



Special Interlocutor Hearing Special Interlocutor Materials October 26th to 27th, 2022

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C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

S U P É R I O R C O U R T

(Civil Division)

N^o.: 500-17-120468-221

KAHENTINETHA

KARENNATHA

KARAKWINE

KWETTIIO

OTSITSATAKEN

KARONHIATE

Plaintiffs

vs.

SOCIÉTÉ QUÉBÉCOISE DES INFRASTRUCTURES

ROYAL VICTORIA HOSPITAL

MCGILL UNIVERSITY HEALTH CENTRE

MCGILL UNIVERSITY

VILLE DE MONTRÉAL

STANTEC INC.

ATTORNEY GENERAL OF CANADA

Defendants

and

**OFFICE OF THE INDEPENDENT SPECIAL
INTERLOCUTOR FOR MISSING CHILDREN AND
UNMARKED GRAVES AND BURIAL SITES
ASSOCIATED WITH INDIAN RESIDENTIAL
SCHOOLS, 225 & 227 – 50 Generations Drive, Six
Nations of the Grand River Territory in the city of
Ohsweken and the province of Ontario, N0A 1M0**

**AMENDED DECLARATION OF VOLUNTARY INTERVENTION FOR
CONSERVATORY PURPOSES**

(Article 185 and following, *Code of Civil Procedure*)

**IN SUPPORT OF THIS INTERVENTION, THE THIRD-PARTY INTERVENOR
DECLARES THE FOLLOWING:**

1. The Plaintiffs have instituted proceedings against the Defendants in the present matter *Kahentinetha et al. v Société Québécoise des Infrastructures et al.* for declaratory relief and an interlocutory and permanent injunction. The dispute centers around a repurposing project for a site poised to be demolished and redeveloped by the Defendants.
2. The site is located on land to which the Plaintiffs claim ownership and indicate there is “high possibility” of unmarked burials of Indigenous people, including children, being located on this site that are related to past atrocities committed against Indigenous peoples.
3. On June 8, 2022, Kimberly R. Murray was announced by the Attorney General and Minister of Justice of Canada as the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools (“Special Interlocutor Murray”). Special Interlocutor Murray was appointed for a two-year term pursuant to an Order-in-Council with a mandate (the “Mandate”) to assist in the identification and protection of the remains of Indigenous children who were taken to Indian Residential Schools and did not return.
4. Special Interlocutor Murray respectfully submits this Declaration to act as a third-party intervenor for conservatory purposes to assist the Plaintiffs in the legal issues in this proceeding, for the reasons set out hereafter. Special Interlocutor Murray is requesting from this Honourable Court the opportunity to make submissions and contribute to the trial record.

MATTER OF PUBLIC INTEREST

5. Special Interlocutor Murray submits there is a significant interest in public law grounding her request to intervene in these proceedings. The Plaintiffs’ claims engage their own constitutional rights, and the issues at stake have a direct correlation with the Mandate and interests of Special Interlocutor Murray. With respect, this Honourable Court can set an example that burial sites of Indigenous children should be treated with the utmost integrity and respect.
6. As an intervenor for conservatory purposes, Special Interlocutor Murray can provide highly specialized contributions through her knowledge and expertise relevant to all issues of this proceeding and contribute in a useful way to the legal debate. Special

Interlocutor Murray also submits that, in this time of Reconciliation, and both national and provincial commitments to advancing the same, the issues in these proceedings have a significant public interest component and the interests of Special Interlocutor Murray are implicated.

INTEREST IN THE OUTCOME

7. Special Interlocutor Murray has a genuine interest in the issues being argued before this Honourable Court. Her Mandate is to “identify needed measures” from a legal perspective regarding the process of identifying, recovering, and protecting unmarked burial sites.
8. This is the first opportunity available to the Special Interlocutor to engage in the legal process and ensure legal disputes exercise sufficient, culturally appropriate, and effective means to locate, investigate, identify, protect, and repatriate the missing children who were taken and never returned home from Indian Residential Schools. As the proposed redevelopment site may contain remains of Indigenous children, Special Interlocutor Murray’s interest in the proceedings is both direct and genuine.

RESOLUTION OF ISSUES

9. As a member of the Kahnnesatake Mohawk Nation, who has held several leadership roles in various organizations such as Aboriginal Legal Services in Toronto, Ontario, and the Truth and Reconciliation Commission of Canada (“TRC”), Special Interlocutor Murray not only has knowledge and information to contribute to these proceedings, but her responsibilities as the Special Interlocutor are also directly implicated.
10. Special Interlocutor Murray’s experience in overseeing the data collection process as Executive Director of the TRC and the challenges faced therein, support her interest in the proceedings before this Honourable Court. Special Interlocutor Murray oversaw the TRC’s investigation into missing children and unmarked burials, and in that role gained experience navigating the challenges faced in the collection of records and gaps in information. The Executive Summary of Volume 4 of the TRC report that details this investigation is attached as **Exhibit I-1**.
11. The issues at stake in these proceedings involve the rights of Indigenous peoples and Special Interlocutor Murray has directly relevant experience engaging with Indigenous communities as Executive Director of the TRC and Assistant Deputy Attorney General of Ontario’s Indigenous Justice Division. This latter position was created as a result of recommendations from the Ontario Juries Report authored by the Honourable Frank Iacobucci, an excerpt of which is attached as **Exhibit I-2**.
12. Special Interlocutor Murray offers specialized knowledge and a perspective to ensure that the Plaintiffs and all others affected by this dispute have their voice heard in these proceedings.
13. In 2021, the recovery of unmarked burials of Indigenous children at the site of a former Indian Residential School in British Columbia gained national attention. Special Interlocutor Murray was appointed to assist in coordinating searches and investigations

for missing Indigenous children, and reviewing the current legal framework applied to unmarked burials.

14. As Executive Oversight Lead of the Survivors' Secretariat at Six Nations of the Grand River, Special Interlocutor Murray became deeply familiar with and utilized various techniques and technologies in death investigations and the identification of unmarked burials. Attached as **Exhibit I-3** is the mandate and announcement of the Survivors' Secretariat.
15. Special Interlocutor Murray is knowledgeable and experienced in using the various forms of technology used to identify potential burial sites, including ground penetrating radar, light detection and ranging, cadaver dogs, and underwater side scan sonar. **Exhibit I-4** is a blog post authored by Special Interlocutor Murray entitled "How Technology is Helping Survivors Uncover the Truth", dated March 25, 2022. The post provides greater detail on technology's use in this process. These skills and areas of knowledge are directly related to the issues before this Honourable Court.
16. Special Interlocutor Murray has direct knowledge of the consequences of the lack of records and documentation that has led to the search for unmarked graves and burials of Indigenous children across Canada as a result of the Indian Residential School system. This understanding supports her interest and belief that there are burials potentially located on the reconstruction site of the Royal Victoria Hospital and thus, her direct and substantial interest in the proceeding.
17. Regarding the investigation required to examine the sufficiency of the Plaintiffs' claims that there is a "high possibility" of the site at issue containing an unmarked burial site, Special Interlocutor Murray can offer her expertise and knowledge in determining this question. Special Interlocutor Murray oversaw the collection and interpretation of large quantities of documents that led to the discovery of unmarked burial sites while in her role at the TRC. Special Interlocutor Murray has extensive experience using the latest technology to discover burial sites, as recently as 2021-2022 in British Columbia and with Six Nations of the Grand River. Special Interlocutor Murray has engaged with communities, institutions, archaeological experts, and others involved in determining the location of unmarked burial grounds.

INADEQUATE DEFENCE OF PLAINTIFFS' INTERESTS

18. The Plaintiffs in this matter have not retained legal counsel, and there is no indication they intend to retain legal counsel for this matter. Special Interlocutor Murray's conservatorship would provide the Plaintiffs afflicted in this dispute much needed resources and assistance whether or not the Plaintiffs retain counsel. Special Interlocutor Murray can provide a broader perspective of the unmarked burial sites issue based on her extensive experience. This perspective, from both a legal and factual context, exceeds the capabilities of the Plaintiffs in contributing to the legal debate.
19. Special Interlocutor Murray shares in the Plaintiffs' interests for a full investigation regarding the presence of Indigenous remains on the disputed site. Special Interlocutor Murray submits that this Honourable Court will be in a better position to rule on the merits with the benefit of her submissions and contributions included in the evidentiary record. The interests of justice will be better served if the request to intervene is granted.

20. On June 6, 2022, Special Interlocutor Murray was appointed by Order-in-Council for the purpose of acting as a special advisor to the Minister of Justice, as described in the Order-In-Council attached as **Exhibit I-5**. Part of the Mandate is to “identify needed measures” and develop a new “legal framework” for the protection of unmarked graves and burial sites of Indigenous children. The Special Interlocutor’s Mandate is attached as **Exhibit I-6**. By intervening for conservatory purposes in the proceedings before this Honourable Court, Special Interlocutor Murray respectfully submits that she will be directly impacted by the conclusions made by the Court as it will affect the work required of her position.
21. Special Interlocutor Murray’s Mandate also states that she is to “facilitate listening and action by engaging in conversations” that include “provinces, territories, local communities, as well as other relevant institutions.” Special Interlocutor Murray proposes to intervene for conservatory purposes to provide her perspective and knowledge to this Honourable Court on a matter that will have a impact on both her role over the next two years and how potential burial sites of Indigenous children are dealt with going forward.
22. This Honourable Court is being called to make determinations which would affect the site identified as containing potential burials of Indigenous children. The Mandate of Special Interlocutor Murray clearly sets out the responsibility to assist in the identification of burial sites of Indigenous children, as well as the preservation and protection of these remains. The central issue to be determined by the Court is whether demolition and construction may continue at the site of the Royal Victoria Hospital. Should this occur before an adequate and complete search of the grounds for unmarked burials has occurred, it affects the work of Special Interlocutor Murray and triggers her interest in the proceedings before this Honourable Court.
23. As set out in the Mandate of Special Interlocutor Murray, part of her role is to “examine existing federal, provincial and territorial laws, regulations, tools, and practices that currently apply and have applied to protect unmarked graves and burial sites.” Special Interlocutor Murray therefore has a direct interest in the proceedings in order to be able to examine, analyze, and provide comment on the practices currently used when dealing with the potential burials of Indigenous children – in this case, in the City of Montreal.
24. Not only are the procedures and policies followed by the Defendants and this Honourable Court in reference to the potential burials of Indigenous children a concern which invokes the Mandate of Special Interlocutor Murray, but her work may also assist the Court in considering what procedures should be used going forward..
25. As part of its determinations, this Honourable Court must decide whether it is probable that the proposed site of redevelopment may contain the remains of Indigenous children. Special Interlocutor Murray respectfully supports all reasonable measures of inquiry to ensure there are not any remains on the site, and therefore address the legitimate and important concerns of the Plaintiffs.
26. The Exhibits attached to this application demonstrate Special Interlocutor Murray’s background, knowledge, and expertise as it relates to the identification and protection of unmarked graves and burial sites associated with Indian Residential Schools and other public institutions, and her responsibilities and rights that are affected by these proceedings.

27. Special Interlocutor Murray has retained legal counsel for this proceeding from Donald Worme and Julian N. Falconer, both of whom have retained special authorization from the Barreau du Québec to provide legal counsel in this matter, as confirmed in the authorizations issued by the Barreau du Québec attached hereto as **Exhibit I-7**.
28. As it is in the public interest and given the importance of the issues in dispute, Special Interlocutor Murray respectfully requests to be added as a third-party intervenor, authorized to intervene for conservatory purposes and:
- a. Make submissions at trial;
 - b. Add to the record; and,
 - c. Take any other steps as appropriate.
29. This Amended Declaration is supported by the affidavit of the third-party Intervenor, dated August 31, 2022 attached hereto, as well as her detailed affidavit of this date.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ALLOW the intervention of the Third-Party Intervenor for conservatory purposes according to the modalities foreseen in its declaration of intervention or according to the modalities of intervention that the court shall fix; or

ALLOW the intervention of the Third-Party Intervenor as a friend of the court, in the alternative.

THE WHOLE without legal costs.

TORONTO, August 31, 2022–October 7, 2022

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AFFIDAVIT OF KIMBERLY R. MURRAY, SPECIAL INTERLOCUTOR

1. I the undersigned, Kimberly R. Murray, domiciled and residing at the city of Toronto, province of Ontario, do solemnly affirm that:
 - a) I am proposing to intervene for conservatory purposes, as proposed in the Declaration of Voluntary Intervention;
 - b) All the facts set out therein are true; and
 - c) I respectfully submit that I have knowledge, experience and expertise related to the issues before this Honourable Court and that I have a direct interest therein.

Introduction

2. To assist this Honourable Court, I propose to provide background information on my professional history and qualifications.
3. I am a Mohawk and a member of Kahnésatake Mohawk Nation. I earned my law degree in 1993 and am presently completing a Master of Laws in Constitutional Law, both at Osgoode Hall Law School. In my legal practice over the past three decades, I have developed expertise in Indigenous legal principles and systems, Aboriginal law, and the challenges faced by Indigenous people and communities when they interact with the Canadian judicial system. Of particular relevance to this proceeding, I have developed significant expertise with respect to:
 - The circumstances leading to the deaths of children who were required to attend Indian Residential Schools;
 - Where the missing children's remains are likely to be located; and
 - Understanding the practical and legal considerations and frameworks in the context of searching, investigating, protecting, commemorating and, where desired, repatriating the missing children.
4. Early in my career, I worked from 1995 to 2010 as a staff lawyer and then Executive Director at Aboriginal Legal Services of Toronto. I then served in executive leadership roles with the Truth and Reconciliation Commission of Canada ("TRC"), the Indigenous Justice Division ("IJD") at Ontario's Ministry of the Attorney General ("MAG"), and as the Executive Lead of the Survivors' Secretariat at Six Nations of the Grand River. I am currently the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools ("Special Interlocutor") appointed by federal Order-in-Council.
5. In these roles, I have gained a unique perspective and experiences that can assist this Honourable Court in these proceedings. Further, this is a perspective that is currently not being provided to the Court. As part of my national mandate, I am required to review, analyze, and provide comment on the procedures being applied to the identification, protection, and in some cases repatriation of the remains of Indigenous children that

were taken to Indian Residential Schools. This means that my rights are directly engaged by the proceedings therein.

Role with the Truth and Reconciliation Commission

6. While at the TRC, I served as the Executive Director. In this role, I reported to the three (3) Commissioners and was responsible for overseeing the implementation of Schedule "N" of the Indian Residential School Settlement Agreement (the "Settlement Agreement"). This included overseeing the entirety of the document collection process related to unmarked burials and missing children who died while being forced to attend Indian Residential Schools. More than five (5) million documents were collected from both the federal government and various church/religious institutions that operated Indian Residential Schools. These documents detailed the experiences of First Nations, Inuit, and Métis children that were forced to attend these institutions across Canada, many of whom were taken and never returned home.
7. Part of my role as the Executive Director was ensuring that all the records received were properly tagged and categorized. I organized the review of the records by the appropriate individuals, and directed the academic research done by writers of the final reports. It is through this review and research that I oversaw the writing and editing of the TRC's Final Report which is split into six (6) volumes. Volume 4 specifically describes the missing children and unmarked burials, as well as the challenges faced in the collection of records and gaps in information. The Executive Summary of Volume 4 is attached to this affidavit as **Exhibit I-1**.
8. As Executive Director, I supervised the compilation of a master list of Indigenous children who had died during their mandatory attendance at Indian Residential Schools across the country. Many of the children whose deaths were recorded were taken from Indian Residential Schools to hospitals.
9. In addition to overseeing the work to identify the names of children that had died while being forced to attend Indian Residential Schools, I retained the services of an archaeologist to determine possible locations of unmarked burials based on various factors, including the history of the institutions, the grounds they were located on, the proximity of churches and cemeteries, and information from archival records and historical photographs.
10. Unfortunately, pursuant to the Settlement Agreement, it was only the federal government and certain religious entities that were required to provide records relating to Indian Residential Schools to the TRC. As a result, I witnessed a significant gap in the records provided to the TRC – a serious gap in information that strongly suggests there are unmarked burials across Canada that have yet to be confirmed. This gap has continued since the end of the TRC's mandate notwithstanding its Call to Actions that called on other institutions, including provincial governments, to search for records of deceased children. Not all of the federal government and church records were provided to the TRC, and many municipal/provincial organizations and other institutions that were involved in administering or overseeing Indian Residential Schools were not required to provide their documents. I provide these comments in order to contextualize the real possibility that the Royal Victoria Hospital may be one such site with unmarked burials.

