

Exploring the Indian Act

Here are some excerpts from the Indian Act (last amended in 2015) for you to look over with your group. In your own words, what do you think each excerpt means?

1.

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.

2.

3. (1) This Act shall be administered by the Minister, who shall be the superintendent general of Indian affairs.

3.

3. (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.

4.

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

5.

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.

6.

20. (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.

7.

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.

8.

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.

9.

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.

10.

45. (1) Nothing in this Act shall be construed to prevent or prohibit an Indian from devising or bequeathing his property by will.

11.

46. (1) The Minister may declare the will of an Indian to be void in whole or in part if he is satisfied that
- (a) the will was executed under duress or undue influence;
 - (b) the testator at the time of execution of the will lacked testamentary capacity;
 - (c) the terms of the will would impose hardship on persons for whom the testator had a responsibility to provide;
 - (d) the will purports to dispose of land in a reserve in a manner contrary to the interest of the band or contrary to this Act;
 - (e) the terms of the will are so vague, uncertain or capricious that proper administration and equitable distribution of the estate of the deceased would be difficult or impossible to carry out in accordance with this Act; or
 - (f) the terms of the will are against the public interest.