the role of running a good meeting, bringing out all the positive ideas learned in the lecture, while the other group demonstrates the actions of a poor club meeting, emphasizing deteriorating factors. The type of group participation selected should be that which is most adaptable and flexible to the subject of the lecture.

The following are suggested types of group participation :

- a) drama -- the acting out of a life situation
- b) discussions
- c) essay preparations
- d) review of a previous lecture, or a prepared talk on one point of the present lecture by one of the trainees.
- e) simple debates -- including the Trial form in which the group acts as the jury, one member the judge, one the "defense" lawyer (who argues on behalf of the subject), and one the "prosecution" lawyer (who argues against the subject).
- f) comparative drama -- the acting out of a life situation in a positive and negative way to illustrate comparisons.
- g) the imaginary radio or television program -- utilizing the "quiz show", amateur program, Public opinion poll, etc.

4. Illustration :

The lecture information can be made more meaningful and impressive by actually demonstrating to the class how something is put into practice. The most popular form of illustration is the movie. The National Film Board, University Extension Departments, and various health divisions make available films illustrating subjects which are difficult to demonstrate in any other way. In the course titled "Understanding People", of valuable use would be films which show the effect on children of broken homes, rejection, and related emotional problems. Of equal value would be films illustrating recreational programs, craft work, programs for various age groups, etc.

4. Illustration. continued :

The conducted tour is also an excellent technique for illustration, but its use is limited to the community resources where the training class is being held. A lecture on the organization of adult, aged or teen age recreational programs might be followed by a trip to the "Y" or community centre where such programs can be witnessed in action. The new housing developments sponsored by various churches for the aged would be a good illustration on how private groups of individuals, without government support, are coping with the problem of the aged in their community. A tour of a nursery school could be used to illustrate the lecture dealing with the needs of the child, or teaching children how to get the most out of life through learning a disciplined routine.

A third technique of illustration is the imported experienced group who, by means of the drama, demonstrate a life situation such as how to organize a club. For lack of an experienced group, any group of people, including the trainee group, may be used, but they should be briefed in advance rather than totally adlibbing as in the drama type of group participation.

5. Skills :

A skill course not only gives the total program variety, but offers an opportunity for light diversion from the academic periods. It also provides a concrete learned experience which the trainee can utilize to his own benefit and take back to his reserve to teach others. The skill should therefore be simple, easily learned and practical from a financial point of view. Examples of skills which might be introduced are as follows:

- a) wood, glass or paper flower making
- b) making children's toys (adaptable to both men and women)
- c) folk dancing -- including square dancing
- d) card games -- canasta, whist, chess, checkers, monopoly
- e) sculpturing or soap carving
- f) community singing
- g) rhythm bands
- h) sports -- badminton, ping pong, volley ball, miniature golf, etc.
- i) model community building -- using the sand table system
- j) copper work, leather work, etc.

6. Sample Time Table - (see Page 7.)V. COURSE CONTENT (outline of lecture subject material)1. Interpretation of the Indian Social Leader's Role

- a) what is a leader and why are leaders necessary ?
 - i) international leadership
 - ii) national leadership
 - iii) community leadership
 - iv) family leadership
- what is leadership and what is its value ?
 - i) concrete direction
 - ii) inspiration for action
 - iii) spokesman for the group's ideas, attitudes and feelings
 - iv) organization for action

SAMPLE TIME TABLE

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
9:00 -9:30	Lecture 1 (a)	Lecture 3 (a)	Lecture 1 (b)	Lecture 3 (b)	Lecture 1 (c)	Lecture 3 (c)
9:30-10:30	discussion	comparative drama	drama	discussion	radio prog	comparative drama
10:30-10:45	summary	summary	summary	summary	summary	summary
10:45 -11:00	break	break	break	break	break	break
11:00 -12:00	skill course	skill course	skill course	skill course	skill course	skill course
12:00 - 1:00	lunch	lunch	lunch	lunch	lunch	lunch
1:00 -1:30	Lecture 2 (a)	Lecture 4 (a)	Lecture 2(b)	Lecture 4 (b)	Lecture 2 (c)	Lecture 4 (c)
1:30- 2:30	radio prog	debate	essay report	drama	debate	discussion
2:30 -2:45	summary	summary	summary	summary	summary	summary
2:45 -3:00	break	break	break	break	break	break
3:00 -5:00	films	illustrated drama	tour	films	tour	course summary
Evening	Party organized by staff	Study	Sport Activity	Amateur Program	Party Organized by group	

1. Interpretation of the Indian Social Leader's Role -continued.b) Leadership Types

What are the qualities and values of each and the natural reactions which they incite ?