11. As referenced in **Exhibit I-1**, the TRC found that “the tragedy of the loss of children was compounded by the fact that burial places were distant or even unknown,” and these sites are commonly “abandoned, disused, and vulnerable to accidental disturbance.” The report calls for “a national strategy for the documentation, maintenance, commemoration, and protection of residential school cemeteries,” and my appointment as Special Interlocutor is an initiative to address that.
12. As a result of my experience overseeing and coordinating the work related to Volume 4 of the TRC Report, I have first-hand knowledge of the steps required to identify unmarked burials and the possible identities of missing children. I also have a concrete understanding of the link between hospitals, universities, and Indian Residential Schools. Through the review of records collected by the TRC, I have knowledge that certain hospitals were utilized to send sick children from Indian Residential Schools to and, as a result, it is a reasonable possibility that the remains of children may be found on these sites.
13. Through my experience with the TRC, I not only navigated challenges relating to record collection and informational gaps, but I also liaised between First Nations, Inuit and Métis communities and public institutions. I worked to resolve a wide variety of challenges related to these gaps. As such, I learned where to look for relevant information relating to the location of unmarked burials and the identities of the missing children; how to analyze and draw inferences from the vast number of records received; and some of the best practices with respect to searching and investigating sites for unmarked burials.
14. My extensive experience at the TRC can save the parties significant time and resources in searching, collecting, and analyzing this information. I can also provide information relating to the importance of respecting Indigenous principles, laws, and cultural protocols so that the spirits of the children and their remains are treated with dignity and respect. The information that I am well-positioned to share will assist this Honourable Court in this hearing.

Indigenous Justice Division (“IJD”)

15. Following my work with the TRC, I was appointed by Ontario’s MAG to lead the implementation of the recommendations from the First Nation Representations on Ontario Juries Report authored by the Honourable Frank Iacobucci (“Iacobucci Report”). Attached to this my affidavit as **Exhibit I-2** is a copy of the recommendations from the Iacobucci Report. The creation of my position as the Assistant Deputy Attorney General at IJD was recommendation number five (5).
16. Part of the mission of the IJD was to support the reclamation of ‘Indigenous legal principles and systems and strengthen justice for Indigenous communities within Ontario’. Throughout my appointment, I helped to move this mandate forward by incorporating different methods to facilitate a higher level of participation by Indigenous people in the judicial system, including their involvement on juries.
17. The importance of an engagement process with First Nation, Inuit, and Métis communities cannot be overstated. For generations, the justice system has shut communities out of the process and made decisions concerning their affairs with woefully insufficient input and participation. In the case of potential unmarked burial

sites, engagement with Indigenous communities is required to carry out its fact-finding mission and appropriately consider the legal issues at hand.

18. At IJD, with the guidance of the IJD's Elders' Council, I built relationships with First Nation, Inuit, and Métis communities to address systemic barriers facing Indigenous people and communities in the Canadian legal system. The experience I have gained through these relationships and the work I did in that role to assist Indigenous communities in searching for and identifying the burials of missing children will assist this Honourable Court with a better understanding of the issues to be dealt with in these proceedings.
19. In addition to my professional role with MAG, I have developed relevant experience as an educator. I co-facilitated the Intensive Program in Indigenous Lands, Resources and Governments at Osgoode Hall Law School at York University for several years. This program focuses on revitalizing and assisting communities with exercising and applying Indigenous laws and systems. My involvement co-facilitating this program increased my knowledge and understanding of community-level concerns.
20. These collective experiences enable me to provide expertise and knowledge from a broader perspective, which is currently not being provided in these proceedings and would be useful to this Honourable Court in its determinations.

Unmarked Burials: Survivors' Secretariat (Mohawk Institute)

21. Following the May 2021 announcement by Tk'emlúps te Secwépemc First Nation that they had potentially identified over 200 unmarked burials of children at the former Kamloops Indian Residential School in British Columbia, I was approached by the elected Chief and Council of Six Nations of the Grand River ("Six Nations") to assist in coordinating the work to search for missing children and unmarked burials at the former Mohawk Institute Residential School ("Mohawk Institute").
22. The Mohawk Institute, located in Brantford, Ontario, operated for over 136 years and was the longest running Indian Residential School in Canada. During this time, countless Indigenous children from over 30 different communities were forced to attend the Mohawk Institute. There are over 600 acres of land to search at various sites associated with the Mohawk Institute, including the site of the old Lady Willingdon Hospital.
23. Through discussions with the leadership at Six Nations, and later with a group of Survivors, I was hired as the Executive Oversight Lead and assisted them in beginning the death investigation and search for unmarked burials, and to establish the Survivors' Secretariat.
24. During my work for the Survivors' Secretariat, I was guided directly by the Survivors of the Mohawk Institute. There are several components of the mandate of the Survivors' Secretariat, including the gathering of statements, research, and document collection, and monitoring the death investigations. As the Executive Oversight Lead, I was involved in all aspects of this work. Attached to this my affidavit as **Exhibit I-3** is the mandate of the Survivors' Secretariat.
25. In this role, I oversaw the search for missing children and unmarked burials. Using information and statements from Survivors, records provided to the TRC (and then

transferred to the National Centre for Truth and Reconciliation), and maps of the grounds relating to the Mohawk Institute, I worked collaboratively with Survivors and other community members to determine the best approach to searching the 600 acres where potential burials might be found. As such, I thoroughly researched and became familiar with the various techniques and technologies that can be used for these types of searches, including ground penetrating radar (“GPR”), light detection and ranging (“LiDAR”), cadaver dogs, and underwater side scan sonar.

26. GPR uses high frequency radio waves to document the distribution of features underground. LiDAR, on the other hand, uses laser light pulses to generate three-dimensional maps of the Earth’s surface. These three-dimensional maps can be used to look for subtle changes in the ground that indicate disturbances caused by humans—such as a burial. These forms of ground penetrating technology require training and specialized skills to analyse the data generated. Attached to this affidavit as **Exhibit I-4** is a copy of the blog post I co-authored entitled “How Technology is Helping Survivors Uncover the Truth”, dated March 25, 2022, describing the various technologies that are available to support searches and investigations for unmarked burials.
27. As noted, specialized skills are required to analyse the data generated from the various technologies that can be used to identify reflections or anomalies on or below the surface to identify potential burials. Many companies have GPR technology and have the experience in using the technology to locate utility lines, cables, and concrete. However, very few experts exist in Canada and around the world that have the experience and skill to identify burials. Through my work at the TRC, the Survivors’ Secretariat, and now as the Special Interlocutor, I have had the opportunity to meet and consult with many of these experts. The knowledge I gained from meeting these experts, and the resources I possess as a result, are key contributions that I can provide to this Honourable Court in making the determinations required in the present proceedings.
28. I further assisted the Survivors’ Secretariat by facilitating discussions with Six Nations Police, Brantford Police, and the Ontario Provincial Police to establish a police task force to investigate who died, how they died, and where they are buried. An Indigenous Human Rights Monitor and Indigenous Cultural Monitors were appointed to monitor the work of the police task force to ensure that Indigenous laws and protocols were respected. With the assistance of Survivors, I created the Terms of References for these Monitors.

Independent Special Interlocutor’s Mandate

29. On June 6, 2022, I was appointed by federal Order-in-Council as the Independent Special Interlocutor. I was tasked with producing an interim and final report with recommendations on a new federal legal framework to preserve and protect former Indian Residential Schools and other sites, and assist Indigenous communities in locating, identifying, investigating, protecting, preserving, commemorating, and, where desired, repatriating the remains of children buried in unmarked burials recovered at Indian Residential Schools or related institutions. Attached to this affidavit as **Exhibit I-5** is a copy of the Order-in-Council approving my appointment.
30. My Mandate states that, as part of my role as the Independent Special Interlocutor, I must work with First Nations, Inuit, and Métis communities to facilitate dialogue, engage

in discussion, and listen to the experiences of those trying to find and identify missing children. Attached to this affidavit as **Exhibit I-6** is a copy of my Mandate.

31. My Mandate requires me to evaluate and report on the strengths and weaknesses of the processes currently used to recover missing children and locate unmarked burials. Thus, my right and ability to intervene in these proceedings for conservatory purposes is set out as part of the obligations of my Mandate. I will be able to provide my nationwide perspective to assist this Honourable Court in its deliberations on the current processes that apply to the issues in these proceedings.
32. As is clear from my Mandate, I have a direct and substantial interest in the proceedings before this Honourable Court. The outcome of the proceedings will either result in the protection or destruction of potential burials of Indigenous children. As Special Interlocutor, I have been tasked with the significant responsibility of finding, identifying, and where possible returning Indigenous children to their rightful homes. As Special Interlocutor, I am also tasked with overseeing the respectful and culturally appropriate treatment of burial sites of children associated with residential schools. As such, the issues before this Honourable Court directly affect my ability to fulfil this responsibility.
33. It is crucial that these discussions are informed by Indigenous laws, customs, practices, and protocols, all of which I have developed an expertise in throughout my career. My understanding of Indigenous customs that I can impart to this Honourable Court can assist in facilitating the conversation between Indigenous organizations, communities, and all levels of government involved in these proceedings.
34. My contributions to these proceedings will be based on my experience and the responsibilities within my current Mandate. These contributions may include assistance with the collection and analysis of information, engaging in dialogue with First Nation, Inuit, and Métis communities, providing relevant information relating to the identification of burial sites based on my experience, and assisting on any other matters that arise before this Honourable Court.

Proposed Interest, Ramifications and Reconciliation

35. The issues that are before this Honourable Court have the potential to have widespread ramifications in respect of the processes for identifying, recovering, and protecting Indigenous child remains, not only in Québec but across the country. This is the first opportunity my office has had to participate in proceedings before a court since my Mandate began on June 13, 2022. This proceeding can set a precedent for future cases involving the national effort to locate, investigate, identify, and protect the missing children who were taken and never returned home from Indian Residential Schools.
36. My intervention will not create any undue delay or prejudice to the rights of other parties. I seek to intervene to provide necessary information and assistance to this Honourable Court on the determination of the issues in the present proceedings and to protect my rights therein. I intend to participate in the discussions/debate at trial, add to the record, and participate in any mediation/resolution discussions. The perspective which I seek to provide is unique, one which comes from my over 20 years of experience working with Survivors and Indigenous communities and considering the best approaches to the sacred work of locating unmarked burials and identifying the missing children buried on the sites of former Indian Residential Schools and related institutions.

37. In today's Canada, promises of doing more to advance the concept of Reconciliation with Indigenous peoples is no longer enough. Action is needed. It is crucial that governments, institutions, and the courts take concrete action to facilitate the meaningful, transparent investigations that Canada committed to when confirming my appointment. This Honourable Court can set an example that burial sites of Indigenous children should be treated with the utmost integrity and respect.

The Plaintiffs' Claim

38. As within the purview of my mandate, I have reviewed the court records and materials relevant to the claim by *Kahentinetha et al.* Based on this review and my analysis, I am concerned that there may indeed be unmarked burials at the site in dispute..

39. I note that I have arrived at this determination based on my experience as outlined above. Especially, my experience with the TRC and the Mohawk Institute Survivors' Secretariat, where I was involved in the efforts to recover unmarked burials and identify the missing Indigenous children who attended Indian Residential Schools. This experience has given me insight into indicators of potential burial sites.

40. The Royal Victoria Hospital was one of the few hospitals in Quebec approved to accept Indigenous children as patients. As alleged in the materials provided by the Plaintiffs, these Indigenous children were potentially victims of horrific psychiatric experimentation. As such, there is a reasonable possibility that there are unmarked burials of Indigenous children there and therefore the responsibilities within my mandate are invoked and will be affected.

41. In addition to my proposal to intervene for conservatory purposes as my rights in my role as Special Interlocutor will be directly affected, I believe that my contributions may also assist in finding practical solutions to the issues and be helpful to the Parties.

42. I have retained legal counsel from Donald Worme and Julian N. Falconer, both of whom have retained special authorization from the Barreau du Québec to provide legal counsel in this matter. The authorizations from the Barreau are attached hereto as **Exhibit I-7**.

Conclusion

43. Based on my prior experience and expertise gained from decades of work relating to the issues directly in dispute in this proceeding, I respectfully submit that I can assist this Honourable Court by providing information that will assist in determining the issues before it. Specifically, my knowledge and perspective will help this Honourable Court to better understand the history of the sites in question, how those sites relate to Indian Residential Schools, and the Plaintiffs' claim to ownership. By providing this information, I will be fulfilling the responsibilities set out in my mandate which demonstrate the interest I have in these proceedings.

44. If leave is granted, I commit to adhering to any deadlines and terms as established by this Honourable Court. My intervention will not cause any undue delay or prejudice to the parties.

45. I make this affidavit in support of my proposed intervention in these proceedings and for no other or improper purpose.

AND I HAVE SIGNED:



Kimberly R. Murray
Independent Special Interlocutor

SOLEMNLY AFFIRMED BEFORE ME
at Toronto this 31st day of August, 2022



Commissioner of Oaths
for the Province of Ontario
Mitchell Goldenberg
LSO #85215T

C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

Nº.: 500-17-120468-221

S U P É R I O R C O U R T

(Civil Division)

KAHENTINETHA

KARENNATHA

KARAKWINE

KWETTIIO

OTSITSATAKEN

KARONHIATE

Plaintiffs

vs.

SOCIÉTÉ QUÉBÉCOISE DES INFRASTRUCTURES

ROYAL VICTORIA HOSPITAL

MCGILL UNIVERSITY HEALTH CENTRE

MCGILL UNIVERSITY

VILLE DE MONTRÉAL

STANTEC INC.

ATTORNEY GENERAL OF CANADA

Defendants

And

**OFFICE OF THE INDEPENDENT SPECIAL
INTERLOCUTOR FOR MISSING CHILDREN AND
UNMARKED GRAVES AND BURIAL SITES
ASSOCIATED WITH INDIAN RESIDENTIAL
SCHOOLS - 225 & 227 – 50 Generations Drive, Six
Nations of the Grand River Territory in the city of
Ohsweken and the province of Ontario, N0A 1M0**

Intervenor

DETAILED AFFIDAVIT OF KIMBERLY R. MURRAY, SPECIAL INTERLOCUTOR

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I the undersigned, Kimberly R. Murray, carrying on my role as the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools (“Special Interlocutor”), domiciled and residing at the City of Toronto.

1. To the extent that this affidavit contains information, which is not based on my direct knowledge, such information is based on the advice of other individuals, which individuals I identify in this affidavit, and whose advice I do verily believe to be true.
2. I submit this affidavit for the purpose of assisting this Honourable Court and the parties in identifying and creating a specific protocol and process for the investigation of possible unmarked burials at the site in question.

Background to the Intervenor’s Affidavit

3. On June 8, 2022, I was appointed Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools. Filed with my Declaration of Voluntary Intervention as **Exhibit I-6** is my Mandate, pursuant to an Order-in-Council by the Attorney General of Canada, to assist in the identification, protection and repatriation of the remains of Indigenous children who were not returned home from Indian Residential Schools.

4. In my role as Special Interlocutor, I have had the opportunity to meet with various experts in fields relevant to the search for unmarked burials and with Indigenous Leaders that hold knowledge of cultural practices and protocols. I have also reviewed relevant studies, reports, and attended presentations on these topics, and I believe the information I have gathered and included in this affidavit is essential to assisting this Honourable Court.
5. The information provided in this affidavit is done in the spirit of truth and reconciliation and to complement the record by sharing information regarding the importance of following culturally respectful processes, and of using the most currently accepted standards for investigating a site for the existence of unmarked burials.
6. I take no position on the outcome of the main application. My intention is to assist this Honourable Court by providing relevant contextual information relating to the request that an investigation for unmarked burials of Indigenous children be conducted on the site of the Royal Victoria Hospital.
7. My primary concern is that there is currently no established legal process to protect the sites where unmarked burials of Indigenous children may be located. Without a culturally appropriate and responsive process to determine if unmarked burials are located within the site, there is a real risk that burials could be disturbed or disrespected. Part of my Mandate is to recommend a legal process to protect and preserve sites that may contain unmarked burials during search, recovery, and investigation.
8. The resolution of this matter will have implications throughout the country for protecting and assessing sites where there is the potential for unmarked burials of Indigenous children who were not returned home from Indian Residential Schools (“IRSS”).
9. As discussed in paragraphs 20-26 of my Amended Declaration of Voluntary Intervention for Conservatory Purposes (“Declaration”), assisting this Honourable Court in this manner is an important part of my Mandate. Attached hereto as **Exhibit I-8** is my Declaration.

