#### Aboriginal Legislation Prior to the Indian Act, 1867

At the time of the Royal Proclamation, 1763, responsibility for Aboriginal affairs in Canada lay with British imperial authorities. By the mid-1800s, however, Britain began to transfer this responsibility to the Canadian colonies themselves. Between 1850 and 1876 (when the first Indian Act was passed), Canadian authorities enacted several key pieces of legislation, which strongly influenced the nature of the Indian Act itself.

The first of these was **An Act for the Better Protection of the Lands and Property of Indians in Lower Canada** and **An Act for the protection of Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury**, which were passed by the Province of Canada (then a British colony) in 1850. These statutes are important in that they represented the first attempt to define “Indian” and who would receive the rights and duties of **Indian status**. Under the acts, the term “Indian” was defined broadly to include the following: 1) any person deemed to be Aboriginal by birth or blood; 2) any person reputed to belong to a particular band or body of Aboriginals; and 3) any person who married an Aboriginal or was adopted by Aboriginals (Indian and Northern Affairs Canada, 1991). While the definition was broadly construed, it is important to note that it assumed for the government the responsibility for deciding who was an Aboriginal. In other words, Aboriginal groups themselves were not given the power to define their own communities. This power, instead, lay in the hands of non-Aboriginal authorities.

Another important statute was **An Act to Encourage the Gradual Civilization of Indian Tribes in this Province, and to Amend the Laws Relating to Indians**, passed by the Province of Canada in 1857. Commonly referred to as the Gradual Civilization Act, this statute was the first to introduce the concept of **enfranchisement** or the process by which Aboriginals lost their Indian status and became full British subjects. In introducing the Act, the colonial government viewed enfranchisement as a privilege for Aboriginals, by which they could gain their freedom from the protected Indian status and gain the rights of full colonial citizenship, such as the right to vote. It is at this point that the strategies of **civilization** and **assimilation** begin their legislative existence, with colonial authorities encouraging Aboriginals to forgo their Indian status and be drawn into the larger colonial society as regular citizens (and, hence, become “civilized”).

Under the Act, only Aboriginal men could seek enfranchisement. In order to do so, they had to be over the age of 21, able to read and write in either English or French, be reasonably well educated, free of debt, and of good moral character as determined by a commission of non-Aboriginal examiners (Report of the Royal Commission on Aboriginal Peoples, 1996). Once enfranchised, the person was entitled to receive up to 50 acres of land from the reserve on which they lived and a per capita share of treaty annuities and other band monies. Enfranchisement was to be fully voluntary by the man seeking it. However, an enfranchised man’s wife and children automatically lost their Indian status, regardless of whether or not they so desired.

In 1860, the Province of Canada passed the **Indian Lands Act**. An important element of this Act was the centralization of control over Aboriginal affairs for the colony. The Act created the office of the Chief Superintendent of Indian Affairs, and transferred all authority for Aboriginals and their lands in the Province of Canada to this single official. Moreover, the Chief Superintendent was given very broad discretionary powers over reserve Aboriginals. This centralization continued in 1867, when the Province of Canada was united with Nova Scotia and New Brunswick to create the new nation of the Dominion of Canada. Section 91(24) of the **Constitution Act, 1867**, gave legislative authority over Aboriginals and their lands to the federal Parliament, removing it from the provincial legislatures.

In 1869, the Government of Canada passed [***An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria***](http://www.ainc-inac.gc.ca/pr/lib/phi/histlws/hln/a69c6_e.html). This Act is significant in that it was the first to introduce the notion of **self-government** forAboriginals on reserves. Under the Act, Aboriginal tribes or bands were permitted to elect chiefs and band councils for the purpose of general administration on reserves. These elected officials were granted limited bylaw powers, and were elected to terms of three years. It is important to note many Aboriginal groups did not engage in democratic practices at the time. Consequently, the Act granted the government the power to impose democratic institutions on them, regardless of what Aboriginal groups desired. Furthermore, Aboriginal women were excluded from voting for band chiefs and councils (women in general were excluded from voting at this time, as [women’s suffrage](http://faculty.marianopolis.edu/c.belanger/QuebecHistory/encyclopedia/Canada-WomensVote-WomenSuffrage.htm) was not achieved in Canada until the early 1900s).