- i) authoritarian
- ii) democratic

Which type is preferable for an Indian Social Leader and why ?

c) What is the role of the Indian Social Leader ?

- i) to stimulate community mindedness
- ii) to encourage the development of constructive programs for general welfare
- iii) to encourage club leadership
- iv) to give direction on club organization
- v) to interpret the welfare philosophy and programs to the band
- vi) to refer problem situations and cases to the Social Worker
- vii) to offer supervision in certain cases referred by the Social Worker.

2. Community Mindedness

- a) Philosophy of selflessness - expanding personal interest and concern beyond ourselves to our immediate families, beyond families to friends and neighbours, and ultimately into the realm of acquaintances and the community at large.

Motivation of and value in community mindedness :

- i) philosophy of charity
- ii) enrichment of life through widening the friendship circle
- iii) improved social and physical environment in which to develop, grow and from which to derive increased happiness.

b) Specific social problems on the reserves :

- i) What are the prevalent social problems ?
- ii) How do they affect the reserve generally ?
- iii) How do they affect you and your immediate family ?
- iv) How do they affect the Indian population as a whole ? (prejudices, etc.)

c) Improving and stimulating community mindedness on the reserves

- i) Does it exist at present ? If so, how ?
- ii) Does it need creating or improving ?

Stimulating community mindedness in the Band Councils, Homemakers' Clubs, or any existing organized group :

- i) Impressing on members their responsibility to the band and the influence of their leadership through example
- ii) Techniques for introducing welfare topics into meetings
- iii) Techniques for stimulating group interest in social problems
- iv) Program ideas for combating social problems

3. Understanding People

a) Happiness -- the immediate goal in life

Prerequisites for happiness and how each contributes:

- i) health
- ii) interest in life generally and in specific activities
- iii) interest in a wholesome work activity
- iv) friends and wholesome recreational outlets
- v) love and security through family relationships

3. Understanding People - continued

- b) Developing the prerequisites for happiness:
 - i) a self disciplined life and an organized routine
 - ii) learning self discipline (i.e. child training -- teaching a child to want what he needs rather than to demand and get what he wants)
 - iii) putting the most into life in order to derive the greatest benefit and happiness from life
 - iv) increasing your interest and benefit from work, home and play situations
- c) Specific problems detrimental to happiness -- cause, effect and treatment :
 - i) broken homes -- effect on children
 - ii) unmarried mothers and illegitimacy
 - iii) juvenile delinquency
 - iv) excessive drinking
 - v) boredom in youth
 - vi) boredom in middle age
 - vii) boredom in aged years.

4. Organized Recreation

- a) The club and the leader :
 - i) What is a club ?
 - ii) How can clubs serve the needs of the reserve ?
 - iii) What is a club leader ?
 - natural leadership
 - directive leadership
 - shared leadership
 - iv) Dictatorial leadership versus democratic leadership
 - v) Stimulating and encouraging natural leadership ability
 - vi) Stimulating and developing leadership -- encouraging others to undertake recreational leadership, etc.
- b) Club organization :
 - i) Stimulating the desire for a youth club
 - ii) Stimulating the desire for an adult club
 - iii) The mechanics of organizing a youth club
 - iv) The mechanics of organizing an adult club
 - v) The procedure for "running" a youth club
 - vi) The procedure for "running" an adult club
- c) Club Program:
 - i) The initial program content
 - ii) Developing and expanding program content
 - iii) Maintaining and restimulating interest (keeping the club alive)

DIARY OF DIRECTOR'S WESTERN TRIP
APRIL 21 - MAY 13, 1955

Minneapolis, Minn.
Regional Offices - Prairie Provinces
Vancouver, B.C.