Overview

10. The Defendants’ materials were served on the evening of Friday September 30, 2022, many without English translations. The exhibits from McGill were not received until Monday October 3, 2022. The timing of these productions has affected my ability to review the entire record. Nevertheless, I can provide additional information to this Honourable Court to assist in making determinations on the potential of unmarked burials on the site in question.
11. Through reviewing a large portion of the records and filed materials in this proceeding, it is evident to me that there are gaps between the Defendants’ proposed steps to address the concerns raised around the potential existence of unmarked burials, and the development of accepted standards for a comprehensive investigation of the site.

12. As outlined in my Declaration of Voluntary Intervention for Conservatory Purposes, I worked from 1995 to 2010 as a staff lawyer and then Executive Director at Aboriginal Legal Services of Toronto. I then served in executive leadership roles with the Truth and Reconciliation Commission of Canada (“TRC”), the Indigenous Justice Division (“IJD”) at Ontario’s Ministry of the Attorney General (“MAG”), and as the Executive Lead of the Survivors’ Secretariat at Six Nations of the Grand River.
13. There are two significant areas where my expertise can assist this Honourable Court. The first is the vital role that Indigenous history, culture, legal principles, protocols, and law play in conducting a proper investigation for unmarked burials.
14. The second is with respect to knowledge and information about the technical steps required to execute a reputable investigation that would not, and should not, be detailed by the organizations undertaking the proposed construction project. This includes an effort to locate relevant documents, to conduct interviews with Survivors and community members, to map the site of potential burials, to use appropriate technology that preserves the integrity of the site, to collect, share and analyse qualitative and quantitative data, and to incorporate Indigenous protocols, input, and oversight into these steps.
15. To convey the importance of these two areas, I will outline the historical background giving rise to the probability of unmarked burials with respect to the Indian Residential School (“IRS”) System, including the abuse of Indigenous people and children in hospitals and the health care system, and the systemic abuse perpetuated by the *Indian Act* and colonial systems of governance and justice.
16. I will also outline the relevant Indigenous legal principles and protocols that substantiate the assertion that the investigation process should be led by Indigenous people. Finally, I endeavour to introduce the established and widely accepted remote sensing techniques endorsed by the Canadian Archaeological Association (“CAA”), which has created and continues to develop a protocol for these exact situations where the need to investigate potential unmarked burial sites arises.

Historical Context

A) History of Indian Residential Schools

17. As outlined in my Declaration, I served as Executive Director for the Truth and Reconciliation Commission of Canada (“TRC”) between 2010 and 2015. I was involved in collecting historical evidence on the creation of IRSs and drafting the TRC reports.
18. Volume 1 of the TRC Report, attached hereto as **Exhibit I-9** to this affidavit, contains essential context relating to the history of IRSs and the existence of unmarked burials and missing children. I have reviewed the TRC Report and verily believe the information contained in it to be true and relevant to these proceedings.

19. In determining the locations of potential unmarked burials, the appropriate context begins with Canada's IRS system. The TRC Report details the operation of the IRS system in Canada from 1831 to the late 1990s; by the 1880's, the Federal Government had adopted a policy of funding IRSs across Canada.
20. The TRC Report establishes that the central goal of the IRS system was to eliminate Indigenous Peoples as distinct societies in Canada, including the elimination of their cultural and spiritual values and practices. The proponents of this system felt that they needed to 'civilize' Indigenous people and instill Christian values upon them. It was believed that the most efficient way to achieve this was to separate Indigenous children from the influence of their families and communities by sending them to Indian Residential Schools.
21. The TRC Report describes the different methods used in the attempt to accomplish the 'civilizing' and assimilation of Indigenous Peoples. Examples of prevalent techniques in the IRS system included: forcing Indigenous children to speak English; prohibiting Indigenous cultural practices; and requiring them to dress and act like non-Indigenous (settler) children.
22. It has been estimated that over 150,000 First Nation, Inuit, and Métis children were forced to attend Indian Residential Schools.
23. The TRC Report also details that in 1996, a series of lawsuits were commenced to gain recognition and compensation for the traumatic abuses that occurred in IRSs and their legacy of pain. The initial lawsuits opened the door for other Survivors to share their truths and experiences. The strength and bravery of these Survivors led to the largest class action settlement in Canadian history at the time – the Indian Residential School Settlement Agreement ("IRSSA").
24. Attached as **Exhibit I-10** to this my affidavit is a copy of the IRSSA. The IRSSA brought Survivors, Indigenous organizations, church authorities, and the Government of Canada together to negotiate various components of the settlement, including two different streams of compensation for the harms suffered at IRSs, a commemoration fund, and a healing fund.
25. One of the terms of the IRSSA was the creation of the TRC. Part of the Mandate of the TRC was to inform all Canadians of the truths regarding IRSs. This included the collection of documents from church and government entities, as well as collecting statements from Survivors and communities impacted by IRSs. Attached as **Exhibit I-11** to this affidavit is a copy of the Mandate of the TRC, also as schedule N to the IRSSA.
26. Through the collection of documents, the gaps in information regarding the operation of IRSs became clear. The TRC Report details that many of the practices of IRSs were informal and not contained in written records. Instead, many practices followed by the principals of these institutions relied on verbal instructions received from officials at Indian Affairs or Indian Agents. Additionally, at various points in time some schools burned down or were destroyed and rebuilt elsewhere, further creating difficulties in

collecting and preserving records of these institutions. Further, church entities and Canada also destroyed many records or did not preserve them appropriately.

27. Attached to this affidavit as **Exhibit I-12** is the report of Dr. Scott Hamilton titled “*Where are the Children Buried*” (p. 5, p. 32). I have reviewed this report and verily believe its contents to be true. Dr. Hamilton’s research, along with documents collected by the TRC, reveal the approach to burial sites at IRSs. Many IRSs established their own cemeteries because of their religious affiliations. However, like the lack of formal protocols for the general operation of the schools, there was no procedure adopted for the maintenance of these cemeteries, especially once schools were shut down. Additionally, the TRC Report details an accepted practice of burying Indigenous children outside of the marked fences or boundaries of the cemeteries, due to a belief that the children did not conform to the values held by the church, or in the case where children took their own lives.
28. As a result of my review of these documents and discussions with Indigenous communities leading searches for unmarked burials, I verily believe that there is a lack of precision in terms of the exact locations of potential cemeteries or other burial sites. A determination as to where potential unmarked burials of missing children may be located requires significant documentary review, interviews with Survivors, and the use of appropriate technologies to conduct searches on potential sites.
29. From listening to Survivors of IRSs throughout my work with the TRC, and hearing from Survivors at a National Gathering that my current office held in September 2022, I verily believe that there is legitimate distrust of the governments, institutions and entities that were involved in the operation of IRSs and other institutions on the part of Survivors and Indigenous communities.
30. The operation of IRSs was facilitated through the cooperation of the federal government and church and religious institutions across Canada. In some jurisdictions, provincial and territorial governments and universities were also involved in some aspects of their operation – including inspecting, studying, policing, and providing child welfare and health services. For this reason, I verily believe that Indigenous communities must take the lead in the oversight of any investigations into potential burials to ensure a competent, unbiased process.

B) The *Indian Act*

31. As detailed in my Declaration, I have been a lawyer for almost three decades, beginning my career with Aboriginal Legal Services of Toronto in 1995. Throughout my legal career, I have served as an Adjunct Professor at Osgoode Hall Law School and was Ontario’s first ever Assistant Deputy Attorney General for Indigenous Justice.
32. It is with these qualifications that I have reviewed all relevant versions of the *Indian Act*. Though there was legislation dealing with “Indians” previously, the first *Indian Act* was passed in 1876, and codified procedures for interactions with and control of “Indians”.

Through the various amendments to the *Indian Act*, there were also changes to how “Indians” were or were not viewed as people being worthy of protection.

33. Attached as **Exhibit I-13** is a copy of the 1876 *Indian Act*. The *Indian Act* controlled the lives of those considered “Indians” under the *Act* and was expressly aimed at the assimilation of Indigenous Peoples. As set out in Section 3, the 1876 *Indian Act* distinguishes an “Indian” from a “person” in which the latter clearly excludes the former. Thus, according to Canadian law at that time, Indigenous people were not considered persons.
34. The exclusion of “Indians” from the definition of “person” continues through the 1927 *Indian Act*, attached as **Exhibit I-14** (at section 2). It isn’t until the 1951 *Indian Act*, as attached as **Exhibit I-15**, that the definition of “person” is removed.
35. For the purposes of this affidavit, I have also reviewed Volume 4 of the TRC Report, which the Plaintiffs attach in **Exhibit P-17**. I contributed to researching and drafting this part of the TRC Report, and verily believe its findings to be true and relevant to the legal rights of Indigenous Peoples, and the confirmation of unmarked burials.
36. As noted in Volume 4 of the TRC Report, it was not until 1884 that the *Indian Act* had any education-related provisions (**Exhibit P-17**, p. 36). In 1894, section 11 of the *Act further to amend “The Indian Act”* amended the *Indian Act* and provided the Governor in Council the power to make regulations about, among other things, compulsory school attendance. Attached as **Exhibit I-16** is a copy of the 1894 Act.
37. Under the authority of the 1894 *Indian Act*, the first education related regulation was passed, entitled *Regulations Relating to the Education of Indian Children*, and is attached as **Exhibit I-17**. An Order-In-Council was then passed in 1895 amending the 1894 regulation. Attached as **Exhibit I-18** is a copy of the 1895 Order-In-Council. (See also **Exhibit P-17**, pp. 37-38.)
38. My review of the documents outlined above highlight the fact that if an Indian Agent or Justice of the Peace thought an “Indian” child between six (6) and sixteen (16) was not being properly cared for, educated, or if the parent or guardian was unable to provide for the education of the child, they could issue an order to place the child in an “industrial” or “boarding” school that had a vacancy (**Exhibit I-17**, section 9; and **Exhibit A-XX4**, p. 255). This often meant that a child was not placed in the school closest to the child’s community.
39. During this period, IRSs were referred to as “boarding” and “industrial” schools. *Regulations Relating to the Education of Indian Children* were adopted in 1908 to clarify the 1894 regulations. Attached as **Exhibit I-19** is a copy of the 1908 regulations. Though many of the provisions of the 1894 regulations remained unchanged, the 1908 regulations brought parts of it into line with the *Indian Act* (**Exhibit I-9**, p. 261; **Exhibit P-17**, p. 39).

40. Starting in 1892, the Department of Indian Affairs required all parents to sign an admission form when children were enrolled in an IRS. The admission form provided for the parents' consent to surrendering guardianship of the child to the principal or head teacher at the school. (**Exhibit I-9**, pp. 264-65).
41. The admission form that was used circa 1900 further stipulated that the Department of Indian Affairs was to determine "the term" that the child was admitted to the IRS for (**Exhibit I-9**, p. 265).
42. Into at least the late 1930s, there is evidence that schools were not informing parents when their children became ill or, if parents were being informed, they were informed much after-the-fact (and often not through official school authorities) (**Exhibit I-9**, pp. 444-45).
43. As is referenced in the Plaintiff's **Exhibit P-17**, there was also the lack of notification to parents when a child died while attending IRS. (**Exhibit P-17**, p. 9).
44. Amendments to the *Indian Act* in 1920 completely rewrote the education provisions and, due to the level of detail in the amendments, no additional regulations were passed, and previous regulations were no longer in force (**Exhibit P-17**, p. 39). Attached as **Exhibit I-20** is a copy of the 1920 *An Act to amend the Indian Act* in which section 1 contains the education-related amendments.
45. Despite the continued use of admission forms, as discussed above, the amendments to the *Indian Act* still did not provide for or legally justify the surrendering of guardianship to school officials. These amendments were included in the 1927 consolidated version of the *Indian Act* (**Exhibit P-17**, pp. 39-40).
46. In 1953, new regulations were adopted regarding IRSs. These regulations dealt with a broader range of topics than previous regulations. The 1953 regulations dictated that students were not to be enrolled or discharged from a school without the approval of the Department of Indian Affairs—except when a school principal removed a student on medical advice (**Exhibit P-17**, p. 40).
47. The 1953 regulations provided further specificity with regards to the role of the principal in relation to the students and regulated that the principal assumed the responsibilities of a parent or guardian with respect to the student's welfare and discipline (**Exhibit P-17**, p. 42).
48. These policies that applied to Indigenous children provide some of the necessary context for determining the issue of whether there is the potential of unmarked burials at the redevelopment site. I verily believe that the *Indian Act* was passed and amended to control Indigenous children and remove the rights of parents and guardians, including lack of notice to parents when children fell ill or died after being taken to Indian Residential Schools. I verily believe this demonstrates the lack of care towards Indigenous children and explains why not all children were accounted for following illness and death.

C) History of Health Care to Indigenous Peoples

49. White Canadians enjoyed access to expanding public health services and coverage throughout the 20th century. The same cannot be said for Indigenous people. The system failed Indigenous people in several areas, including poor quality of care, racist practices, underfunding, and lack of choice or autonomy over one's treatment.
50. I reviewed a 1922 report by Dr. P.H. Bryce, who served as Medical Inspector to the Department of Indian Affairs from 1904-1921. I verily believe the contents of the 1922 Bryce Report to be true, which is attached hereto as **Exhibit I-21**. For each year up to 1914, Dr. Bryce wrote an annual report on the health of "Indians", published in the Departmental report (**Exhibit I-21, p. 3**). In 1907, Dr. Bryce was instructed by the Minister to complete a special inspection of thirty-five 'Indian Schools' in the three prairie provinces (**Exhibit I-21, p. 3**).
51. The 1922 report was published separately from the annual report, and the recommendations that were included were not released to the public until after his tenure as the Medical Inspector. This separate report stated that 24% of all Indigenous children at the schools reviewed were known to be dead, and at one particular school, the number of children who were deceased was 75% in the 16-year history of the school (**Exhibit I-21, p. 4**).
52. Dr. Bryce detailed observations from 1907 of Professor George Adami of McGill University, and head of the pathological department at Royal Victoria Hospital. Professor Adami observed the government's lack of action in responding to frequent and devastating tuberculosis outbreaks amongst Indigenous children. In a letter to the Deputy Minister of Indian Affairs, Professor Adami stated that "My only motive is a great sympathy for these children, who are the wards of the government and cannot protect themselves from the ravages of this disease," (**Exhibit I-21, pg. 5-6**).
53. The National Inquiry into Missing and Murdered Indigenous Women and Girls' Final Report (MMIWGR) contains a relevant section on the health care system and Indigenous people, which I have reviewed and verily believe to be true. The relevant section is attached hereto as **Exhibit I-22 (p. 268-273)** to this affidavit. Outbreaks of tuberculosis were prevalent throughout the 20th century, and the desire to segregate Indigenous people from the Canadian health care system led to the creation of "Indian Hospitals" in the 1920s, lasting until the 1980s. These institutions were operated by the federal government exclusively for Indigenous patients, with the intention of providing limited care for what was characterized as "a dying race," as recounted in the excerpt.
54. Attached hereto as **Exhibit I-23 (p. 205)** is the conclusion from Professor Maureen Lux's detailed study on "Indian Hospitals", which I have reviewed and verily believe to be true. The study concludes that Indigenous patients received substandard health services provided by underpaid physicians and nurses. Staff doubted Indigenous patients' ability to follow typical outpatient drug therapy to treat tuberculosis and determined that the solution was to instead institutionalize Indigenous people for years on end, and to perform invasive, disfiguring surgeries with the goal of avoiding re-infection.