In addition to a mechanism for Aboriginal self-government, the 1869 Act included other key provisions. It prohibited the sale of alcohol to Aboriginals, on the paternalistic grounds of protecting Aboriginals from themselves. Furthermore, the Act instituted a **compulsory enfranchisement** provision. Under the Gradual Civilization Act (see above), enfranchisement was a completely voluntary process, by which Indian status could only be lost at an individual’s choosing. Under the 1869 Act, however, Aboriginal women who married non-Aboriginal men automatically lost their Indian status, regardless of whether or not they so desired it. Moreover, any children resulting from the marriage would also be denied Indian status. This provision continued with the strategy of assimilation, as many Aboriginal women, and their children, forcefully lost their Indian status and gained Canadian citizenship.

### Civilization and Assimilation: The First Indian Act

Overview of the first Indian Act, passed in 1876

The Government of Canada, now an independent nation, introduced the first Indian Act in 1876, with the purpose of consolidating all prior federal legislation regarding Aboriginals into one single piece of legislation. The following provides an overview of the underlying philosophy and key provisions of the Indian Act, 1876.

#### Philosophy of the Indian Act, 1876

The first Indian Act adopted an explicit vision of assimilation, in which Aboriginals would be encouraged to leave behind their Indian status and traditional cultures and become full members of the broader Canadian society. In this context, Aboriginals were viewed as children or wards of the state, to which the government had a paternalistic duty to protect and civilize. This underlying philosophy was clearly expressed by the Canadian Department of the Interior in its 1876 annual report:

“Our Indian legislation generally rests on the principle, that the aborigines are to be kept in a condition of tutelage and treated as wards or children of the State. …the true interests of the aborigines and of the State alike require that every effort should be made to aid the Red man in lifting himself out of his condition of tutelage and dependence, and that is clearly our wisdom and our duty, through education and every other means, to prepare him for a higher civilization by encouraging him to assume the privileges and responsibilities of full citizenship.” (Report of the Royal Commission on Aboriginal Peoples, 1996)

It is important to note the change in Aboriginal policy from the Royal Proclamation, 1763 to the first Indian Act. The first Indian Act maintained the Crown’s role as trustee of Aboriginal interests, but had a very different view of that relationship. No longer were Aboriginal groups viewed as autonomous quasi-nations within the broader Canadian political system, to which the Crown had an obligation to protect from abuse and encroachment from European colonial society.

#### Key Provisions of the Indian Act, 1876

The Indian Act, 1876 adopted much of the basic framework established in previous Aboriginal legislation, with some minor alterations.

First, the Act maintained the centralized administration of Aboriginal affairs, with a Superintendent General of Indian Affairs, which was a cabinet position, who had broad discretionary powers in dealing with Aboriginals and their lands.

The Act also continued the practice of imposing a definition of **Indian status** on Aboriginal groups, thus ensuring that it was the Canadian government, and not Aboriginal groups themselves, that had the power to decide who was, and who was not, Aboriginal. However, the Act did place a stronger emphasis on male lineage in its definition of Indian status. Under the Act, the term “Indian” now referred to 1) any male of Indian blood reputed to belong to a particular band; 2) any child of such person; and 3) any woman who is or who was married to such a person. Moreover, the Act explicitly denied Indian status to the [Métis](http://www.metisnation.ca/who/index.html) of Manitoba, which were persons of mixed Aboriginal and European decent.

The Act also maintained and broadened the system of **enfranchisement**, by which Aboriginals could lose their Indian status and gain full citizenship. Previously, Aboriginals could voluntarily apply for enfranchisement if they met certain criteria. Moreover, compulsory enfranchisement occurred for Aboriginal women when they married non-Aboriginal men. In addition to maintaining these provisions, the Act allowed for the compulsory enfranchisement of any Aboriginal who received a university degree or who became a doctor, lawyer or clergyman, regardless of whether they desired to lose their Indian status and gain full citizenship.

