

## INAPPLICABLE PROVISIONS OF THE *INDIAN ACT*

**“Once a land code takes effect, the First Nation, its members and its First Nation land will not be subject to the following:” (Framework Agreement on First Nation Land Management, clause 21.1)**

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### **Indian Act CHAPTER I-5**

Reserves to be held for use and benefit of Indians

**18. (1)** Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

Use of reserves for schools, etc.

**(2)** The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian burial grounds, Indian health projects or, with the consent of the council of the band, for any other purpose for the general welfare of the band, and may take any lands in a reserve required for those purposes, but where an individual Indian, immediately prior to the taking, was entitled to the possession of those lands, compensation for that 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.

Children of band members

**18.1** A member of a band who resides on the reserve of the band may reside there with his dependent children or any children of whom the member has custody.

Surveys and subdivisions

**19.** The Minister may

- (a)** authorize surveys of reserves and the preparation of plans and reports with respect thereto;
- (b)** divide the whole or any portion of a reserve into lots or other subdivisions; and
- (c)** determine the location and direct the construction of roads in a reserve.

Possession of lands in a reserve

**20. (1)** No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

#### Certificate of Possession

- (2)** The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

#### Location tickets issued under previous legislation

- (3)** For the purposes of this Act, any person who, on September 4, 1951, held a valid and subsisting Location Ticket issued under The Indian Act, 1880, or any statute relating to the same subject-matter, shall be deemed to be lawfully in possession of the land to which the location ticket relates and to hold a Certificate of Possession with respect thereto.

#### Temporary possession

- (4)** Where possession of land in a reserve has been allotted to an Indian by the council of the band, the Minister may, in his discretion, withhold his approval and may authorize the Indian to occupy the land temporarily and may prescribe the conditions as to use and settlement that are to be fulfilled by the Indian before the Minister approves of the allotment.

#### Certificate of Occupation

- (5)** Where the Minister withholds approval pursuant to subsection (4), he shall issue a Certificate of Occupation to the Indian, and the Certificate entitles the Indian, or those claiming possession by devise or descent, to occupy the land in respect of which it is issued for a period of two years from the date thereof.

#### Extension and approval

- (6)** The Minister may extend the term of a Certificate of Occupation for a further period not exceeding two years, and may, at the expiration of any period during which a Certificate of Occupation is in force
  - (a)** approve the allotment by the council of the band and issue a Certificate of Possession if in his opinion the conditions as to use and settlement have been fulfilled; or
  - (b)** refuse approval of the allotment by the council of the band and declare the land in respect of which the Certificate of Occupation was issued to be available for re-allotment by the council of the band.

#### Improvements on lands

- 22.** Where an Indian who is in possession of lands at the time they are included in a reserve made permanent improvements thereon before that time, he shall be deemed to be in lawful possession of those lands at the time they are included.

#### Compensation for improvements

- 23.** An Indian who is lawfully removed from lands in a reserve on which he has made permanent improvements may, if the Minister so directs, be paid compensation in respect thereof in an amount to be determined by the Minister, either from the person who goes into possession or from the funds of the band, at the discretion of the Minister.

Transfer of possession

- 24.** An Indian who is lawfully in possession of lands in a reserve may transfer to the band or another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister.

Indian ceasing to reside on reserve

- 25. (1)** An Indian who ceases to be entitled to reside on a reserve may, within six months or such further period as the Minister may direct, transfer to the band or another member of the band the right to possession of any lands in the reserve of which he was lawfully in possession.

When right of possession reverts

- (2)** Where an Indian does not dispose of his right of possession in accordance with subsection (1), the right to possession of the land reverts to the band, subject to the payment to the Indian who was lawfully in possession of the land, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

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.

Grants, etc., of reserve lands void

- 28. (1)** Subject to subsection (2), any deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

Minister may issue permits

- (2)** The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.



Penalty for trespass

- 30.** A person who trespasses on a reserve is guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding one month or to both.

Information by Attorney General

- 31. (1)** Without prejudice to section 30, where an Indian or a band alleges that persons other than Indians are or have been
- (a)** unlawfully in occupation or possession of,
  - (b)** claiming adversely the right to occupation or possession of, or
  - (c)** trespassing on a reserve or part of a reserve, the Attorney General of Canada may exhibit an information in the Federal Court claiming, on behalf of the Indian or band, the relief or remedy sought.

Information deemed action by Crown

- (2)** An information exhibited under subsection (1) shall, for all purposes of the *Federal Court Act*, be deemed to be a proceeding by the Crown within the meaning of that Act.

Existing remedies preserved

- (3)** Nothing in this section shall be construed to impair, abridge or otherwise affect any right or remedy that, but for this section, would be available to Her Majesty or to an Indian or a band.