- April 21, 1955 - P.M. En route to Minneapolis
- " 22, - "
- " 23, - University of Minnesota
Regional Conference on current status and interpretation of Indian rights and their treaties.
- " 24, - P.M. Gave paper on Indian program of the Canadian Government
- " 25, - Winnipeg Regional Office
Staff Conference with Messrs. Davis, Nield, Marcoux, Singer and White on 1955-56 construction program.
- " 26, - Brokenhead Indian Reserve with Messrs. Jackson, Nield and Daggit. Visited Metro settlement - one Indian home headlined in Winnipeg press - Day School and Miss Ferguson - made temporary arrangements for 20 children to attend school next term in W. A. Hall.
- " 27, - Winnipeg Office - Phone call from Deputy Minister - interviewed Mr. White re. conversation with Father Giard concerning completion of Guy Residential School - Memo to Deputy Minister - Interviews with Mrs. Oddson and Mr. Daggit.
P.M. - Private interview with Mr. R. S. Davis re. his retirement from Government service - Memo to Deputy Minister
- " 28, - Regina Office - Staff Conference with Messrs. Jones, Warden, Runcie, Hughes and Cairns re. 1955-56 program of construction and outlining functions of C. and E. prairie depot.
- " 29, - A.M. Continuation of staff conference and interviewed Miss Meade and Mr. Tunstead.
P.M. Mr. J. S. White - Deputy Minister of Welfare and Mr. R. J. Davidson - Director of Education
- " 30, - File Hills Qu'Appelle Agency - Agency conference - Hospital - Lebret Indian Residential School and Standing Buffalo Reserve Day School.

- May 1 - White Bear Reserve with Mr. Jones and Mr. Warden - 2 Day Schools - Met Chief Standing Ready and several Indians - No complaints - plenty of fresh meat during the past winter - suggested more emphasis on cattle raising with Chief.
2. - At Regina Office with Mr. Jones - due to heavy rains Sunday night roads to Indian reserves again blocked - decided to proceed to Calgary Monday night instead of Tuesday.
- 3 - In Calgary office. Mr. Battle discussed the advantage of having regional office in Edmonton instead of Calgary. Is going to recommend the change. Interviewed Robertson and Albinson re. Blue Quills Residential School.
- 4 - Mr. Waller and Miss Broderick P.M. to Edmonton - Met Mr. Edlund re. trouble at Cold Lake air weapons range - distribution of monies.
- 5 - Edmonton office - Met Mr. Lapp - monthly statements of trust account balances are not coming through from Ottawa - Discussed inefficiency of Mr. D. Sims, Clerk Grade 3 - No initiative or desire to get ahead.

Met Mr. Casey, Minister, and Mr. Jensen, Deputy Minister of Lands and Forests - evidently Mr. Jensen had not discussed Michel enfranchisement with his Minister. Mr. Casey gave his own opinion that the province did not have any reversionary interest in the land but wanted to get the opinion of Cabinet who were meeting Friday morning - promised to wire me Friday afternoon. Mr. Casey felt that province should be represented on any Committee appointed under Sec.112. Annoyed about publicity over Trans Canada Highway and feel the Indians are being exorbitant in their demands; also feels that Alberta would get unfavourable publicity if any Department of their Government opposed the Michel enfranchisement while the province would have no say in a matter that might cost the province thousands of dollars each year in welfare and medical services. Sec.112 was explained to him but he was not very convinced.

P.M. Father Fauvrier - Provincial of Oblates - stated he had no evidence to support his claim that Mr. Waller is anti-Catholic but he has assumed that was the case because of remarks relayed to him by officials (whom he would not name). He stated he would accept the assurance of Mr. Battle and myself that Mr. Waller was not anti-Catholic and he would consider the matter closed. Discussed Father Latour and Ermineskin School.

May 5 - (P.M. Cont'd) - Discussed Father Paquette. He is aware of Father Paquette's personal grudge against the Department but does not feel that he can do much about it. He was aware that Mr. Jones of Regina had the door slammed in his face by Father Paquette. He stated he would take care of any letters sent by Father Paquette if we would forward them to him.

Charles Camsell Hospital

Father Latour - Ermineskin School - Samson Community Hall - Met Assistants Ingram and Morcom. Father Latour promised full co-operation in future. Claims pressure of parents was the reason for closing the temporary school. Met Jonas Applegarth.