Regarding **self-government**, the Act continued the system of elected chiefs and band councils, who served for three years, and had limited bylaw powers. As before, the Act granted the Superintendent General the power to impose democratic systems on Aboriginal groups, regardless of whether they were desired.

Moreover, the Act allowed the Superintendent General to order a reserve to be surveyed and divided into lots, and then require band members to obtain tickets for individual plots of land. The allowed the government to promote **individualism** amongst Aboriginals, by breaking up communal use of reserve lands, and encouraging practices of individual ownership of property.

Finally, the Act also included many protective features. No one other than an “Indian of the Band” could live on or use reserve lands without licence from the Superintendent General. Moreover, no federal or provincial taxation on real estate or personal property was permitted on a reserve; no liens under provincial law could be placed on Aboriginal property; and no Aboriginal property could be seized for debt.

### Assimilation Reinforced: The Indian Act from 1876 to 1951

Early amendments and revisions of the Indian Act

Since its introduction in 1876, the Indian Act has undergone several amendments and reforms. The following provides a summary of key changes to the Indian Act during the period 1876 to 1951.

#### Amendments to the Indian Act 1876-1950

Between 1876 and 1950, the purpose of the amendments to the Indian Act was to strengthen the philosophy of civilization and assimilation underlying the first Act. Moreover, many of the changes to the Act granted the government greater powers to move Aboriginals and expropriate their lands for the purpose of non-Aboriginal use.

Key amendments to the Indian Act during this period include:

* 1885: Prohibition of several traditional Aboriginal ceremonies, such as potlaches.
* 1894: Removal of band control over non-Aboriginals living on reserves. This power was transferred to the Superintendent General of Indian Affairs.
* 1905: Power to remove Aboriginal peoples from reserves near towns with more than 8,000 people.
* 1911: Power to expropriate portions of reserves for roads, railways and other public works, as well as to move an entire reserve away from a municipality if it was deemed expedient.
* 1914: Requirement that western Aboriginals seek official permission before appearing in Aboriginal “costume” in any public dance, show, exhibition, stampede or pageant.
* 1918: Power to lease out uncultivated reserve lands to non-Aboriginals if the new leaseholder would use it for farming or pasture.
* 1927: Prohibition of anyone (Aboriginal or otherwise) from soliciting funds for Aboriginal legal claims without special licence from the Superintendent General. This amendment granted the government control over the ability of Aboriginals to pursue land claims.
* 1930: Prohibition of pool hall owners from allowing entrance of an Aboriginal who “by inordinate frequenting of a pool room either on or off an Indian reserve misspends or wastes his time or means to the detriment of himself, his family or household.”

#### 1951 Revision of the Indian Act

In the late 1940s, the federal government established a **Joint Committee of the Senate and House of Commons** to examine Aboriginal policy. While recommending broad changes to the Indian Act, the Joint Committee nevertheless continued with the previous philosophy of transitioning Aboriginals from wardship to citizenship.

In response to the Joint Committee’s report, the federal government instituted some changes to the Indian Act in 1951 (although, overall, the new Act continued with many of the practices under the previous legislation).

In regard to general administration, the 1951 Act assigned responsibility for Aboriginals to the minister of Indian Affairs, with broad discretionary powers over the implementation of the Act as well as the daily lives of Aboriginals on reserves. The Act also maintained the government’s power to expropriate Aboriginal lands, albeit in a significantly reduced manner.

Concerning the definition of **Indian status**, the 1951 Act instituted some limited reforms. The Act maintained the federal government’s power to define Indian status and band membership, instead of transferring this power to Aboriginals themselves. However, the new Act abandoned the criterion of “Indian blood” in favour of a system of registration with strong biases in favour of descent through the male line.