Sale or barter of produce

- 32. (1)** A transaction of any kind whereby a band or a member thereof purports to sell, barter, exchange, give or otherwise dispose of cattle or other animals, grain or hay, whether wild or cultivated, or root crops or plants or their products from a reserve in Manitoba, Saskatchewan or Alberta, to a person other than a member of that band, is void unless the superintendent approves the transaction in writing.

Exemption

- (2)** The Minister may at any time by order exempt a band and the members thereof or any member thereof from the operation of this section, and may revoke any such order.

Offence

- 33.** Every person who enters into a transaction that is void under subsection 32(1) is guilty of an offence.

Roads, bridges, etc.

- 34. (1)** A band shall ensure that the roads, bridges, ditches and fences within the reserve occupied by that band are maintained in accordance with instructions issued from time to time by the superintendent.

Idem

- (2) Where, in the opinion of the Minister, a band has not carried out the instructions of the superintendent issued under subsection (1), the Minister may cause the instructions to be carried out at the expense of the band or any member thereof and may recover the cost thereof from any amounts that are held by Her Majesty and are payable to the band or member.

Taking of lands by local authorities

- 35. (1)** Where by an Act of Parliament or a provincial legislature Her Majesty in right of a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest therein without the consent of the owner, the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands in a reserve or any interest therein.

Procedure

- (2) Unless the Governor in Council otherwise directs, all matters relating to compulsory taking or using of lands in a reserve under subsection (1) are governed by the statute by which the powers are conferred.

Grant in lieu of compulsory taking

- (3) Whenever the Governor in Council has consented to the exercise by a province, a municipal or local authority or a corporation of the powers referred to in subsection (1), the Governor in Council may, in lieu of the province, authority or corporation taking or using the lands without the consent of the owner, authorize a transfer or grant of the lands to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council.

Payment

- (4) Any amount that is agreed on or awarded in respect of the compulsory taking or using of land under this section or that is paid for a transfer or grant of land pursuant to this section shall be paid to the Receiver General for the use and benefit of the band or for the use and benefit of any Indian who is entitled to compensation or payment as a result of the exercise of the powers referred to in subsection (1).



Sales

- 37. (1)** Lands in a reserve shall not be sold nor title to them conveyed until they have been absolutely surrendered to Her Majesty pursuant to subsection 38(1) by the band for whose use and benefit in common the reserve was set apart.

Other transactions

- (2) Except where this Act otherwise provides, lands in a reserve shall not be leased nor an interest in them granted until they have been surrendered to Her Majesty pursuant to subsection 38(2) by the band for whose use and benefit in common the reserve was set apart.

Surrender to Her Majesty

**38. (1)** A band may absolutely surrender to Her Majesty, conditionally or unconditionally, all of the rights and interests of the band and its members in all or part of a reserve.

Designation

**(2)** A band may, conditionally or unconditionally, designate, by way of a surrender to Her Majesty that is not absolute, any right or interest of the band and its members in all or part of a reserve, for the purpose of its being leased or a right or interest therein being granted.

How lands surrendered or designated

**39. (1)** An absolute surrender or a designation 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 absolute surrender or designation, 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), the Minister may, if the proposed absolute surrender or designation 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 absolute surrender or designation is assented to at the meeting or referendum by a majority of the electors voting, the surrender or designation shall be deemed, for the purposes of this section, to have been assented to by a majority of the electors of the band.

Secret ballot

**(4)** The Minister may, at the request of the council of the band or whenever he considers it advisable, order that a vote at any meeting under this section shall be by secret ballot.

Officials required

**(5)** Every meeting under this section shall be held in the presence of the superintendent or some other officer of the Department designated by the Minister.

Certification

**40.** A proposed absolute surrender or designation that is assented to by the band in accordance with section 39 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 then submitted to the Governor in Council for acceptance or refusal.

Effect of surrenders and designations

- 41.** An absolute surrender or a designation shall be deemed to confer all rights that are necessary to enable Her Majesty to carry out the terms of the surrender or designation.



Devisee's entitlement

- 49.** A person who claims to be entitled to possession or occupation of lands in a reserve by devise or descent shall be deemed not to be in lawful possession or occupation of those lands until the possession is approved by the Minister.

Approval required

- 50. (4)** The purchaser of a right to possession or occupation of land under subsection (2) shall be deemed not to be in lawful possession or occupation of the land until the possession is approved by the Minister.

Transactions re surrendered and designated lands

- 53. (1)** The Minister or a person appointed by the Minister for the purpose may, in accordance with this Act and the terms of the absolute surrender or designation, as the case may be,
- (a)** manage or sell absolutely surrendered lands; or
  - (b)** manage, lease or carry out any other transaction affecting designated lands.