- 6 - A.M. With Mr. Ragan at Sarcee Reserve - Met Chief and Council - New Memorial Hall - Visited both classrooms of day school - Spoke to children - Visited Sarcee Military Camp - Half 10,000 acres bought from Indians - other half under lease from Indians - Mr. Ragan enquired if gravel could not be sold on surrendered part as surrender reserved mineral rights for Indians.
- P.M. Blackfoot Indian Reserve - with Mr. Battle. Visited Old Sun and Crowfoot Residential Schools - toured reserve. Calgary in P.M.
- 7 - Lunch at McLeod with Messrs. Hunter of Blood and Woodsworth of Peigan. Visited Community Hall - Standoff Day School and housing units - Band Farm Center - Cardston - Returned to Calgary.
- 8 - Sunday - Stony Reserve - Morley. Lunch with John Laurie at Canmore. Discussed legally married women living on the reserves and having children by other Indians - Illegitimacy. Reference made to obstruction in some parts of Alberta to Day school program.
- 9 - C.P.R. en route to Vancouver
- 10 - Vancouver. Met Mr. John Boucher of Ottawa - Discussed research project at U.B.C.
- P.M. to U.B.C. for discussion with Professor Hawthorn and associates.

May 11 - U.B.C. all day - Continuing discussion on research projects - Present: Professors Hawthorn, Belshaw, Jamieson, Chapman and Dixon.

P.M. En route to Victoria, B.C.

12 - A.M. Deputy Attorney General McLean discussed for two hours plans for Metlakatla enfranchisement. Indicated he would discuss the matter with Mr. Bonner and recommend that as the reversionary interests of the province seemed so small, they be dropped in this case.

P.M. To Saanich Reserve with Messrs. Arneil and Boys. Tsartlip Day School - Hubert Henry welfare house - Agency staff at Duncan. To Nanaimo for ferry trip to Vancouver.

13 - Vancouver office - Rev. Peter Kelly and Robert Clifton (President, Native Brotherhood - See separate notation below)

P.M. (The following is taken from memorandum to D.I.A. dated May 13, 1955, from Mr. Arneil)

"You will recall that at the meeting to-day with Mr. Paull, he brought up the question of the possibility of the Government paying for court action in connection with the Income Tax question. He suggested that the procedure being adopted in the Lewis Francis case to have Band Funds made available for court action for the Income Tax case.

"He complained that a Dr. Archibald from Sidney, Nova Scotia, who is evidently a local medical superintendent, should be removed. He stated that the doctor is quite unsuitable and is a political appointment. He intends to see Dr. Moore regarding this matter.

"He also complained against the continued employment of Dr. Arnold whose services, he states, are quite unsatisfactory and he should be removed. He will also discuss this matter with Dr. Moore.

"At the meeting this morning with Dr. Peter Kelly and Robert Clifton, representing the Native Brotherhood of British Columbia, he intimated that since the 1952 Act regarding Income Tax, the Brotherhood's lawyer, Mr. Neil Cook, feels that any action contemplated through the Exchequer Court or the Supreme Court would be futile. While Mr. Cook continues as the legal advisor to the Native Brotherhood, he is taking no further action in Income Tax cases pending further instructions from the Native Brotherhood. Dr. Kelly feels that their case should rest on Article 13 of the Terms of Union which states that a liberal policy as that hitherto pursued by the B.C. Government should be continued by the Dominion Government after the Union.

"Following discussion, Dr. Kelly intimated that he would write to Mr. Harris, the Minister of Finance, submitting to him the case of the west coast fishermen whom they feel should not be required to pay Income Tax and should enjoy the same privileges as the Indian farmer or rancher in the interior or prairie provinces.

"Dr. Kelly also intimated that he would write to the Minister concerning the possibility of appointing an Indian to assist our Director as included in the recommendations of the Joint Committee on Indian Affairs.

"He also discussed the possibility of two Indians being appointed to the Senate of Canada and was advised that such a matter was high level Government policy beyond officials of the Indian Affairs Branch."



DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

IN YOUR REPLY REFER TO

No.....
ALSO TO DATE OF THIS LETTER
YOUR FILE
No.....
DATE.....

P.O. BOX 70,
VANCOUVER, B.C.

13th May, 1955.

Memorandum to Colonel H.M. Jones:

You will recall that at the meeting to-day with Mr. Paull, he brought up the question of the possibility of the Government paying for court action in connection with the Income Tax question. He suggested that the procedure being adopted in the Lewis Francis case to have Band Funds made available for court action to be treated as a precedent for gaining funds to pay for court action for the Income Tax case.

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Dr. Kelly also intimated that he would write to *the Minister* ~~Mr. Harris~~ concerning the possibility of appointing an Indian to assist our Director as included in the recommendations of the Joint Committee on Indian Affairs.

He also discussed the possibility of two Indians being appointed to the Senate of Canada and was advised that such a matter was high level Government policy beyond officials of the Indian Affairs Branch.

W.S. Arneil,
Indian Commissioner for B.C.