55. Attached hereto as **Exhibit I-24** is a Crown and Indigenous Relations (“CIRNAC”) website entitled “Inuit and the past tuberculosis epidemic,” which I have reviewed and verily believe to be true. On that website, CIRNAC acknowledges that Inuit tuberculosis patients were treated in hospitals in southern Canada. Under the “Management of records” heading, the document details that many of those patients “died and were laid to rest near treatment facilities.” CIRNAC states that “To this day, many Inuit are still searching for information” and that information about whether a patient had died as well as details about their burial “were not always communicated back to their family.”
56. I verily believe this document to be an acknowledgement by the federal government that Indigenous people died in health care facilities outside of their communities and were not returned home. Where possible, children from IRSs were sent to Indian Hospitals, but when this was logistically inconvenient, children were sent to other institutions such as hospitals or tuberculosis sanatoria.
57. I verily believe that we can conclude from these reports that Indigenous people in general, and children in the care of IRSs, often suffered from poor health due to lack of government support or intervention when health issues arose.
58. Dr. Lux’s report details that the preferred solution at the time was to segregate Indigenous patients from White Canadians at “Indian Hospitals” where poor standards of care and medical experimentation were abundant; Indigenous patients were often sent to general hospitals as well.
59. Based on my review of these reports related to the health care system’s treatment or mistreatment of Indigenous peoples from **Exhibits I-12 to I-24**, I verily believe that some patients who died at the Royal Victoria Hospital came from various Indigenous communities around Quebec and Inuit communities in the eastern arctic and northern Canada. As each community has its own customs, laws, beliefs, and practices, it is essential that any investigation of the site in question be inclusive and collaborative.

D) History of McGill University

60. As detailed in the Plaintiffs’ materials, there is extensive documentation of the MK Ultra experiments which occurred at the Allan Memorial Institute which I have reviewed and verily believe to be true (**for example, Exhibits P-6, 7, 8, 9, 11, 15, 16**). The Plaintiffs refer to the Royal Victoria Hospital, Allan Memorial Institute and McGill University as locations where Indigenous children were treated, with first-hand accounts of abuse experienced therein (**for example, Exhibits P-10, 29, 30-33**).
61. As detailed in my Declaration, I assisted in the creation of the Survivors’ Secretariat in 2021, where I, along with Survivors and community members, led the investigation into unmarked burials at the Mohawk Institute grounds. I verily believe that an archival search for documents, coupled with the appropriate remote sensing technologies are an essential part of any investigation for unmarked burials. Without and before such work being done, it would be premature to deny the existence of unmarked burials located in the vicinity of any institution that Indigenous children were sent to. It is important that thorough investigations be completed that give primacy to the participation of Survivors, Indigenous families, and communities in the process.

62. It is well documented that it was rare for bodies of deceased Indigenous children to be returned to their home communities. It was not uncommon for burials to occur both within and around the proximity of cemetery grounds due to changing boundaries, or changes to the geography caused by weather. Dr. Scott Hamilton's report details a search in Regina that yielded confirmations of burials both within the fenced area of a cemetery, and outside (**Exhibit I-12, p. 5, 32**).
63. The redevelopment site's close proximity to the hospital grounds and Mount Royal Cemetery leads me to verily believe that a proper investigation according to the established standards and Indigenous protocols is needed to determine whether unmarked burials are on the site.

Indigenous Laws and Protocols

64. There is an important distinction between "Aboriginal law" and "Indigenous law" which Volume 6 of the TRC Report emphasizes in its discussion on Reconciliation. I have reviewed and verily believe the accuracy of the report, attached hereto as **Exhibit I-25 (p.45)**.
65. The report established that "Aboriginal law" is the body of law that exists within the Canadian legal system. "Indigenous law", on the other hand, is referred to by legal scholar John Borrows as "diverse, with each Indigenous nation across the country having its own laws and legal traditions." The report details that "Indigenous law" was and is used by Indigenous Peoples to maintain peace, make decisions, form agreements, and govern communities. The Supreme Court of Canada has also recognized the continuing existence and validity of Indigenous law (**Exhibit I-25, p. 45**).
66. An important part of my Mandate, attached hereto as **Exhibit I-6**, is to incorporate Indigenous laws and protocols into my work on missing children and unmarked burial sites. Specifically, I am to create an engagement process that "acknowledges and respects Indigenous laws, legal orders and governance".
67. With the current matter being the first before a Court in Canada, I believe that my perspective provides a broad view of Indigenous laws, protocols and other practices that can assist this Honourable Court in its considerations—particularly given the fact that the children separated from their families were from many different First Nations, Inuit, and Métis communities.
68. Based on my professional experience, I verily believe that there is great variation in Indigenous laws, protocols and other practices related to death, burials and mourning of family and community members which are relevant to investigating for unmarked burials of Indigenous children. In many Indigenous communities, there may be specific ceremonies that are required. By failing to allow cultural protocols to be followed, harms are created to both the living and the dead.
69. Based on my study of Indigenous law, I believe that the burial of Indigenous children in unmarked burials is a breach of Indigenous laws. Families and communities of these

children have not been provided with the opportunity to uphold their responsibilities under Indigenous law to honour, respect and bring dignity to their loved ones and to perform ceremonies according to their customs and protocols.

Investigating Unmarked Burials

70. I am aware that the CAA is the primary archaeological organization in Canada.

71. I am aware that the CAA has created a Principles of Ethical Conduct document (the "Principles") which members of the CAA agree to abide by, and I have reviewed it extensively.

72. Attached hereto as **Exhibit I-29** is a copy of the CAA's Principles, which I believe to be comprehensive according to the latest developments in the field. The Principles contain a mandatory professional responsibility for archaeologists to "comply with local protocols of Indigenous Peoples in or outside of Canada". Additionally, the Principles outline the following standards related to the CAA's commitment to reconciliation, in which CAA members will:

- Make every effort to engage, cooperate, collaborate and/or partner with the relevant Indigenous Peoples and communities on any archaeological work involving sites that include an Indigenous component, including historical sites;
- Learn and respect cultural protocols of Indigenous Peoples and communities relating to the conduct of archaeological activities;
- Work to co-develop protocols for archaeological projects or work;
- Respect Indigenous standards, principles, protocols, and/or laws governing the investigation, removal of Indigenous ancestors' remains and associated objects; and,
- When human remains are found, they are to be cared for and protected by Indigenous Peoples and should be treated with respect and dignity and studied in collaboration with the descendant community.

73. In addition to the Principles, the CAA has developed a further set of principles specific to ethical conduct when working with Indigenous Peoples which I have reviewed and verily believe to be true. Attached hereto as **Exhibit I-30** is a copy of the CAA's Statement of Principles for Ethical Conduct Pertaining to Aboriginal Peoples (the "Aboriginal Peoples Principles"). The Aboriginal Peoples Principles identify the criteria that CAA members agree to abide by including:

- Recognizing and respecting the role of Aboriginal communities in matters relating to their heritage;
- Negotiating and respecting protocols, developed in consultation with Aboriginal communities, relating to the conduct of archaeological activities;
- Acknowledging the cultural significance of human remains and associated objects to Aboriginal Peoples; and,
- Respecting protocols governing the investigation, removal, curation, and reburial of human remains and associated objects.

74. In response to the recoveries of Indigenous children at Tk'emlúps te Secwépemc in 2021, the CAA and other organizations have developed a set of resources to assist Indigenous communities with locating unmarked graves. **Exhibit I-31** is an example of a resource developed by the CAA entitled "Recommended Pathway for Locating Unmarked Graves Around Residential Schools" (the "Recommended Pathway"), which I have reviewed and verily believe to be accurate.
75. One of the key foundational principles identified therein is that work related to locating missing Indigenous children must be led by Indigenous communities. The Recommended Pathway also includes a section entitled "Recommended Components" that outlines the steps the CAA recommends that Indigenous communities consider in doing this work—particularly when remote sensing is to be involved.
76. More recently, an alliance has been formed by a group of scholarly associations and organizations whose members have expertise and experience relevant to locating unmarked graves that includes the Indigenous Heritage Circle, the Canadian Historical Association, the CAA, Geophysics for Truth, the Canadian Permafrost Association, and the Canadian Association for Biological Anthropology (the "Alliance"). Attached as **Exhibit I-32** is a copy of an announcement made by the Alliance, which I have reviewed and verily believe to be accurate. The announcement lists a number of guiding principles that include:
- Recognition and support for the right of every Indigenous community to decide how they wish to proceed with any investigation and that the Alliance will assist and support any efforts upon request; and,
 - That all aspects of investigating unmarked graves should, as much as possible, be conducted by Indigenous communities.
77. These principles regarding Indigenous input and involvement when dealing with sites of potential unmarked burials align with my Mandate, particularly in terms of facilitating and creating an engagement process that acknowledges and respects Indigenous laws and protocols.
78. During my time as the Executive Oversight Lead of the Survivors' Secretariat at Six Nations of the Grand River, I drafted a blog post on the various forms of technology used to identify potential burial sites. Attached as **Exhibit I-4** is a copy of that blog post entitled "How Technology is Helping Survivors Uncover the Truth". This blog post focuses on Light Detection and Ranging ("LiDAR") and ground penetrating radar ("GPR") technologies, as those technologies were being used by the Survivors' Secretariat in their search for unmarked burials.
79. I have reviewed **Exhibits I-29 to I-38**, which contains guidance issued by the CAA regarding the various remote sensing technologies that can be used either alone or in concert to locate unmarked burials. The methods selected for each investigation vary depending on a variety of factors, including the terrain to be searched, the soil

composition, and whether the lands have been developed. Most of the remote sensing technologies are either aerial-based or ground-based.

80. I note that the discussion of remote sensing steps in the Recommended Pathway includes that “Local ceremonial protocols should be observed when conducting any such [remote sensing] work.” (**Exhibit I-31**, p. 4)
81. I am aware through my work at the Survivors’ Secretariat and now as the Special Interlocutor that GPR, a ground-based approach, is often the most common remote sensing technology that has been used in locating unmarked burials. Attached as **Exhibit I-33** is the CAA’s recommendations related to GPR and unmarked graves (“GPR Recommendations”), which I have reviewed and verily believe to be accurate. The GPR Recommendations note that GPR is not as effective when the soil is clay-rich and that the units work best when they are in direct contact with the ground, possibly requiring mowing and the removal of low vegetation (**Exhibit I-33**, pp. 1-2).
82. The Director of the Institute of Prairie and Indigenous Archaeology, Dr. Kisha Supernant, prepared a document entitled “Overview of Technologies for Searching for Human Remains and Unmarked Graves” that is exhibited by the Plaintiffs (**Exhibit P-139**); Dr. Supernant also gave a presentation on the topic which I attended. Dr. Supernant’s presentation noted that GPR does not work well in areas that have been paved or with forest cover. I am aware of projects looking for unmarked burials in forested areas that have combined the use of GPR with the knowledge of Survivors and their families. I verily believe that should still be considered as part of an investigation into the redevelopment site.
83. Attached as **Exhibit I-34** are the CAA’s recommendations related to the use of LiDAR, which I have reviewed and verily believe to be accurate. As noted in that document, LiDAR is an aerial-based approach that involves the use of drones or unmanned aerial vehicles. LiDAR and other aerial-based techniques can be hindered by vegetation cover such as forest, shrubs or tall grass and, similar to GPR, may require that vegetation be removed (**Exhibit I-34**, p. 3).
84. Electrical resistivity is another technique that can be used in locating unmarked burials. Attached as **Exhibit I-35** are the CAA’s recommendations related to this approach, which I have reviewed and verily believe to be accurate. In contrast to GPR, electrical resistivity works well in soils with high clay/conductive or moisture content. The CAA states that electrical resistivity is “a great addition to unmarked grave projects and an important technique in certain environments” such as in areas with lots of obstructions and vegetation (**Exhibit I-35**, p. 5).
85. Magnetometry is another remote sensing approach. Attached as **Exhibit I-36** are the CAA’s recommendations related to conductivity surveys, which I have reviewed and verily believe to be accurate. A magnetometer survey is one of the fastest remote sensing approaches and allows for large areas to be surveyed quickly (**Exhibit I-36**, p. 2). Magnetometry can be used in areas where GPR cannot, however does not work as well in areas where the soil has a high iron content and usually can only penetrate to a

maximum depth of thirty (30) centimetres. Areas close to fence lines, parking lots, buildings and other sources of metal are also not suitable for this technique (**Exhibit I-36**, pp. 2-3).

86. I am also aware that cadaver dogs are another potential technique that can be used as part of the process to locate unmarked burials.
87. Each of these techniques or approaches can be used in various combinations to provide a more fulsome picture and investigation into locating unmarked burials without requiring the ground to be disturbed—as the Recommended Pathway similarly suggests (**Exhibit I-31**, p. 4). In fact, the CAA states that “it is considered best practice to apply multiple techniques to remote sensing projects, as each provides its own distinct data set that can offer different insights” (**Exhibit I-36**, p. 1).
88. I verily believe that remote sensing is the best practice in searching for unmarked burials because it can assist in locating potential remains without disturbing the ground, unlike what occurs during large-scale or manual excavations.
89. I verily believe that the approach advocated for by groups such as the CAA forms the basis for a contemporary and informed approach that includes Indigenous participation and leadership in the search process and respect for Indigenous laws and protocols throughout the process.
90. **Exhibit I-37** is an example of such a contemporary informed approach that combines remote sensing technologies and Indigenous participation as well as respect for Indigenous laws, and protocols. This integrated approach contributes to reconciliation; and demonstrates the importance of involving Indigenous communities throughout the search process – from the beginning right through to completion of the search. I have reviewed this document and verily believe it to be accurate.
91. Additionally, there are important ceremonial protocols that need to be performed at the start and throughout any search process for potential unmarked burials. I verily believe these protocols cannot be fulfilled through mere consultation meetings with Indigenous communities but require their direct involvement.
92. The CAA has produced a general remote sensing and grave detection Frequently Asked Questions document that is attached as **Exhibit I-38**, which I have reviewed and verily believe to be true. On the second page of the document is a discussion about who should undertake a remote sensing (or geophysical) survey. This discussion is the only part of the document that specifically emphasizes that the use of GPR, at least in this context, “is uncommon and requires specific training” that includes specific data collection methods and interpretive knowledge. The CAA notes that “Unfortunately, we are also seeing some companies and individuals taking advantage of the tragic circumstances revealed at Kamloops Indian Residential School who do not have the appropriate experience.” As a result, the CAA recommends “Extreme caution”.
93. Though it is a specialized skillset to use remote sensing technologies in the contexts of unmarked burials, restricting the number of properly trained individuals, I verily believe

the following individuals and organizations have the required skills that acknowledge and incorporate Indigenous Peoples' laws, protocols and knowledge—some of the following being Indigenous themselves:

- Adrian Burke (Professeur titulaire, Université de Montréal);
- Kisha Supernant (Associate Professor, University of Alberta and Director, Institute of Prairie and Indigenous Archaeology);
- Andrew Martindale (Professor, University of British Columbia);
- Ed Eastaugh (Lab Manager, Western University);
- Sarah Beaulieu (Assistant Professor, University of the Fraser Valley);
- Terrence Clark (Assistant Professor, University of Saskatchewan);
- William Wadsworth (PhD Student, University of Alberta); and,
- GeoScan.

Conclusion

94. Reconciliation is at the forefront of the relationship between Indigenous Peoples and Canadian society, as acknowledged by the Supreme Court of Canada. Guidelines and processes, such as those proposed by the CAA, seek to promote the principles of reconciliation, as set out in the TRC Report, attached in **Exhibit I-39**.
95. I verily believe that Indigenous Peoples have historically faced challenges in advocating for their rights and interests through Canadian courts, as the courts have generally upheld colonial government laws and policies that have targeted Indigenous Peoples. Part of my Mandate is to recommend a legal framework to protect and preserve sites where unmarked burials may be located that emphasizes the primary role that Survivors, Indigenous families and communities should have in leading these searches and investigations.
96. Indigenous Peoples have their own legal principles and systems, and governance structures that have served their communities from time immemorial. However, following the execution of the federal government's policy for the assimilation of Indigenous Peoples, Canada began regulating the lives of Indigenous Peoples and prohibited certain cultural and spiritual practices.
97. The TRC Report details how colonial courts have overseen and perpetuated the degradation of Indigenous rights, the assimilation of Indigenous culture, and led to the vast overrepresentation of Indigenous people in the criminal justice system. Indigenous Survivors have been speaking their truth about their experience and the legacy of IRSs for many years, and it is only recently that these issues have garnered international media attention.
98. Indigenous justice processes are different than colonial justice processes, and as stated in the TRC Calls to Action, reconciliation requires the court system to provide space for

Indigenous legal principles and processes in the pursuit of justice in the context of the legacy of Indian Residential Schools. A copy of the TRC Calls to Action are attached to this affidavit as **Exhibit I-40**, which I have reviewed and verily believe to be accurate.