Grant where original purchaser dead

- (2)** Where the original purchaser of surrendered lands is dead and the heir, assignee or devisee of the original purchaser applies for a grant of the lands, the Minister may, on receipt of proof in such manner as he directs and requires in support of any claim for the grant and on being satisfied that the claim has been equitably and justly established, allow the claim and authorize a grant to issue accordingly.

Departmental employees

- (3)** No person who is appointed pursuant to subsection (1) or who is an officer or a servant of Her Majesty employed in the Department may, except with the approval of the Governor in Council, acquire directly or indirectly any interest in absolutely surrendered or designated lands.

Assignments

- 54.** Where absolutely surrendered lands are agreed to be sold and letters patent relating thereto have not issued, or where designated lands are leased or an interest in them granted, the purchaser, lessee or other person who has an interest in the absolutely surrendered or designated lands may, with the approval of the Minister, assign all or part of that interest to any other person.

Surrendered and Designated Lands Register

**55. (1)** There shall be maintained in the Department a register, to be known as the Surrendered and Designated Lands Register, in which shall be recorded particulars in connection with any transaction affecting absolutely surrendered or designated lands.

Conditional assignment

**(2)** A conditional assignment shall not be registered.

Proof of execution

**(3)** Registration of an assignment may be refused until proof of its execution has been furnished.

Effect of registration

**(4)** An assignment registered under this section is valid against an unregistered assignment or an assignment subsequently registered.

Certificate of registration

**56.** Where an assignment is registered, there shall be endorsed on the original copy thereof a certificate of registration signed by the Minister or by an officer of the Department authorized by the Minister to sign such certificates.

Regulations

**57.** The Governor in Council may make regulations

- (a)** authorizing the Minister to grant licences to cut timber on surrendered lands, or, with the consent of the council of the band, on reserve lands;
- (b)** imposing terms, conditions and restrictions with respect to the exercise of rights conferred by licences granted under paragraph (a);
- (c)** providing for the disposition of surrendered mines and minerals underlying lands in a reserve;
- (d)** prescribing the punishment, not exceeding one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for contravention of any regulation made under this section; and
- (e)** providing for the seizure and forfeiture of any timber or minerals taken in contravention of any regulation made under this section.

Uncultivated or unused lands

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

- (a)** improve or cultivate that land and employ persons therefor, and authorize and direct the expenditure of such amount of the capital funds of the band as he considers necessary for that improvement or cultivation including the purchase of such stock, machinery or material or for the employment of such labour as the Minister considers necessary;

- (b) where the land is in the lawful possession of any individual, grant a lease of that land for agricultural or grazing purposes or for any purpose that is for the benefit of the person in possession of the land; and
- (c) where the land is not in the lawful possession of any individual, grant for the benefit of the band a lease of that land for agricultural or grazing purposes.

#### Distribution of proceeds

- (2) Out of the proceeds derived from the improvement or cultivation of lands pursuant to paragraph (1)(b), a reasonable rent shall be paid to the individual in lawful possession of the lands or any part thereof and the remainder of the proceeds shall be placed to the credit of the band, but if improvements are made on the lands occupied by an individual, the Minister may deduct the value of the improvements from the rent payable to the individual under this subsection.

#### Lease at request of occupant

- (3) The Minister may lease for the benefit of any Indian, on application of that Indian for that purpose, the land of which the Indian is lawfully in possession without the land being designated.

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

- (4) Notwithstanding anything in this Act, the Minister may, without an absolute surrender or a designation
  - (a) dispose of wild grass or dead or fallen timber; and
  - (b) with the consent of the council of the band, dispose of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, or, where that consent cannot be obtained without undue difficulty or delay, may issue temporary permits for the taking of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, renewable only with the consent of the council of the band.

#### Proceeds

- (5) The proceeds of the transactions referred to in subsection (4) shall be credited to band funds or shall be divided between the band and the individual Indians in lawful possession of the lands in such shares as the Minister may determine.

#### Adjustment of contracts

- 59. The Minister may, with the consent of the council of a band,
  - (a) reduce or adjust the amount payable to Her Majesty in respect of a transaction affecting absolutely surrendered lands, designated lands or other lands in a reserve or the rate of interest payable thereon; and
  - (b) reduce or adjust the amount payable to the band by an Indian in respect of a loan made to the Indian from band funds.

Control over lands

**60. (1)** The Governor in Council may at the request of a band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable.

Withdrawal

**(2)** The Governor in Council may at any time withdraw from a band a right conferred on the band under subsection (1).

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Expenditure of revenue moneys with consent of band

**66. (1)** With the consent of the council of a band, the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in the opinion of the Minister will promote the general progress and welfare of the band or any member of the band.