/PP



DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

628 Public Building,
Calgary, Alberta,
May 9th, 1955.

PERSONAL AND CONFIDENTIAL

Director,
Indian Affairs Branch,
Dept. of Citizenship & Immigration,
OTTAWA.

For your convenience, following is a summary of reserves visited by you during your trip to Alberta:

1. On Tuesday, May 3rd you were in the Regional office where you met my Assistant, Mr. E. A. Robertson, Mr. L.G.P. Waller, Regional School Inspector, Mr. A.H. Albinson, Regional Supervisor of Construction, Miss Willa Broderick, Social Worker, Mr. H. Moore, Principal Clerk and our stenographic staff, Miss Osofeet, Mrs. Gerke and Miss Hong. During that day, in addition to the Blue Quills Residential school problem you discussed matters of organization and procedure, particularly the roles of the various officials concerned in the selection of school sites, etc.
2. On Wednesday, May 4th, we travelled to Edmonton in the afternoon where we met with Mr. R. I. Eklund, Regional Supervisor of Fur, in the evening.
3. On Thursday, May 5th, you visited the firm of Archibald, Edwards and Covey regarding the Michel Band enfranchisement plan, and the Edmonton Agency office where you met Mr. G. S. Lapp, Superintendent of the Edmonton Indian Agency, and his staff. Following your discussion with the Honourable Mr. Ivan Casey, Minister of Lands and Forests and his Deputy, we visited the Charles Camsell Hospital where you met Doctors Falconer, Orford and Matas and Mr. Dew,

Principal of the Charles Camsell Hospital school, along with his staff of teachers. Just previous to this we had a discussion with the Father Provincial, Father Fournier.

4. In the evening of the 5th we stopped at the Hobbema Agency where you met Indian Superintendent Mr. Wild and his two Assistants, Mr. Ingram, recently transferred from the Lesser Slave Lake Agency, and Mr. Gordon Morcom. We visited Ermineskin Residential school with Mr. Wild and the Principal, Father Latour and then inspected the Samson hall where you met Mr. James Crane, Samson Councillor and Mr. Jonas Applegarth.
5. On Friday, May 6th you met Mr. R.D. Ragan, Superintendent, Stony-Sarcee Indian Agency and his office staff. Mr. Ragan took you to the Sarcee Reserve where you inspected the Sarcee day school and met the teachers, Miss Rempel and Miss Zacharias as well as Chief James Starlight, Councillor Dick Starlight and Councillor Dick Big Plume.

In the afternoon we proceeded to the Blackfoot Agency where you met Superintendent W.P.B. Pugh and his office staff which included the Assistant Mr. A. H. Murray, as well as Mrs. Wilson and Miss Bates. We then visited the Old Sun Anglican Residential school where you met the Principal, the Reverend Crocker and we then toured part of the farming area on the reserve, ending up at the Crowfoot Catholic Residential school where you met the Principal the Reverend Father Charron and various members of his staff.

6. On Saturday, May 7th we drove to Fort Macleod where you met Mr. H.N. Woodsworth, Superintendent, Peigan Indian Agency and Mr. L. C. Hunter, Superintendent Blood Indian Agency. In the afternoon you stopped at the Standoff settlement where you met the teacher of the Standoff school, Mr. McNeil. We then travelled to the Blood Band Community hall where you met Councillor Percy Creighton. You next inspected the Blood Band seed-cleaning plant at the old Agency site which is now the Farm Headquarters. You then met Assistants Middleton and Mathews as well as the Grader Operator and Farm Mechanic, Mr. Ferguson. Going on to the town of Cardston you met the Clerk Grade 4, Mr. R.C. Hamer as well as Mr. Campbell Evans who is in charge of the agricultural lease area. We then returned to Calgary.

7. On Sunday, May 8th, we proceeded through the Stony Reserve to Canmore for a meeting with Mr. John Laurie, Secretary of the Indian Association of Alberta, and after a short stay in Banff where you visited the Norman Luxton Museum, we returned to Calgary.
8. On Monday, May 9th you took the 8.15 A.M. train for Vancouver.

On behalf of the Indian Affairs staff in Alberta may I again say that we very much appreciated your visit to Alberta. Although with very few exceptions our Superintendents are constantly striving to encourage our Indians to move steadily forward to a position of responsibility as citizens of this country, it is reassuring and gratifying to know that we finally have a Director who felt it advisable to spend nearly a week of his time in our Region.