99. As the TRC's Calls to Action state, Indigenous legal principles, processes, and protocols should be given priority when determining whether and how searches should be conducted for unmarked burials of Indigenous children on the sites of institutions where they were known to have been taken.
100. Indigenous families and communities should be able to rely on the Canadian legal system to protect these sites until searches are complete. Just as Canadians would not tolerate having the remains of their family members buried in a cemetery disturbed and desecrated, neither should Indigenous families and communities have the burials of their children disrespected and desecrated.
101. Importantly, I verily believe this Court should consider the importance of upholding Indigenous laws and protocols in the context of the site being proposed for redevelopment. As Special Interlocutor, my role and Mandate includes facilitating dialogue and collaboration between impacted Indigenous communities and those with ownership of former IRS and associated sites.
102. I verily believe that guidelines and processes, such as those outlined by the CAA, are a way to verify that a comprehensive investigation is conducted. This involves comprehensive research, community-driven protocols, and analysis that balances the different perspectives. My aim is to assist this Honourable Court and all parties in determining an appropriate process to adopt that will address both the plaintiffs' and defendants' concerns.
103. As such, on sites where there is a realistic possibility of unmarked burials, I verily believe that it is essential to involve the affected Indigenous communities, protect the sites until a proper search and investigation is completed, and ensure that the appropriate Indigenous cultural protocols and ceremonies are conducted to honour, respect, and bring dignity to the children who are recovered.
104. I make this affidavit in support of my proposed intervention in these proceedings and for no other or improper purpose. And I affirm that all of the allegations in the Amended Declaration are true.

AND I HAVE SIGNED:



Kimberly R. Murray
Independent Special Interlocutor

SOLEMNLY AFFIRMED BEFORE ME by video conference
from the City of Toronto this the 7th day of October, 2022



Mitchell Goldenberg
Commissioner of Oaths
for the Province of Ontario
LSO# 85215T

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

Nº.: 500-17-120468-221

SUPERIOR COURT

(Civil Division)

KAHENTINETHA

KARENNATHA

KARAKWINE

KWETTIIO

OTSITSATAKEN

KARONHIATE

Plaintiffs

vs.

SOCIÉTÉ QUÉBÉCOISE DES INFRASTRUCTURES

ROYAL VICTORIA HOSPITAL

MCGILL UNIVERSITY HEALTH CENTRE

MCGILL UNIVERSITY

VILLE DE MONTRÉAL

ATTORNEY GENERAL OF CANADA

Defendants

and

ATTORNEY GENERAL OF QUEBEC

Mis-en-cause

and

OFFICE OF THE INDEPENDENT SPECIAL
INTERLOCUTOR FOR MISSING CHILDREN AND
UNMARKED GRAVES AND BURIAL SITES
ASSOCIATED WITH INDIAN RESIDENTIAL
SCHOOLS

Intervenor

AMENDED LIST OF EXHIBITS

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Exhibit I-10: Excerpt, Indian Residential School Settlement Agreement ("IRSSA")

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Exhibit I-36: 10 Principles of Reconciliation – Truth and Reconciliation Commission (2015)

Exhibit I-37: Truth and Reconciliation Commission Calls to Action (2015)

Toronto, October 7, 2022



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**SUPERIOR COURT
DISTRICT OF MONTREAL**

KAHENTINETHA, et al

Plaintiffs

vs.

**SOCIÉTÉ QUÉBÉCOISE DES
INFRASTRUCTURES, et al**

Defendants

and

ATTORNEY GENERAL OF QUEBEC

Mis-en-cause

**OFFICE OF THE SPECIAL
INTERLOCUTOR**

Third-Party Intervenor

- **AMENDED DECLARATION OF VOLUNTARY INTERVENTION FOR CONSERVATORY PURPOSES**
 - **AFFIDAVIT DATED AUGUST 31, 2022**
 - **DETAILED AFFIDAVIT DATED OCTOBER 7, 2022**
 - **AMENDED LIST OF EXHIBITS**
-

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**Exhibits of Kimberly R. Murray – Third Party Intervenor
Independent Special Interlocutor for Missing Children and
Unmarked Graves and Burial Sites Associated with Residential
Schools**

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EXHIBIT I-1

Executive Summary, Volume 4 of the Truth and Reconciliation Final Report

Canada's Residential Schools:
**Missing Children and
Unmarked Burials**

The Final Report of the
Truth and Reconciliation
Commission of Canada

Volume 4



Truth and
Reconciliation
Commission of Canada



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Volume 4

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Executive summary

The Truth and Reconciliation Commission of Canada's "Missing Children and Unmarked Burials Project" is a systematic effort to record and analyze the deaths at the schools, and the presence and condition of student cemeteries, within the regulatory context in which the schools were intended to operate. The project's research supports the following conclusions:

- The Commission has identified 3,200 deaths on the Truth and Reconciliation Commission's Register of Confirmed Deaths of Named Residential School Students and the Register of Confirmed Deaths of Unnamed Residential School Students.
- For just under one-third of these deaths (32%), the government and the schools did not record the name of the student who died.
- For just under one-quarter of these deaths (23%), the government and the schools did not record the gender of the student who died.
- For just under one-half of these deaths (49%), the government and the schools did not record the cause of death.
- Aboriginal children in residential schools died at a far higher rate than school-aged children in the general population.
- For most of the history of the schools, the practice was not to send the bodies of students who died at schools to their home communities.
- For the most part, the cemeteries that the Commission documented are abandoned, disused, and vulnerable to accidental disturbance.
- The federal government never established an adequate set of standards and regulations to guarantee the health and safety of residential school students.
- The federal government never adequately enforced the minimal standards and regulations that it did establish.
- The failure to establish and enforce adequate regulations was largely a function of the government's determination to keep residential school costs to a minimum.

- The failure to establish and enforce adequate standards, coupled with the failure to adequately fund the schools, resulted in unnecessarily high death rates at residential schools.

These findings are in keeping with statements that former students and the parents of former students gave to the Commission. They spoke of children who went to school and never returned. The tragedy of the loss of children was compounded by the fact that burial places were distant or even unknown. Many Aboriginal people have unanswered questions about what happened to their children or relatives while they were attending residential school. The work that the Commission has begun in identifying and commemorating those students who died at school and their gravesites needs to be finished.

The work that the Commission has commenced is far from complete. The National Residential School Student Death Register established by the Truth and Reconciliation Commission of Canada represents the first national effort to record the names of the students who died at school. There is a need for continued work on the register: there are many relevant documents that have yet to be reviewed. There is a need for the development and implementation of a national strategy for the documentation, maintenance, commemoration, and protection of residential school cemeteries. Such a program, carried out in close consultation with the concerned Aboriginal communities, is necessary to properly honour the memory of the children who died in Canada's residential schools.

Introduction

Death cast a long shadow over Canada's residential schools. In her memoir of her years as a student at the Qu'Appelle, Saskatchewan, school in the early twentieth century, Louise Moine wrote of one year when tuberculosis was rampaging through the school.

There was a death every month on the girls' side and some of the boys went also. We were always taken to see the girls who had died. The Sisters invariably had them dressed in light blue and they always looked so peaceful and angelic. We were led to believe that their souls had gone to heaven, and this would somehow lessen the grief and sadness we felt in the loss of one of our little schoolmates.¹

Enos Montour had similar memories of his time at the Mount Elgin school in Muncey, Ontario. On occasion,

the silent killer TB showed up amongst the enrolment. Some quiet, inoffensive lad would grow unusually quiet and listless.... As his creeping, insidious disease came over him, he began to lose interest in all boyish activity. He coughed

frequently and his energy was sapped away. His chums tried to interest him in their games and outings, but he only smiled wanly and told them to leave him out. He didn't feel like it.

Eventually, the boy was taken from the school. "An emptiness remained where the gentle boy had lived with his pals."²

In his memoir, James Gladstone was critical of the medical care available to the students at the Anglican boarding school on the Blood Reserve in Alberta. In the spring of 1900, a fellow student, Joe Glasgow, became ill after stepping on a nail. "Rev. Owen had made arrangements for a doctor from Fort Macleod, but he was a useless drunk who didn't come until it was too late. I looked after Joe for two days until he died. I was the only one he would listen to during his delirium."³

Distressed, neglected, and abused, some students killed themselves. In her memoirs, Eleanor Brass spoke of a boy who had hung himself for fear of discipline at the File Hills school in Saskatchewan. "The poor youth was in some kind of trouble which was not so terrible but apparently it seemed that way to him."⁴

Accidental death was also a risk for residential school students. A Methodist missionary and six students were travelling to the Brandon, Manitoba, school in 1903 when the boat carrying them sank. All seven drowned.⁵ Christina Jacob, a student at the Kamloops, British Columbia, school, died in 1962, when an airplane being piloted by a school employee crashed near the school.⁶

Poorly built and maintained buildings were fire traps. Nineteen boys died in the fire that destroyed the Beauval, Saskatchewan, school in 1927.⁷ Twelve children died when the Cross Lake, Manitoba, school burned down in 1930. The high death toll was partially attributable to inadequate fire escapes.⁸

Some students disappeared while running away from school. Four boys who ran away from the Fort Albany, Ontario, school in the spring of 1941 were presumed to have drowned. Their bodies were never recovered.⁹ Another two boys had run away from the Sioux Lookout, Ontario, school in 1956. The principal waited a month before reporting that they were missing.¹⁰ They were never found.¹¹

Many of the cemeteries in which students were buried have long since been abandoned. When the Battleford school in Saskatchewan closed in 1914, Principal E. Matheson reminded Indian Affairs that there was a school cemetery that contained the bodies of seventy to eighty individuals, most of whom were former students. He worried that unless the government took steps to care for the cemetery, it would be overrun by stray cattle.¹² Such advice, when ignored, led to instances of neglect, with very distressing results. In 2001, water erosion of the banks of the Bow Highwood River exposed the remains of former students of the High River, Alberta, school, which had closed in 1922. Thirty-four bodies were exhumed and reburied, with both Aboriginal and Christian ceremonies, at the St. Joseph's Industrial School Provincial Historical Site.¹³

These examples point to a larger picture: many students who went to residential school never returned. They were lost to their families. They died at rates that were far higher than those experienced by the general school-aged population. Their parents were often uninformed of their sickness and death. They were buried away from their families in long-neglected graves. No one took care to count how many died or to record where they were buried.

The most basic of questions about missing children—Who died? Why did they die? Where are they buried?—have never been addressed or comprehensively documented by the Canadian government. This document reports on the first systematic effort to record and analyze the deaths at the schools, and the presence and condition of student cemeteries, within the regulatory context in which the schools were intended to operate.

The Missing Children and Unmarked Burials Mandate

The Indian Residential Schools Settlement Agreement (IRSSA), which was signed in 2006 and approved by the courts in early 2007, mandated the Truth and Reconciliation Commission of Canada (TRC) to:

Identify sources and create as complete an historical record as possible of the IRS [Indian Residential Schools] system and legacy. The record shall be preserved and made accessible to the public for future study and use

and to

Produce and submit to the Parties of the Agreement a report including recommendations to the Government of Canada concerning the IRS system and experience including: the history, purpose, operation and supervision of the IRS system, the effect and consequences of IRS (including systemic harms, inter-generational consequences and the impact on human dignity) and the ongoing legacy of the residential schools.

The establishment of a specific “Missing Children and Unmarked Burials” mandate did not come until after the Settlement Agreement had been approved by the courts. On April 24, 2007, Liberal Member of Parliament Gary Merasty (Desnethé/Missinippi/Churchill River) raised the issue of residential school death rates in the House of Commons. He stated that the schools were places of disease, hunger, overcrowding, and despair.

Many children died. In 1914 a departmental official said “fifty per cent of the children who passed through these schools did not live to benefit from the education which they had received therein”. Yet, nothing was done.... Mr. Speaker, above all else, I stand for these children, many of whom buried their friends,

families and siblings at these schools.... Will the Prime Minister commit to the repatriation of the bodies and an apology to the residential school survivors?¹⁴

James Prentice, who was both the minister of Indian Affairs and Northern Development as well as the minister responsible for the Office of Indian Residential Schools Resolution Canada, responded, “We will get to the bottom of the disappeared children. The Truth and Reconciliation Commission will hear much about that. I have instructed our officials to look into that and to work with Oblate records of the churches to get to the bottom of this issue, and this sad chapter in our history.”¹⁵

Prentice asked the Commission to form a working group to make recommendations for further research into the issue. The Working Group on Missing Children and Unmarked Burials was established in the spring of 2007.¹⁶ The working group included representatives from national Aboriginal organizations, former students, archivists, and the federal government.

The working group concluded that the following questions should be addressed:

- 1) Who and how many residential school students died?
- 2) What did residential school students die from?
- 3) Where are the residential school students buried?
- 4) Who were the residential school students who went missing?

The first three questions address the issues specific to students who died at the schools. The fourth refers to those students who may not have died at the schools, but who never returned home from residential school.

The term *missing children* in this context includes both those who died at school and those whose fate after enrolment was unknown, at least to their parents. This could include, for example, students who might have run away to urban centres and never contacted their home community again, students who never returned to their home communities after leaving school, students who became ill at school and were transferred to a hospital or sanatorium and died there (possibly several years later) without parents being informed, or students who were transferred to other institutions such as reformatories or foster homes and never returned home.

To address its four key questions, the working group proposed the following four research projects.

- 1) **Statistical Survey:** A statistical survey intended to achieve a precise estimate of student enrolment, including rates of death and disease.
- 2) **Operational Policies and Custodial Care:** A study intended to review administrative policies pertaining to death, illness, and disappearances of students.
- 3) **Unmarked Burials and Commemoration:** A study intended to identify the location of cemeteries and gravesites in which students are believed to be buried. The project was to collaborate with communities to identify options for commemoration, ceremony, and further community-based research.

- 4) **Specific Case Research:** A project in which the Commission, in collaboration with its partner organizations, was to help individual requesters to locate information regarding former students who may have died or gone missing while in the care of an IRS. Where possible, this would include locating burial sites.¹⁷

These four recommendations formed the basis for the Truth and Reconciliation Commission of Canada's work on the Missing Children and Unmarked Burials Project, which was an expectation of significant additional work, beyond the Commission's original mandate. Early projections indicated that the budget for this additional work and implementing the working group's recommendations would be in excess of \$1.5 million. Because research of the scope proposed by the working group was not anticipated in the original TRC budget, in 2009 the Commission requested that Indian Affairs cover the cost of this further work.¹⁸ The request was denied in December 2009. The federal government's denial of this request has placed significant limits on the Commission's ability to fully implement the working group's proposals, despite our sincere belief in their importance.¹⁹

Document review and statistical analysis

As a first step in the review and analysis of deaths, the Commission established a National Residential School Student Death Register. The register is made of up three sub-registers:

- 1) the Register of Confirmed Deaths of Named Residential School Students ("Named Register")
- 2) the Register of Confirmed Deaths of Unnamed Residential School Students ("Unnamed Register")
- 3) the Register of Deaths that Require Further Investigation

The Register of Confirmed Deaths of Named Residential School Students

Student deaths have been recorded in this register on the basis of the following criteria.

- The student was
 - a registered residential school student,
 - a student who was registered at a day school but was living in a student residence, or
 - an orphaned or destitute child living in a residential school.

- The student either
 - died during the school term, or
 - died within one year of discharge from school. (This would include students who died in a hospital or sanatorium within a year of being transferred from a residential school to the hospital or sanatorium.)
- For the purposes of this study, a residential school was defined as an institution recognized in the Indian Residential Schools Settlement Agreement, plus any residential school for Aboriginal students that was not included in the Settlement Agreement for the apparent reason that the school had ceased operation either in the nineteenth or early twentieth century.