The 1951 Act continued with the **band council system**, with some small alterations. Band council authority was still limited. However, under the new Act, bands that reached “an advanced stage of development” could acquire additional powers, such as authority to tax local reserve property. The new Act also allowed the full participation of Aboriginal women in band democracy.

The practice of **enfranchisement** was kept in the 1951 Indian Act. Voluntary enfranchisement was still permitted, as well as the compulsory enfranchisement of Aboriginal women who married non-Aboriginal men was continued and Aboriginals who received a university degree or who became a doctor, lawyer or clergyman. Moreover, the 1951 Act introduced the double-mother rule, which provided for the compulsory enfranchisement of persons whose mother and grandmother had obtained Indian status only through marriage to a man with status. However, under the new Act, the minister could only enfranchise an individual or band upon the advice of a special committee established for that purpose.

The new Act removed many of the prohibitions on tradition Aboriginal practices and ceremonies, such as potlaches and wearing traditional “costume” at public dances, exhibitions and stampedes. The Act, however, continued many of the paternalistic elements of earlier versions. For example, the Act made it an offence for Aboriginals to be in the possession of intoxicants or to be intoxicated.

One of the more important reforms concerned the application of **provincial law** to Aboriginals. Previously, the federal government had asserted exclusive jurisdiction to legislate in the context of Aboriginals. Changes made in 1951, however, provided that whenever a provincial law dealt with a subject not covered under the Indian Act, such as child welfare matters, Parliament would allow that provincial law to apply to Aboriginals on reserves. This opened the door to provincial participation in Aboriginal law making.

### Aboriginal Policy in Transition: The Indian Act from 1952 to 2002

Contemporary amendments and revisions of the Indian Act

Since the revisions of 1951, the Indian Act has continued to undergo changes, both in terms of its underlying philosophy and its specific provisions. The following provides an overview of the Indian Act during the period 1952 to 2002.

#### Conflicting Views on Aboriginal Policy

From the 1950s onward, Aboriginal policy in Canada entered into a complex period. On the one hand, there still remained the traditional philosophy of assimilation, which encouraged Aboriginals to leave behind their Indian status and integrate into the broader Canadian society. Contrasted to this, however, were new approaches to Aboriginal policy, based on the desire of Aboriginal groups to assume control over their own communities, as well as new ideas derived from the international indigenous movements of the time. Central to this approach was the view of Aboriginal groups as distinct nations, which were entitled to political, social and economic self-determination.

This period of complexity is evident in the range of actual and proposed amendments that occurred to the Indian Act between 1952 and 1985. For example, in 1960, Aboriginals received the right to vote federally without having to give up their Indian status. Furthermore, in 1961, the compulsory enfranchisement provisions were removed from the Indian Act, meaning that Aboriginals could no longer be forced to give up their Indian status. This eliminated some of the key assimilation provisions of the Indian Act, which had been in existence since the late 1800s.

In 1969, however, the federal government introduced the [**1969 White Paper**](http://www.ainc-inac.gc.ca/pr/lib/phi/histlws/cp1969_e.pdf) on Aboriginal affairs. This strategy paper proposed the abolition of the Indian Act altogether, the rejection of land claims, and the assimilation of Aboriginals into Canadian society (with the status of an ethnic minority, as opposed to being a distinct national-cultural group). Strong Aboriginal and non-Aboriginal criticism of the 1969 White Paper eventually led the federal government to back away from this position.

#### The 1985 Revision of the Indian Act

One of the more significant changes to the Indian Act came in 1985, when the federal government introduced **Bill C-31**. This amendment was in response to changes in Canada’s constitutional framework; in particular, the introduction of the [***Canadian Charter of Rights and Freedoms***](http://www.mapleleafweb.com/features/canadian-charter-rights-and-freedoms-introduction-charter-rights) in 1982. Section 15 of the Charter prohibited discrimination based on certain characteristics, such as race, ethnicity, religion, sex, age, or mental or physical disability. This right to equality had important implications for sections of the Indian Act, particularly in regard to the historical practice of compulsory enfranchisement for Aboriginal women who married non-Aboriginal men (while Aboriginal men marrying non-Aboriginal women could retain their Indian status).