R. F. Battle,
Regional Supervisor of Indian Agencies.

RTB/o



CANADA

DEPUTY MINISTER
OF
CITIZENSHIP AND IMMIGRATION

0/113-2-4

Adm

Ottawa, November 15, 1955.

MEMORANDUM FOR

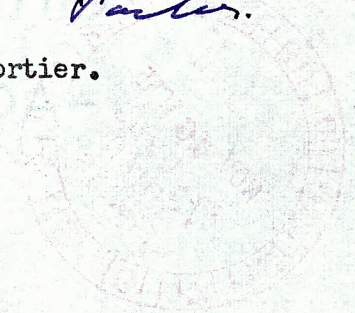
THE DIRECTOR OF INDIAN AFFAIRS

I have now received the proposed draft to amend the Indian Act from the Department of Justice, which is hereto attached, together with a letter addressed to Mr. Couture from Mr. Dréidger. Immediately hereunder, you have my comments on the proposed amendments.

I wish you would have these amendments reviewed immediately so that by Thursday or Friday, we could meet with your officials to reach a final decision.

Laval Fortier.

NOTED -
16.11.55
P.H.





OFFICE OF
THE DEPUTY MINISTER OF JUSTICE
AND
DEPUTY ATTORNEY GENERAL OF CANADA

OTTAWA, November 4, 1955.

174000-5

Re: The Indian Act

Dear Sir:

I enclose two copies of a preliminary draft of a Bill to amend the Indian Act. I should be glad to have your comments.

I have not incorporated all of the amendments recommended in your memorandum. I would ask that you reconsider them in the light of the following comments:

1 - Surrenders have always been subject to acceptance by the Governor in Council and you propose that this should be changed to Minister. I would point out that a surrender is the foundation of title and it is desirable that the fact of a surrender should be readily ascertainable and provable. This can be done if the surrender is accepted by the order of the Governor in Council, but I foresee difficulties if the surrender is to be accepted by the Minister.

2 - Section 72 of the Indian Act authorizes the Governor in Council to make regulations and subsection (2) authorizes the Governor in Council to prescribe penalties for breach of the regulations. You propose that this be changed to the Minister. I would point out that normally legislative power of this kind is delegated to the Governor in Council rather than the Minister.

L. A. Couture, Esq.,
Legal Adviser,
Department of Citizenship & Immigration,
Woods Building,
OTTAWA, Ontario.

3 - You also propose that the Minister should be substituted for the Governor in Council in the enfranchisement provisions and in the education provisions. I recall that when the Indian Act was revised these two matters were given considerable policy consideration by the Cabinet, and it was then decided that it should be the Governor in Council rather than the Minister. If this is to be changed to the Minister it might be desirable to raise the questions of policy again with the Cabinet Legislation Committee.

Yours truly,



Encl.

Asst. Deputy Minister.

Comments on the proposed amendments to
the Indian Act

Re. Section 9. Instead of the draft of subsection 5 as suggested by Mr. Dredger, I feel that subsection 5 should read along the following lines:

"Once the Judge has rendered his decision, the Registrar must act accordingly and the inclusion or deletion of the name on the Band list or general list cannot be again protested".

Re. Section 11, sub-paragraph (e), I would prefer that the disposition now suggested as sub-paragraph 2 be included in sub-paragraph (e).

DK. Regarding the proposed sub-paragraph 3 of Section 11, I note that the onus is on the person who claimed to be entitled to be registered. The suggested amendment by the Branch was that the person who makes the protest should have the onus of proof.

✓ Regarding the amendment to Section 13, I do not believe that the draft reflects the suggestion made by the Branch, or cures the problem as mentioned by the Branch.

Regarding Section 39. I believe that in Section 1, sub-paragraph (c) the words 'Governor-in-Council' should be replaced by 'Minister'.

Regarding Section 43, I note that the suggested sub-paragraph 2 refers to lawfully in possession. This could create confusion in view of Section 20 of the Act.

Regarding the suggested amendment to Section 58, I believe that the Indians would prefer if the section read: "Where land in a reserve is uncultivated or unused and in the opinion of the Minister".

Regarding Section 60, I note that 'the Minister' has been substituted to 'the Governor-in-Council'. It might be one of the sections where the change would not be desirable.

Regarding the suggested amend to Section 64. I just do not understand this suggested amendment.