The decision to include those students who died within a year of discharge rests on a common residential school practice of discharging students who were suffering from terminal illness to their homes or to institutions such as hospitals and sanatoria.

The Register of Confirmed Deaths of Unnamed Residential School Students

- The student was
 - a registered residential school student,
 - a student who was registered at a day school but was living in a student residence, or
 - an orphaned or destitute child living in a residential school.
- The student either
 - died during the school term, or
 - died within one year of discharge from school. (This would include students who died in a hospital or sanatorium within a year of being transferred from a residential school to the hospital or sanatorium.)

One of the common sources for the information about deaths included in this category is the reports made by principals who noted the number of students who had died in the previous year but who did not identify them by name.²⁰ It is recognized that the possibility exists that some of the deaths recorded in the Named Register might also be included in the Unnamed Register. The Commission has been cross-referencing entries in both registers to identify and eliminate such duplications wherever possible, and to identify the names of students who had originally been placed in the Unnamed Register.

The Register of Deaths that Require Further Investigation

Reports of deaths that the Commission has determined require further investigation to determine if they meet the criteria for inclusion in either of the other two sub-registers.

In creating the National Residential School Student Death Register, the Commission:

- conducted a review of documents held by the government and church signatories to the Indian Residential Schools Settlement Agreement that were provided to the TRC;
- included questions in the statement-gathering process that sought information from former students about deaths, including causes, runaways, and burials;
- worked with provincial agencies, such as the offices of chief coroners and medical examiners, offices of the registrars general of vital statistics, and provincial archives across the country, to identify records that may relate to deaths at residential schools; and
- conducted a review of provincial archaeological site inventories. (These are databases of reported archaeological sites. They included maps and aerial photos of the vicinity of the former schools.)

As one measure of true commitment to reconciliation, and out of respect for the thousands of children who died and their families, the Commission believes that work on this historic National Residential School Student Death Register must continue after the transfer of the Truth and Reconciliation Commission records to the National Centre for Truth and Reconciliation.

Limitations to the register

There are significant limitations in both the quality and quantity of the data the Commission has been able to compile on residential school deaths. There are problems with the level of detail in the data. As noted above, in many cases, school principals simply reported on the number of children who had died in a school, with few or no supporting details. There are also some reports that give a total of the number of students who had died since a specific school opened, but with no indication of the year in which each student died.²¹ Such reports usually did not give detailed information on the cause of death.

Changes over the years in the way the government reported the information it received from the schools have also placed limits on data collection. Prior to 1915, Indian Affairs' annual reports reproduced a detailed report from each principal that often contained information on the health conditions and the number of students who had died in the previous year. But, after 1915, Indian Affairs stopped publishing

principals' reports. Subsequent reports did not provide information on student deaths in any regularized format.

It was not until 1935 that Indian Affairs adopted a formal policy on how deaths at the schools were to be reported and investigated.²² Under this policy, the principal was to inform the Indian agent of the death of a student. The agent was to then convene and chair a three-person board of inquiry. The two other members of the board were to be the principal and the physician who attended the student. The board was to complete a form provided by Indian Affairs that requested information on the cause of death and the treatment provided to the child. Parents were to be notified of the inquiry and given the right to attend or have a representative attend the inquiry to make a statement. However, an inquiry was not to be delayed for more than seventy-two hours to accommodate parents, an extreme limitation, considering the relative isolation of many of the residential schools and the limited communications of the day.²³ The department was not prepared to pay parents' transportation costs to attend the inquiry.²⁴ The policy was not always adhered to, and, in some cases, the Indian agent simply filled out the form, based on information provided to him by the principal.²⁵

It is also doubtful that schools reported on the deaths of seriously ill children who had been sent home. This was a common practice for at least the first several decades that the schools were in operation. For example, in 1907, Dr. Peter Bryce, the chief medical officer for Indian Affairs, proposed that tubercular students be treated in small tent hospitals rather than "being sent home to die."²⁶

Due to the limitations in the records, it is probable that there are many student deaths that have not been recorded in the register because the record of the death has not yet been located. There are a number of instances where the only mention of a specific student death is in a church document, but there is no recorded indication of it in any Indian Affairs document that the Commission could locate.²⁷ There also exists the possibility that the death may not have been reported at all. As late as 1942, the principal of a residential school in Saskatchewan was unaware of any responsibility to report a death to provincial vital statistics officials.²⁸ Many residential schools housed significant numbers of Métis students during their history. In some cases, the federal government provided funding for these students; in other cases, it did not.²⁹ It is not clear if the schools reported on the deaths of unfunded Métis students at the schools.

As well, many records have simply been destroyed. According to a 1933 federal government policy, school returns could be destroyed after five years and reports of accidents could be destroyed after ten years. This led to the destruction of fifteen tons of paper. Between 1936 and 1944, 200,000 Indian Affairs files were destroyed.³⁰

Health records were also regularly destroyed. For example, in 1957, Indian and Northern Health Services was instructed to destroy, after a period of two years, "correspondence re routine arrangements re medical and dental treatments of Indians

and Eskimos, such as transportation, escort services, admission to hospital, advice on treatment, requests for treatment, etc.” Reports of doctors, dentists, and nurses were similarly assigned a two-year limited retention period.³¹

The Commission’s work has also been hampered by limited and late access to relevant documents from the government and churches, due to problems with document production. The federal government first provided access to substantial numbers of documents in the fall of 2011. These came to the Commission through an Aboriginal Affairs departmental online database that contained documents that had been compiled from Library and Archives Canada and collected from the churches. The database was originally established by Canada in the preparation of the government’s position in response to civil lawsuits launched by former residential school students. It was also used for settling alternate dispute-resolution claims brought by former school students. Although it contained many relevant documents, this database had not been designed to collect documents related to deaths in the schools. The digitization of these documents was often of poor quality: in some cases, documents were illegible. Additions were made to this database throughout 2012 until it contained almost one million documents. Additional documents were sent directly to the Commission as other departments began to search their records. However, relevant documents held by Library and Archives Canada were still withheld. In January 2013, the Ontario Superior Court determined that the federal government, although not obliged to turn over its originals, was required to compile all relevant documents in an organized manner for review by the Commission rather than simply providing access to Library and Archives Canada for Commission researchers.³² Since that date, there has been considerable improvement in the production of documents to the Commission. Nonetheless, the delay in clarifying Canada’s obligation means that the production of documents to the TRC is still continuing. It has not been possible to review all recently produced documents and to make the required adjustments to the National Residential School Student Death Register by the time of this report.

Operational policies and custodial care

As part of the Commission’s work, it reviewed operational and custodial care policies and practices at Canada’s residential schools. It is clear that the government and the churches failed to establish the necessary regulations to ensure that an acceptable level of care, based on the standards of the day, was provided to students. This failure occurred in the areas of health, nutrition, building conditions (including sanitation), discipline, truancy, student labour, abuse, and child welfare. Those regulations that were introduced were often poorly communicated and poorly enforced. Such failures contributed to unnecessarily high death rates among the students, and to poor

nutrition that would have contributed to poor physical and mental health conditions that affected many students for the rest of their lives.

Cemeteries and unmarked burials

The Truth and Reconciliation Commission of Canada undertook ongoing work to locate and identify cemeteries and gravesites in which residential school students might be buried. Archival documents and oral testimony were used to identify potential locations of gravesites. In consultation with Aboriginal communities, the Commission visited some of these sites to ascertain current condition and location, and to record any disturbance or neglect. Visits were made to cemeteries and twenty unmarked gravesites in the Northwest Territories, British Columbia, Alberta, Saskatchewan, Nova Scotia, and Ontario. In addition, the Commission documented the location and condition of school sites and cemeteries on maps, using satellite imagery. The area surrounding a visited school was systematically examined, using the available maps and satellite imagery. For the most part, the cemeteries that the Commission documented are abandoned, disused, and vulnerable to accidental disturbance. Although there have been creative and heartening community commemoration measures undertaken in some locations, there is an overall need for a national strategy for the documentation, maintenance, commemoration, and protection of residential school cemeteries. On the basis of the work undertaken to date, it is apparent that there are likely to be other unidentified residential gravesites across the country. A national program, carried out in close consultation with the concerned Aboriginal communities, is required to complete the task of identifying the many unmarked residential school cemeteries and gravesites across Canada.

Specific case inquiries

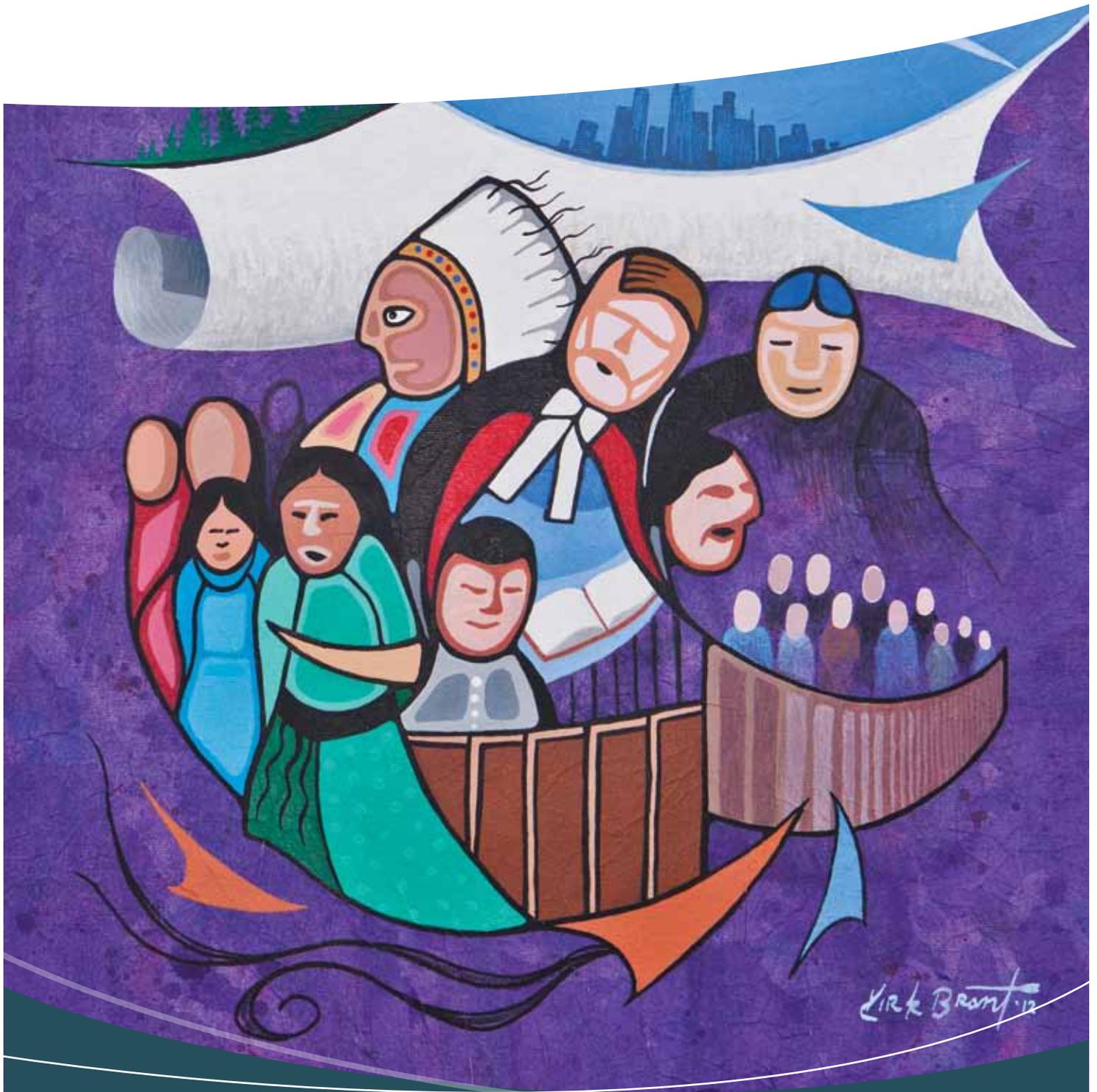
The Truth and Reconciliation Commission of Canada received inquiries from individuals seeking information about what had happened to family members who had been sent to residential school. To the degree that it was able, the Commission responded to a number of these requests.

At a 2012 intergovernmental conference, the Chief Coroners and Medical Examiners of Canada adopted a unanimous resolution to support the Missing Children Project, and agreed to assist the Commission where possible in identifying deaths at residential schools in their provincial records. To date, Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova

Scotia, Manitoba, and Prince Edward Island have responded. This process has provided both information about previously unknown deaths and more details about known deaths.

EXHIBIT I-2

**First Nation Representations on Ontario
Juries Report authored by the Honourable
Frank Iacobucci dated February 2013**



FIRST NATIONS REPRESENTATION ON ONTARIO JURIES

Report of the Independent
Review Conducted by
The Honourable Frank Iacobucci

February 2013

6. RECOMMENDATIONS

44. As a result of the engagement process, review of submissions, and research and analysis as described above, I make the following 17 major recommendations.

RECOMMENDATION 1: the Ministry of the Attorney General establish an Implementation Committee consisting of a substantial First Nations membership along with Government officials and individuals who could, because of their background or expertise, contribute significantly to the work of the Implementation Committee. This Committee would be responsible for the oversight of the implementation of the below recommendations and related matters. In view of the importance and urgency of the matter, I recommend that the Committee be established as soon as practically possible.

RECOMMENDATION 2: the Attorney General establish an Advisory Group to the Attorney General on matters affecting First Nations and the Justice System.

RECOMMENDATION 3: after obtaining the input of the Implementation Committee, the Ministry of the Attorney General provide cultural training for all government officials working in the justice system who have contact with First Nations peoples, including police, court workers, Crown prosecutors, prison guards and other related agencies.

RECOMMENDATION 4: the Ministry of the Attorney General carry out the following studies for eventual input by the Implementation Committee:

- (a) a study on legal representation that would involve Legal Aid Ontario, particularly in the north, that would cover a variety of topics, including the adequacy of existing legal representation, the location and schedule of court sittings, and related matters.
- (b) a study on First Nations policing issues, including the recognition of First Nations police forces through enabling legislation, the establishment of a regulatory body to oversee the operation of First Nations law enforcement programs, the creation of an independent review board to adjudicate policing complaints, and the development of mandatory cultural competency training for OPP officers; and
- (c) a review of the Aboriginal Court Worker program and an examination of resources required to improve the program.

RECOMMENDATION 5: the Ministry of the Attorney General create an Assistant Deputy Attorney General (ADAG) position responsible for Aboriginal issues, including the implementation of this Report.

RECOMMENDATION 6: after obtaining the input of the Implementation Committee, the Ministry of the Attorney General provide broader and more comprehensive justice education programs for First Nations individuals, including:

- (a) developing brochures in First Nations languages with plain wording which provide comprehensive information on the justice system, including information respecting the role played by criminal, civil, and coroner's juries;
- (b) establishing First Nations liaison officers responsible for consulting with First Nations reserves on juries and on justice issues;
- (c) commissioning the creation of video or other educational instruments, particularly in First Nations languages, that would be used to educate First Nations individuals as to the role played by the jury in the justice system and the importance of participating on the jury; and

- (d) considering the feasibility of a program that would enlist students from Ontario law schools to participate in intensive summer education and legal assistance programs for First Nations representatives, dealing with the justice system generally and the jury system in particular, in consultation with Chiefs, and Court Services officials.

RECOMMENDATION 7: with respect to First Nations youth, in addition to having a youth member on the Implementation Committee, the Implementation Committee should request that the Provincial Advocate for Children and Youth facilitate a conference of representative youth members from First Nations reserves to focus on specific issues in the relationship between youth, juries, and the justice system, addressed in this report. The Provincial Advocate for Children and Youth should prepare a report on that conference; prior to submitting the report to the Implementation Committee the Provincial Advocate for Children and Youth should consult with PTOs and other First Nations associations.

RECOMMENDATION 8: the Ministry of the Attorney General, in consultation with the Implementation Committee, undertake a prompt and urgent review of the feasibility of, and mechanisms for, using the OHIP database to generate a database of First Nations individuals living on reserve for the purposes of compiling the jury roll.