Minister may direct expenditure

**(2)** The Minister may make expenditures out of the revenue moneys of the band to assist sick, disabled, aged or destitute Indians of the band, to provide for the burial of deceased indigent members of the band and to provide for the payment of contributions under the Employment Insurance Act on behalf of employed persons who are paid in respect of their employment out of moneys of the band.

Idem

**(2.1)** The Minister may make expenditures out of the revenue moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the revenue moneys.

Expenditure of revenue moneys with authority of Minister

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

- (a)** for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;
- (b)** to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;
- (c)** to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;
- (d)** to prevent overcrowding of premises on reserves used as dwellings;
- (e)** to provide for sanitary conditions in private premises on reserves as well as in public places on reserves; and
- (f)** for the construction and maintenance of boundary fences.

Management of revenue moneys by band

**69. (1)** The Governor in Council may by order permit a band to control, manage and expend in whole or in part its revenue moneys and may amend or revoke any such order.

Regulations

**(2)** The Governor in Council may make regulations to give effect to subsection (1) and may declare therein the extent to which this Act and the Financial Administration Act shall not apply to a band to which an order made under subsection (1) applies.

Minister may operate farms

**71. (1)** The Minister may operate farms on reserves and may employ such persons as he considers necessary to instruct Indians in farming and may purchase and distribute without charge pure seed to Indian farmers.

Application of profits

**(2)** The Minister may apply any profits that result from the operation of farms pursuant to subsection (1) on reserves to extend farming operations on the reserves or to make loans to Indians to enable them to engage in farming or other agricultural operations or he may apply those profits in any way that he considers to be desirable to promote the progress and development of the Indians.

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Removal of material from reserve

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

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

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

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

**(b)** has in his possession anything removed from a reserve contrary to this section, is guilty of an offence and 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.

## REGULATIONS UNDER THE *INDIAN ACT*

Clause 21.1(g) of the Framework Agreement on First Nation Land Management provides that the First Nation, its members and its First Nation lands will not be subject to regulations made under section 57 of the *Indian Act*.

Section 57 is reproduced below. Regulations under section 57 include:

- The Indian Timber Regulations
- The Indian Timber Harvesting Regulations
- The Indian Mining Regulations

Regulations

**57.** The Governor in Council may make regulations

- (a) authorizing the Minister to grant licences to cut timber on surrendered lands, or, with the consent of the council of the band, on reserve lands;
- (b) imposing terms, conditions and restrictions with respect to the exercise of rights conferred by licences granted under paragraph (a);
- (c) providing for the disposition of surrendered mines and minerals underlying lands in a reserve;
- (d) prescribing the punishment, not exceeding one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for contravention of any regulation made under this section; and
- (e) providing for the seizure and forfeiture of any timber or minerals taken in contravention of any regulation made under this section.

Clause 21.1(f) of the Framework Agreement on First Nation Land Management provides that the First Nation, its members and its First Nation lands will not be subject to regulations made under sections 42 and 73 of the *Indian Act* to the extent that they are inconsistent with the Framework Agreement or the land code or laws of the First Nation.

Sections 42 and 73 are reproduced below. Regulations enacted under these sections include:

- The Indian Estate Regulations
- The Indian Reserve Waste Disposal Regulations

Powers of Minister with respect to property of deceased Indians

**42. (1)** Subject to this Act, all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister and shall be exercised subject to and in accordance with regulations of the Governor in Council.

Regulations

**(2)** The Governor in Council may make regulations 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 subsection (2) may be made applicable to estates of Indians who died before, on or after September 4, 1951.

Regulations

**73. (1)** The Governor in Council may make regulations

- (a)** for the protection and preservation of fur-bearing animals, fish and other game on reserves;
- (b)** for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;
- (c)** for the control of the speed, operation and parking of vehicles on roads within reserves;
- (d)** for the taxation, control and destruction of dogs and for the protection of sheep on reserves;
- (e)** for the operation, supervision and control of pool rooms, dance halls and other places of amusement on reserves;
- (f)** to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;
- (g)** to provide medical treatment and health services for Indians;
- (h)** to provide compulsory hospitalization and treatment for infectious diseases among Indians;
- (i)** to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;
- (j)** to prevent overcrowding of premises on reserves used as dwellings;
- (k)** to provide for sanitary conditions in private premises on reserves as well as in public places on reserves;
- (l)** for the construction and maintenance of boundary fences; and
- (m)** for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes.

Punishment

- (2)** The Governor in Council may prescribe the punishment, not exceeding a fine of one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for contravention of a regulation made under subsection (1).

Orders and regulations

- (3)** The Governor in Council may make orders and regulations to carry out the purposes and provisions of this Act.