1. Re. amendment to Section 73 (3). This might be place where it would be preferable to retain 'Governor-in-Council' rather than 'Minister'.

Re. amendment suggested to 73 (3)(c), should we not suggest also

a meeting of the Band instead of a referendum alone.

Regarding the suggested amendment to Section 87. The new subsection (b) as drafted could be interpreted as saying that Indians are subject to Provincial laws regarding, for instance, hunting, fishing, etc.

I do not believe that the new suggested Sections concerning intoxicants meets the case as suggested by the Minister. Those are Sections 92 to 99.

Regarding Section 99, I would like to have some explanation on the new subsection 2.

Does the amendment on subsection 2 of Section 108 cover the amendment the Indian Branch had in mind?

Regarding the Section 116. Will it not be necessary to renumber the sub-paragraph?

Comments on Draft Amendments to Indian Act

1. Sec. 2 (b) - Dealt with by amendment to Section 48 as recommended by the Deputy Minister.
2. Sec. 2 (1)(o) - Not dealt with by Justice although recommended by the Deputy Minister.
3. Sec. 2 (p) - Not dealt with by Justice although recommended by the Deputy Minister.
4. Sec. 3 (2) - Not dealt with by Justice although recommended by the Deputy Minister.
5. Sec. 4 (1) - Not dealt with by Justice although recommended by the Deputy Minister.
6. Sec. 9 - It was recommended that this section be amended to overcome the following problems:-
 1. Question of double appeal;
 2. Onus of proof on those seeking admission to band membership;
 3. Question of protest where a new band is constituted pursuant to Sec. 17(a).

1. Double Appeal

While the Justice amendment suggested as subsection 5 would solve the problem, it would not forestall a second protest which would require correspondence to explain why it could not be acted upon. The suggestion of the Deputy Minister seems to be the preferable course to follow, and it is suggested the new subsection 5 might read as follows:-

- (5) The addition to or deletion from the Indian Register of a name, following a judicial decision, may not be protested.

It is presumed that in view of this amendment it will be necessary to amend subsection 1 of section 9 by adding at the beginning the following words:-

9(1) "Subject to subsection five"

2. Onus of Proof

The recommendation made was that the onus of proof in any case should rest with the person making the protest. In practice this would mean that a person protesting his omission from a list must prove his right to membership, and a person or group of persons protesting the inclusion of a name in a list must prove the person in question is not entitled to membership.

The Justice amendment covers only the first case - that of exclusion - and has been drafted as an amendment to section 11, which does not seem right as section 9 is the section concerned with protests, hearings, etc.

It is suggested the problem be met by amending subsection 2 of section 9 as follows:-

9(2) "i. where a protest conclusive"

"ii. The onus of establishing that a name was improperly included, omitted, added or deleted from a band or general list, as the case may be, lies upon the person who makes the protest."

3. Protest of New Band List

The amendment proposed by Justice seems to meet the problem. However, it is suggested as an addition to section 17, whereas it might preferably be part of section 9 - perhaps as subsection 2, dropping the present subsection 2 to 3, etc.

7. Sec. 11 - Our recommendations were that paragraphs (c) and (e) of section 11 be amended to meet problems arising in the administration of them.

1. Section 11(c)

Not dealt with by Justice although Deputy Minister suggested amendment.

2. Section 11(e)

While the amendment suggested by Justice relieves Branch officials from the necessity of making an investigation in each case, it does not appear to cover the change recommended by the Deputy Minister.

It is suggested the paragraph might read as follows:-

11(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d) unless, on investigation, following a protest, the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered.

Justice suggests a further amendment to extend the time for protesting illegitimate children to twelve months. We see no objection to the principle but the wording of the amendment is faulty. It speaks of the "addition to or deletion from a Band list" by reason of paragraph (e), and in our view the words "deletion from" are superfluous. Under the proposed paragraph (e) the names of all illegitimate children will be included in Band lists and unless such additions are protested the children will remain in membership. They can be excluded only following a protest, so that there can never be a protest of their exclusion - the proper action would be to appeal the Registrar's decision to a Judge.

It is recommended the Justice amendment be amended itself by deleting therefrom the words "or deletion" in the second line and the words "or deletion" in the last line.

We favour the Justice idea of making this subsection 2 of section 11 rather than the suggestion of incorporating the amendment in to paragraph (e). However, it might be better to interchange paragraphs (e) and (f) under these circumstances.