RECOMMENDATION 9: in connection with this review, the Ministry of Attorney General and First Nations, in consultation with the Implementation Committee, consider all other potential sources for generating this database, including band residency information, Ministry of Transportation information and other records, and steps that might be taken to secure these records, such as a renewed memorandum of understanding between Ontario and the Federal government respecting band residency information or memorandums of understanding between Ontario and PTOs or First Nations, as appropriate.

RECOMMENDATION 10: the Ministry of the Attorney General, in consultation with the Implementation Committee, consider amending the questionnaire sent to prospective jurors to:

- (a) make the language as simple as possible;
- (b) translate the questionnaire into First Nations languages as appropriate;
- (c) remove the wording threatening a fine for non-compliance and replacing it with wording stating simply that Ontario law requires the recipient to complete and return the form because of the importance of the jury in ensuring fair trials under Ontario's justice system;
- (d) on the premise that a First Nations member living on reserve in Ontario satisfies the Canadian citizenship requirement under s. 2(b) of the *Juries Act*, add an option for First Nations individual to identify themselves as First Nations members or citizens rather than Canadian citizens;
- (e) enable First Nations elected officials, such as Chiefs and Councillors, as well as Elders, to be excluded from jury duty; and
- (f) provide, through an amendment to the *Juries Act*, for a more realistic period than the current five days for the return of jury questionnaires.

RECOMMENDATION 11: the Ministry of the Attorney General, in consultation with the Implementation Committee, consider implementing the practice from parts of the U.S., that when a jury summons or questionnaire is undeliverable or is not returned, another summons or questionnaire is sent out to a resident of the same postal code, thereby ensuring that nonresponsive prospective jurors do not undermine jury representativeness.



RECOMMENDATION 12: the Ministry of the Attorney General, in consultation with the Implementation Committee, consider a procedure whereby First Nations people on reserve could volunteer for jury service as a means of supplementing other jury source lists.

RECOMMENDATION 13: the Ministry of the Attorney General, in consultation with the Implementation Committee, consider enabling First Nations people not fluent in English or French to serve on juries by providing translation services and by amending the jury questionnaire accordingly to reflect this change.

RECOMMENDATION 14: the Ministry of the Attorney General, in consultation with the Implementation Committee, adopt measures to respond to the problem of First Nations individuals with criminal records for minor offences being automatically excluded from jury duty by:

- (a) amending the *Juries Act* provisions that exclude individuals who have been convicted of certain offences from inclusion on the jury roll, to make them consistent with the relevant *Criminal Code* provisions, which exclude a narrower group of individuals;
- (b) encouraging and providing advice and support for First Nations individuals to apply for pardons to remove criminal records; and
- (c) considering whether, after a certain period of time, an individual previously convicted of certain offences could become eligible again for jury service.

RECOMMENDATION 15: the Ministry of the Attorney General discuss with the Implementation Committee the advisability of recommending to the Attorney General of Canada an amendment to the *Criminal Code* that would prevent the use of peremptory challenges to discriminate against First Nations people serving on juries.

RECOMMENDATION 16: in view of the concerns I have heard and the fact that current jury compensation is not consistent with cost-of-living increases, I recommend that the Ministry of the Attorney General refer the issue of jury member compensation to the Implementation Committee for consideration and recommendation.

RECOMMENDATION 17: the Ministry of the Attorney General, in consultation with the Implementation Committee, institute a process that would allow for First Nations individuals to volunteer to be on the jury roll for the purposes of empanelling a jury for a coroner's inquest.

45. For a complete explanation of the recommendations, see paragraphs 347 to 386.

7. ACKNOWLEDGEMENT

46. The preparation of this Report would not have been possible without the participation and assistance of many First Nations people, including Chiefs, Councillors, Elders, members of reserves, provincial territorial organizations and their leaders, and even some First Nations students. I also benefitted greatly from the contributions of the lawyers who acted for various organizations and from government officials, all of whom were very fair and candid in their assessments of the shortcomings of current conditions.

47. It is my sincere hope that the trust that First Nations people have invested in this Independent Review process will be rewarded with prompt response and action by the Government of Ontario.

EXHIBIT I-3

**Announcement and Mandate of the
Survivors' Secretariat**



AUG 16, 2021

Mohawk Institute – Survivors’ Secretariat Creates Oversight of Police Task Force

Survivors of the Mohawk Institute at Six Nations of the Grand River are pleased to announce that they have hired Kimberly R. Murray as the Executive Oversight Lead to assist them with creating a Survivors’ Secretariat to commence a death/criminal investigation.

Ms. Murray is the former Executive Director to the Truth and Reconciliation Commission of Canada, where she assisted the Commission in fulfilling its mandate. Kimberly was also the first Assistant Deputy Attorney General of the Indigenous Justice Division at the Ontario Ministry of the Attorney General. Her experience and knowledge of the Indian Residential School system, the historical records, and the legal landscape is a tremendous asset to the Survivors.

Mohawk Institute Survivor Roberta Hill stated, “It’s really hard to find the right words to describe our feelings about this enormous work ahead because there are so many emotions we still have – so many unthinkable things happened at that place [Mush Hole]. I think relief and hope are a couple that I would share. It’s finally time for us to recover all

think relief and hope are a couple that I would share. It's finally time for us to recover all the children that died and were left to remain unknown – it's time for justice and accountability. We are getting older and many are dying, so we are relieved that the police services, Coroner and Forensic Officers are working together in the death and criminal investigation, and that we have Kimberley here to oversee this work.”

“I come to this new role with humility and enormous respect for the Survivors and the Sacred work ahead. The work of the TRC in relation to the Missing Children and Unmarked Burials was only a beginning. My commitment to the Survivors and their families is that we will not stop until we find the truth about where the children are,” said Kimberly Murray.

The Mandate of the Survivors’ Secretariat includes coordinating death investigation processes and protocols, conducting Statement Gathering, document collection and historical research, supporting commemoration initiatives, and liaising with First Nations, provincial, and federal governments.

The Survivors’ Secretariat is currently working to put in place an Indigenous Human Rights Monitor and a Cultural Monitor to oversee the work of the Joint Police Task Force.

Survivors and community members have been clear, the Joint Police Task Force must be Survivor-led. These two monitoring roles, once in place, are essential to ensuring that Indigenous legal principles, the United Nations Declaration on the Rights of Indigenous Peoples, and cultural protocols are respected.

Chief Mark Hill stated, “From the very start it was recognized that the Secretariat needed to be apolitical and not under the Six Nations of the Grand River Elected Council. Communication with intergenerational Survivors and community is a critical component of this work and it’s important that politics not hinder the engagement that needs to take place.”

We understand that this is a difficult topic for many. If you are struggling and need support, there are resources available to you:

- Six Nations 24/7 Mobile Crisis Line: 519-445-2204 or 1-866-445-2204
- Six Nations Mental Health and Addictions: 519-445-2143 (Monday-Friday, 8:30am-4:30pm)
- National Indian Residential School Crisis Line: 1-866-925-4419

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Our Mandate

Death Investigation

The Secretariat has appointed an Indigenous Human Rights Monitor and several Cultural Monitors to oversee the Police Task Force* in their search for the unmarked burials of Indigenous children on over 600 acres of land associated with the Mohawk Institute.

Statement Gathering

Thousands of children were taken to Indian Residential Schools, including the Mohawk Institute. The Secretariat will create opportunities for Survivors and intergenerational Survivors to share their statements to inform the truth in a culturally safe and trauma-informed way.

Research and Documentation

The Secretariat will support the creation of a community archive by collecting all related records from governments, churches and other institutions that were known to have been involved in the operations of the Mohawk Institute. It will also support commemoration policies and related activities.

Community Accountability and Advocacy

The Secretariat will report to Survivors, leaders and community members on an ongoing basis and liaises with impacted First Nations by facilitating Nation to Nation dialogues.

Our Mandate

Death Investigation

The Secretariat has appointed an Indigenous Human Rights Monitor and several Cultural Monitors to oversee the Police Task Force* in their search for the unmarked burials of Indigenous children on over 600 acres of land associated with the Mohawk Institute.

[LEARN MORE ABOUT THE HUMAN RIGHTS MONITOR »](#)

Research and Documentation

The Secretariat will support the creation of a community archive by collecting all related records from governments, churches and other institutions that were known to have been involved in the operations of the Mohawk Institute. It will also support commemoration policies and related activities.

[LEARN MORE ABOUT THE POLICE TASK FORCE »](#)

Statement Gathering

Thousands of children were taken to Indian Residential Schools, including the Mohawk Institute. The Secretariat will create opportunities for Survivors and intergenerational Survivors to share their statements to inform the truth in a culturally safe and trauma-informed way.

Community Accountability and Advocacy

The Secretariat will report to Survivors, leaders and community members on an ongoing basis and liaises with impacted First Nations by facilitating Nation to Nation dialogues.



Newsletters

Videos

SIX NATIONS OF THE GRAND RIVER

1695 Chiefswood Rd

PO Box 5000

Ohsweken, ON N0A 1M0

8:30 am – 4:30 pm

T 519.445.2201

F 519.445.4208

EXHIBIT I-4

Blog Posting “How Technology Is Helping Survivors Uncover the Truth” Survivors' Secretariat dated March 25, 2022

Skip to content

Survivor Secretariat Logo

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Menu

- March 25, 2022
- **Update**

How Technology Is Helping Survivors Uncover the Truth

Survivors are utilizing technology to help fulfill their mandate of uncovering and sharing the truth about what happened at the Mohawk Institute.

Q: How and Why Are Survivors Searching for Missing Children?

- The Truth and Reconciliation Commission documented the names of 48 children that died while being forced to attend the Mohawk Institute. We don't know where they are buried, or if other children died during the Institute's 136 years of operation. Survivors have stated that children "just disappeared" and that they don't know if something bad happened to them or if they returned safely to their homes.
- The Survivors' Secretariat is using archival and modern-day maps, records, and documents to outline the grounds associated with the Mohawk Institute that may be searched. These include the Mohawk Parsonage Lot, the Mohawk Mission School Lot, the Manual Labour Farm and the Mohawk Chapel Grounds— totaling over 600 acres. ¹
- In addition, the Survivors' Secretariat is among the first communities to use Light Detection and Ranging (LiDAR) equipment in the search for unmarked burials.

- Survivors are also utilizing Ground-Penetrating Radar (GPR) to assist in answering their question of “how many children died and where are they buried?”

This article outlines how these technologies work as well as their advantages and limitations.

Q: What is LiDAR?

There are different types of LiDAR:

- LiDAR mapping uses laser light pulses to generate three dimensional (3D) maps of the earth’s surface. These instruments can collect information from piloted and unpiloted aircraft, or from tripod-mounted devices on the ground. The Survivors’ Secretariat is using both aerial and terrestrial (ground) LiDAR.
- The Survivors’ Secretariat is using LiDAR to produce detailed maps of the ground surface. These maps record subtle changes in the ground to find disturbances caused by humans.
- LiDAR maps may reveal evidence of old service trenches, drainage ditches, trash pits, building rubble, or shallow depressions left by grave shafts. The size, orientation and distribution of such features, coupled with old air photographs and maps, will help reconstruct earlier versions of the Mohawk Institute and its outbuildings.

Q: What is Ground-Penetrating Radar?

- Ground-Penetrating Radar (GPR) has become a widely used tool for locating unmarked burials at former residential school sites.”
- GPR is similar to medical ultrasound but instead, high-frequency radio waves are sent into the ground to document the distribution of features underground. Some of these features might be natural such as roots, rocks, insects, etc. while others may be caused by human activity such as burials.
- The GPR machine looks like a small box on wheels attached to a handle and electronic screen that contains a data logger and output. The wheeled box is pushed along an organized grid by a technician. The box contains a radar system that sends pulses into the ground as well as a receiver that collects its data. The timed interval between pulses – leaving the box until its return – allows an estimation of the depth of whatever caused it to reflect back to the surface.
- These reflections can be difficult to interpret because they might reflect natural sediment conditions or be affected by soil texture and moisture conditions as well as roots and other natural features. The reflections might also be due to rock, metal, and other materials mixed in the soil, resulting in signal ‘noise’ that obscures the features being searched for. Careful analysis by skilled technicians is required to ‘filter’ the data and identify ‘reflections’ that might indicate burials.
- This video about **Archaeological Remote Sensing (or ground-penetrating radar)** created by the Canadian Archaeological Association (CAA) and the Institute for Prairie and Indigenous Archaeology (IPIA) at the University of Alberta, describes GPR and some of its limitations.

- The CAA writes: “The truth is with ground-penetrating radar, we can never be 100% certain that what we’re seeing is in fact a grave, but there are well established methods that have been used by archaeologists for many, many years that can help us build our confidence that what we’re actually seeing is a grave.”²

Q: How Are Survivors Using These Technologies?

- **Community members** and Six Nations Police Service’s members on the Task Force have been trained in the use of the ground-penetrating radar equipment and are the primary searchers. Survivors are directing which areas should be searched and in what order.
- In the fall of 2021, 60 10’x10’ grids were laid out to be GPR scanned. Searchers were able to scan 37 of these grids before the snow covered the grounds. The remaining 23 grids will be completed in early spring and new grids will be laid out.
- In December 2021, the Secretariat scanned 10 acres with LiDAR technology. The data from these scans are now being processed and analyzed.

Q: What are the Limitations of LiDAR and GPR?

- It’s important to note that while GPR data can provide information about soil being disturbed, it is not like an X-ray; it does not illustrate bodies or bones.³
- While equipment and technologies are critical **to the search of the land** surrounding the former Mohawk Institute and the possible identification of unmarked burials, a 100% success rate is not guaranteed.
- There are several important factors affecting the success of these technologies, including: geography, soil conditions, training of users, and the overall operation and success of receiving data from these devices.

Moving Forward

The powerful combination of Survivors’ testimonies, archival records and current technologies allows the Survivors’ Secretariat to further its mandate to uncover and share the truth. Despite the complexities involved in the search of the former Mohawk Institute, Survivors and community members continue to innovate and strategize as they move forward with this Sacred work of finding the missing children.

Sources

¹ **Survivors’ Secretariat**

² **Canadian Archaeological Association**

³ **Resources for Indigenous Communities Considering Investigating Unmarked Graves, the Canadian Archaeological Association and the Institute for Prairie and Indigenous Archaeology (IPIA) at the University of Alberta**

- **Archaeological Remote Sensing, GPR, Ground-Penetrating Radar, LiDAR, Missing Children**

Latest Posts

Searching Mohawk Lake: Insights and Updates

July 28, 2022

Finding the Missing Children and Unmarked Burials

April 13, 2022

How Technology Is Helping Survivors Uncover the Truth

March 25, 2022

Searching the Grounds of the Mohawk Institute

January 12, 2022

We Are The Witnesses

January 10, 2022

Categories

Categories

- **General**
- **History**
- **Update**

Services Available to Survivors, and Intergenerational Survivors

If you require immediate support, please contact the **Hope for Wellness Help Line** at **1-855-242-3310** to access toll-free, 24/7 counselling and crisis intervention. Hope for Wellness Help Line offers immediate mental health counselling and crisis intervention to all Indigenous peoples across Canada. Experienced Helpline counsellors, many are Indigenous, can help if asked to find wellness supports that are available in your area.

The Indian Residential Schools Crisis Line (1-866-925-4419) is available 24 hours a day for anyone experiencing pain or distress as a result of their residential school experience.

The Indigenous Victim Services at Six Nations Line (1-866-964-5920). After hours & weekends: **1-866-445-2204**. Available to people living in Brantford, Hamilton or the Six Nations community.

Survivors' Secretariat

PO Box 460

Ohsweken, ON

NOA 1MO

Tel. (888) 597-1062

Instagram Twitter Facebook

Donate Now »

EXHIBIT I-5

Order in Council of the Appointment of the Special Interlocutor



PC Number: 2022-0636

Date: 2022-06-06

Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, under paragraph 127.1(1)(c) of the *Public Service Employment Act*, appoints Kimberly Renée Murray of Toronto, Ontario, to be special adviser to the Minister of Justice, to be known as Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools, to hold office during pleasure for a term of two years, and fixes her remuneration and certain conditions of employment as set out in the annexed schedule, which salary is within the range (\$228,900 - \$268,200), effective June 13, 2022.