The Indian Act, 1985 removed this discrimination by asserting that women could no longer gain or lose Indian status as a result of marriage. Moreover, the new Act permitted the restoration of Indian status to several groups that had been forcefully enfranchised in the past. This included Aboriginal women who had lost status due to marrying non-Aboriginals; children enfranchised as a result of their mothers’ marriage to non-Aboriginals; persons enfranchised as a result of the double-mother provision; and illegitimate children of Aboriginal women who lost their Indian status because of non-Aboriginal paternity.

In addition to removing elements of discrimination from the Act, the 1985 revision also granted Aboriginal bands the right to determine their own membership. Under the Act, bands were allowed to administer and update their band lists, which was a record of all persons who were recognized as formally belonging to the band. Moreover, bands were allowed to establish their own rules of membership in administering their band lists. This reform enabled greater Aboriginal control over who was to be considered an Aboriginal for the purpose of the Indian Act.

#### Recent Amendments to the Indian Act

The last major revision of the Indian Act occurred in 1985. Since that time, however, there have been further amendments to the legislation.

In 1988, the Act was changed to allow bands greater powers to tax land interests on their reserves, as well as permitted individuals to mortgage these leaseholds on reserves. The purpose of these reforms was to provide bands with access to revenues and financing in order to promote economic development on reserves.

The 1990s and early 2000s saw renewed efforts on the part of the federal government to significantly revise the Indian Act. In the early 1990s, the federal government announced its intention to eventually abolish the Indian Act. As part of this policy, the government introduced the **Indian Act Optional Modification Act** in 1996. The proposed legislation included modifications to the Indian Act in several areas, such as the system of the band governance, bylaw authority, and the regulation of reserve land and resources. The Act faced strong opposition from Aboriginal groups, and was never passed by Parliament.

In 2002, the federal government again initiated a major overhaul of the Indian Act with the introduction of **The First Nations Governance Act**. Central to the new Act was the requirement that Aboriginal bands develop a system by which to choose their leaders, as well as clear rules regarding how band money is spent. Furthermore, under the Act, the actions of Aboriginal bands would no longer be exempt from the Canadian Charter of Rights and Freedoms. Again, however, the new Act faced opposition from Aboriginal groups and was never passed by Parliament.

For more information on The First Nations Governance Act:

* [Parliament of Canada: Bill C-7: The First Nations Governance Act](http://www.parl.gc.ca/common/bills_ls.asp?Parl=37&Ses=2&ls=c7)

While these large overhaul packages were never passed, the federal government did implement more narrow revisions of the Indian Act during this period. In 1999, it enacted **The First Nations Land Management Act** (FNLMA). Previously, reserve land management, such as environmental standards and land use policies, was governed by provisions of the Indian Act. Under the FNLMA, however, bands can apply to the federal government to assume control over land management on their reserves. The purpose of the legislation is to improve band capacities and opportunities for economic development.

For more information on The First Nations Land Management Act:

* [Government of Canada: First Nations Land Management Act](http://www.ainc-inac.gc.ca/pr/pub/matr/fnl_e.html)

Furthermore, in 2000, the Indian Act was amended to allow band members living off-reserve to vote in band elections and referenda. This amendment was in response to a 1999 Supreme Court of Canada decision which concluded that the denial of voting rights for off-reserve band members violated their right to equality under Section 15 of the [*Canadian Charter of Rights and Freedoms*](http://www.mapleleafweb.com/features/canadian-charter-rights-and-freedoms-introduction-charter-rights).

For more information on this amendment of the Indian Act:

* [Government of Canada: Amendments to the Indian Band Election Regulations and the Indian Referendum Regulations](http://www.ainc-inac.gc.ca/nr/prs/s-d2000/00168bkd_e.html)