8. Sec. 12 - No amendment suggested originally but the question has come up whether the adoption of an Indian child by a non-Indian should not be a sufficient basis for declaring the child is not entitled to be registered.
9. Sec. 13 - Do not understand the meaning of the Justice amendment nor see how it meets the problem reported previously.

It seems to us the Deputy Minister's recommendation and suggestions were quite clear and that the section could have been amended easily by dropping the words "the Band" from each part and adding a new subsection 3 somewhat as follows:-

13. s.s.3 The Minister may direct that the consent, required in subsections one and two, shall be given by the Band.

10. Sec. 17 - Justice has suggested adding to this section a new subsection providing against the protesting of names included in new Band lists. We have suggested the amendment should be to section 9 rather than 17.
11. Sec. 20 - Two recommendations were made by the Branch - (1) to extend the Certificate of Occupation period and (2) to set up a third form of possession to meet leasing difficulties.
- The first was approved by the Deputy Minister, but no amendment has been prepared by Justice. Query - why not?
- The second suggestion was not approved by the Deputy Minister who suggested instead, an amendment to section 58 which will be considered later.
- Justice has made one amendment - substituting the word "may" for "shall" in subsection 5, as recommended by us originally.
- A third recommendation concerned allotments based on years of occupation rather than on the whim of a Band Council or, in short, allotment by prescription. These would overcome two difficulties - (a) the refusal of Band Councils to make allotments, (b) the difficulty we encounter of trying to trace chains of occupation. It is not clear what happened to this recommendation, particularly when in part it was adopted in the Estate Regulations.
12. Secs. 26 & 27 - Justice amendments meet our recommendation and appear adequate.
13. Sec. 30 - No administrative instructions have been compiled to date. Query whether the section should be amended in view of this.
14. Sec. 37 - We still feel the recommendation made originally has merit, and believe most Band Councils would agree. As it would lessen the administrative work and in addition broaden the functions and powers of the Band Council, it is difficult to understand the opposition expressed by the Deputy Minister.
15. Sec. 39 - With one change the Justice amendment seems satisfactory. In subsection 3 the word "electors" should be inserted in place of "members".
16. Sec. 42 - Despite the Deputy Minister's comments apparently Justice did not take any steps to give the Minister broader powers to cover a wide variety of problems not falling within the category "matters and causes testamentary". Query - why not? Similarly as to debts and partition.
17. Sec. 43 - Justice amendment appears to meet the difficulty, but if a man through death can acquire lawful possession by prescription, why cannot he do so during his lifetime. See our previous comments on section 20. If the amendment is to stand, it is suggested section 20 may have to be amended as follows:-

20 (1) Except where this Act otherwise provides, no Indian is lawfully...unless we can distinguish between an Indian and his estate.

18. Sec. 45 - The amendment suggested has been incorporated in the Estate Regulations. Query whether these are intra vires and whether certain parts of them should not be incorporated in the Indian Act.

19. Sec. 48 - Amendment satisfactory.

20. Sec. 58 - See notes hereunder.

21. Sec. 64 - We made two recommendations: (1) to provide means of realizing on security; (2) to provide authority for using capital moneys for housing.

No amendment has been made to take care of the first recommendation, and we consider it imperative this be done.

The Justice amendment to meet the second recommendation does seem to meet our problem exactly. What we wanted was authority to make unsecured housing loans from capital on a repayable basis. Few Indians can meet the stiff loan requirements in paragraph (b) when it comes to borrowing say \$2,000 for a house. However, many can afford to repay a loan over 10 or 20 years if we can make it without security other than their promise to repay and an assignment of treaty and interest shares. We suggest the amendment should read,

(ii) to make loans to members of the band, for the purposes of house construction.

22. Sec. 66 - Amendment does not meet our recommendation which was that revenue moneys of a Band generally be available without consent of a Band Council to meet resources management expenses. Justice amendment confines this to revenue earned from the management - misuse of word revenue as the management may bring in capital moneys.

We originally had in mind using revenue funds only, but in many instances these are now available to meet a bill, having been earmarked for other purposes in a Band budget. The amendment should therefore permit use of either revenue or capital moneys in that order.

23. Sec. 58 - If the words "be put to better agricultural use" are intended to cover the case of individual Indians' lands being leased as is done in the Pelly Agency, then something more is required - probably an amendment to paragraph (b) - deleting the word "lawful". This word permits the leasing of an individual's land regardless of whether he had lawful possession as provided by Section 20 or possession through usage recognized by the Band.