Sur recommandation du premier ministre et en vertu de l'alinéa 127.1(1)c) de la *Loi sur l'emploi dans la fonction publique*, Son Excellence la Gouverneure générale en conseil nomme Kimberly Renée Murray, de Toronto (Ontario), conseillère spéciale auprès du ministre de la Justice, portant le titre d'Interlocutrice spéciale indépendante pour les enfants disparus et les tombes et les sépultures anonymes en lien avec les

pensionnats indiens, à titre amovible pour un mandat de deux ans, et fixe sa rémunération et certaines conditions d'emploi conformément à l'annexe ci-jointe, lequel traitement se situe dans l'échelle (228 900 \$ – 268 200 \$), à compter du 13 juin 2022.

[Back to Form](#)

Date modified: 2022-08-29

EXHIBIT I-6

Mandate of Special Interlocutor



[Home](#)

> [Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial...](#)

Mandate and Terms of Reference

On June 8, 2022, Kimberly Murray was appointed as Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools.

Related links

- [Kimberly Murray's Biography](#)
- [News release](#) (June 8, 2022)
- [Backgrounder](#) (June 8, 2022)

The Special Interlocutor's mandate will be carried out from June 14, 2022 to June 13, 2024.

On this page

- [Context](#)
- [Mandate](#)
- [Reporting](#)
- [Additional notes](#)

Context

The identification of unmarked graves and burial sites at former residential schools in Canada has brought to public consciousness the depth of historical injustice that has inflicted unfathomable pain throughout First Nations, Inuit and Métis communities and families. This part of Canadian

history has been known and shared in Indigenous communities, and it has had lasting effects in these communities. The history is finally coming to light in Canada and has entered the public discourse.

The First Nations, Inuit and Métis children whose graves are now being identified deserve to be recognized in a meaningful way. A legal framework to preserve and protect the rights, respect and dignity of the children buried in unmarked graves and burial sites is necessary to advance reconciliation in this country and to ensure that their communities and families are in a position to do so.

Mandate

The Special Interlocutor will work to **identify needed measures and recommend a new federal framework** to ensure the respectful and culturally appropriate treatment of unmarked graves and burial sites of children associated with former residential schools. This work will be done in collaboration with First Nations, Inuit and Métis governments, representative organizations, communities, Survivors, and families, other departments of the Government of Canada, provinces and territories, and other relevant institutions such as church entities and record holders.

The Special Interlocutor will **begin a dialogue** between parties that is trauma-informed and culturally safe. She will work toward a collective approach and develop a path forward to address the legacy of unmarked graves and burial sites.

The Special Interlocutor will **function independently and impartially, in a non-partisan and transparent manner** to achieve the objectives of her mandate.

The Special Interlocutor will **examine the existing federal, provincial and territorial laws, regulations, tools and practices** that currently apply and have applied to protect unmarked graves and burial sites connected to former residential schools, as well as applicable Indigenous laws and protocols, in order to develop a description of the current legal framework. The Special Interlocutor will identify areas of improvement in Canadian law and make recommendations for a new federal legal framework to identify, protect, and preserve unmarked burial sites connected to former residential schools and lands associated with the schools. Although the approach is national, where appropriate, she will work with provinces and territories.

The starting point will be to engage with affected First Nations, Inuit and Métis governments, representative organizations, communities, Survivors, and families to discuss issues of concern around the identification, preservation, and protection of unmarked graves and burial sites, including the potential repatriation of remains. The Special Interlocutor will guide this process, facilitate listening and action by engaging in conversations in ways that are culturally informed, trauma-informed, appropriate and respectful, and based on Indigenous customs, decision and consensus-building practices.

In doing so, the Special Interlocutor will model an approach based on principles that contribute to building a relationship of trust and respect between Canada and First Nations, Inuit and Métis.

The *United Nations Declaration on the Rights of Indigenous Peoples Act* (S.C. 2021, c. 14) (the “*UN Declaration Act*”) provides a clear vision for the future. The *UN Declaration Act* requires that moving forward, federal laws and policies reflect the standards set out in the United Nations Declaration on the Rights of Indigenous Peoples (the “*Declaration*”). The *UN Declaration*

Act provides a framework to help address injustices, prejudice, discrimination and violence that First Nations, Inuit and Métis have suffered and continue to suffer such as the deaths resulting from children at former residential schools. This framework requires that the Government of Canada, in consultation and cooperation with Indigenous peoples, take measures to ensure that federal laws are aligned with the Declaration (section 5), develop an action plan for the implementation of the Declaration (section 6) and report annually on progress (section 7). The Special Interlocutor's work and recommendations should contribute to the implementation of the Declaration, consistent with the *UN Declaration Act* and the *Constitution Act, 1982* (including section 35).

In carrying out her mandate, the Special Interlocutor will:

1. Create an engagement process between First Nations, Inuit and Métis and Canada that:
 - is based on building and strengthening trust
 - uses engagement processes and mechanisms familiar to, and co-developed with, First Nations, Inuit and Métis
 - engages First Nations, Inuit and Métis in a manner that respects their territoriality, laws and protocols, as well as the traumatic historic and contemporary relationships between Indigenous peoples and Canada;
 - acknowledges and respects Indigenous laws, legal orders and governance
 - facilitates communications between First Nations, Inuit and Métis and Canada
 - supports the advancement of the implementation of the Truth and Reconciliation Commission's Calls to Action, in particular Calls to Action 71 to 76

2. Examine existing federal, provincial and territorial laws, regulations, tools, policies and practices that currently apply and have applied to protect unmarked graves and burial sites connected to former residential schools and lands associated with the schools, as well as applicable Indigenous laws and protocols, in order to develop a description of the current legal framework.
3. Identify gaps and inconsistencies (including the gaps and inconsistencies identified by those with whom the Special Interlocutor may engage) and needed measures, and make recommendations relating to federal laws, regulations, policies and practices surrounding unmarked graves and burial sites at former residential schools and lands associated with the schools. Recommendations should identify the needs to be addressed by a new framework that adequately responds to critical questions related to preserving the dignity of First Nations, Inuit and Métis children, communities, Survivors, and families, setting out responsibilities for unmarked graves and burial sites.
4. Identify needed measures and recommend a new federal legal framework that respects the dignity of unmarked graves and burial sites of First Nations, Inuit and Métis, consistent with the wishes, traditions and protocols of their respective communities and families, and report these recommendations to Survivors, communities and families and to the Government of Canada.
5. Ensure that the processes, measures and recommendations are in accordance with applicable Indigenous laws and legal orders and relevant international instruments including the Declaration as well as with the *Constitution Act, 1982*, including section 35.
6. Adopt an engagement approach focused on building and strengthening trust between Canada and First Nations, Inuit and Métis. The process may follow Indigenous decision and consensus-building

practices and will be culturally safe and trauma informed. It will employ engagement processes and mechanisms familiar to First Nations, Inuit and Métis.

7. Act as a conduit, in collaboration with departments of the Government of Canada and other entities including the proposed National Advisory Committee on Missing Children and Unmarked Burials, to:
 - assist First Nations, Inuit and Métis governments, representative organizations, communities, Survivors and families navigate the federal system on matters relating to unmarked graves and burial sites at former residential schools and lands associated with the schools
 - assist communities and Survivors navigate the federal system as communities seek to obtain and preserve relevant information and records from Canada, provinces and territories and other relevant institutions such as church entities and record holders.
8. Include consideration of Indigenous children who were buried on sites other than those at and associated with former residential school lands, and of those whose remains cannot be found.
9. Consider how a federal legal framework could support the advancement of the implementation of the Truth and Reconciliation Commission's Calls to Action, contribute to implementation of the Declaration and align with section 35 of the *Constitution Act, 1982*.
10. Consider how a federal legal framework could support pathways for the acknowledgement and methods for the possible return of First Nations, Inuit and Métis lands that were assigned or expropriated to accommodate churches and residential school sites and associated lands.
11. Recognizing that addressing the issue of unmarked graves and burial sites lends itself to a cooperative approach between the federal and

provincial governments and Indigenous peoples, facilitate dialogue with provinces and territories for matters arising within their jurisdiction and with other relevant institutions such as church entities.

In addition, the Special Interlocutor will:

1. Carry out this mandate in a manner that does not interfere with criminal investigations, prosecutions or civil proceedings. While this mandate does not confer powers to compel the production of information or documents, it does not affect the ability of the Special Interlocutor to request, obtain or review documents (including coroner reports) in accordance with access and privacy legislation or any other applicable law.
2. Make any other recommendations relevant to the federal legal framework relating to residential school sites and associated unmarked graves and burial sites arising from engagement with First Nation, Inuit and Métis families and communities.

Reporting

By no later than three months from the date of her appointment, the Special Interlocutor will update the Minister on her plans and progress, and take the opportunity to seek any clarity required in relation to the provisions of their mandate.

At the end of one year from the date of her appointment, and more frequently at the written request of the Minister or at the instigation of the Special Interlocutor, the Special Interlocutor will deliver an interim report concurrently to the Minister and to First Nations, Métis and Inuit communities, Survivors and families, describing her work and progress to date in relation to her mandate.

At the end of two years from the date of her appointment, the Special Interlocutor will deliver a final report concurrently to the Minister and to First Nations, Métis and Inuit communities, Survivors and families.

The final report will:

- include needed measures and make recommendations relating to federal laws, regulations, policies and practices surrounding unmarked graves and burial sites at former residential schools
- take into account the wishes and traditions of the respective communities and families, and will be based upon and include information received through meetings, submissions, visits or otherwise, as well as research and analysis carried out by the Special Interlocutor, and their support team, during the course of their work.

All reports will describe the engagement process, including the identification of elements that could inform future initiatives or a new approach to engagement on issues of common concern to the federal government and First Nations, Inuit and Métis.

All reports will be delivered concurrently to the Minister of Justice and to First Nations, Métis and Inuit Survivors, families, leaders and communities, and to the public, as well as to relevant United Nations Processes and Procedures (for example, Special Rapporteurs).

Additional notes

For greater certainty, it is understood that:

1. the reference to “unmarked graves and burial sites” includes the burial sites of children associated with former residential schools, whether or not those sites are physically marked or documented in any way

2. the Terms of Reference, which include the mandate, may be adjusted from time to time, in writing, upon the agreement of the Minister of Justice and the Special Interlocutor
 3. the Special Interlocutor will perform their functions independently according to their own skill and judgment, without influence from the federal government about the conclusions to be reached, or the recommendations to be made
-

Date modified:

2022-06-08

EXHIBIT I-7

**Special Authorization to Act in Quebec;
Donald E. Worme and Julian N. Falconer**

1553 – APPLICATION FOR A SPECIAL AUTHORIZATION

For a person practising outside Québec (section 42.4 *Professional Code*)

IMPORTANT: For the current year, I present a:

- First application / date : August 19, 2022 Third application / date : _____
 Second application / date : _____ More than three applications

PART A ■ APPLICANT'S INFORMATION

1. Personal information

Family name: WORME First name: DONALD
 Complete address: _____

2. Professional contact information

Complete address: 150-103C PACKHAM AVENUE
 Téléphone: 306-664-7175 Fax: 306-664-7176
 E-mail: DWORME@SWLLEGAL.CA

3. Bar membership(s)

I am a member of the following bar(s)
 Name of the bar: SASKATCHEWAN BAR ASSOCIATION Date of admission: OCTOBER 7, 1986
 Member number: 3138 Status: IN GOOD STANDING
 Name of the bar: _____ Date of admission: _____
 Member number: _____ Status: _____

Please attach to this application the original of a certificate of good standing issued by the appropriate officer of the bar of which you are a member, attesting that you are authorized to practise law outside Québec.

4. I am making this application in connection with the following case:

Name and address of the client: OFFICE OF THE SPECIAL INTERLOCUTOR
 Court: SUPERIOR COURT-CIVIL DIVISION Judicial district: MONTREAL Court number: 500-17-120468-221
 Brief description of the case: APPLICATION TO INTERVENE AS A FRIEND OF THE COURT, *Kahentimetha et al v. Société Québécoise des Infrastructures et al.* is for declaratory relief and an Interlocutory
 Class action: and permanent Injunction

5. I intend to retain the services of a member of the Barreau du Québec to serve as counsel:

YES NO Lawyer's name: Paul Marci Member number: 185537-9

6. I am attaching a certificate from my professional liability insurer guaranteeing that my professional services in connection with the above-mentioned case are insured.

YES NO

PART B ■ INFORMATION TO THE CLIENT

Knowledge of french and interpreter's costs:

French is the official language of the province of Québec and a party, witness or lawyer may, if he so chooses, express himself in French during judicial proceedings. Furthermore, the right of a party or witness to obtain the assistance of an interpreter, as such right is conferred by section 14 of the *Canadian Charter of Rights and Freedoms*, generally does not extend to the lawyer for that party or witness and does not contemplate legal persons. Therefore, a unilingual English lawyer may have to _____; of an interpreter.

CLIENT'S SIGNATURE REQUIRED: _____  _____

Professional liability insurance:

A Quebec lawyer's coverage for professional liability insurance is \$10,000,000.

A Canadian or foreign lawyer who obtains a special authorization to practise law in Québec in a specific case, pursuant to section 42.4 of the *Professional Code*, must have professional liability insurance which the coverage is not necessary of at least \$10,000,000.

CLIENT'S SIGNATURE REQUIRED: _____  _____

Special authorization:

A Canadian or foreign lawyer who obtains a special authorization to practise law in Québec, pursuant to section 42.4 of the *Professional Code*, is authorized to practise law in connection with a specific case. He must therefore act within the parameters of said authorization.

CLIENT'S SIGNATURE REQUIRED: _____  _____

Jurisdiction of the local bar:

If a dispute arises regarding the professional services rendered by a Canadian or foreign lawyer who has obtained a special authorization to practise law in Québec, pursuant to section 42.4 of the *Professional Code*, all complaints will have to be submitted to the bar of which that lawyer is a member. The Barreau du Québec has no jurisdiction to deal with any complaint arising from the case.

CLIENT'S SIGNATURE REQUIRED: _____  _____

PART C ■ FEES AND MODE OF PAYMENT

The administrative fee for reviewing the first application is \$230. During the current year, the remaining applications are free of charge. Any renewal application is free of charge.

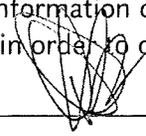
To pay by credit card (Visa or Mastercard), please visit www.barreau.qc.ca/paiement and select form #1553 or attach a cheque or money order to the Barreau du Québec.

PART D ■ CONSENT TO THE COMMUNICATION OF PERSONAL INFORMATION

The Ministry of Justice and the Ministry of Public Security have reinforced the security of some courthouses. Security controls including detection devices have been installed at the entrance of some buildings or secured areas, including Montreal courthouse and the Court of appeal in Montréal.

The Ministry of Justice grants authorizations to access these courthouses to members of the Barreau du Québec or Canadian or foreign lawyers holding a special authorization granted by the Barreau du Québec.

I consent to the communication of personal information collected in this application (sections A1 to A3) by the Barreau du Québec to the Ministry of Justice in order to obtain an authorization to access courthouses.

SIGNATURE OF THE LAWYER: _____  _____

PART E ■ AUTHORIZATION AND DECLARATION

I undertake to practise law in Québec in accordance with this special authorization.

I undertake to abide by all the obligations set out in *An Act respecting the Barreau du Québec*, the *Code of ethics of advocates* and the other regulations of the Barreau du Québec.

I agree to indicate to the Barreau du Québec, **immediately**, any change in the information provided in this application.

Signature

Solemnly affirmed before me at Saskatoon, SK, this 22nd day of AUGUST of the year 2022

(Commissioner of Oaths)

Commission Expires: May 31, 2026
No. of the Commissioner: 28

Special authorization to practise duly granted on August 30th, 2022

President of the Barreau du Québec

This authorization is valid only for this case, until a final judgment has been rendered within a period not exceeding 12 months. It can be renewed only by the board of directors.

RETURN BY EMAIL OR BY MAIL

- this duly completed form
- a certificate of good standing
- a professional liability insurance certificate
- the payment receipt or the \$230 fees payable to the Barreau du Québec by cheque or postal money order

Secretariat of the Barreau du Québec

Maison du Barreau, 445, boulevard Saint-Laurent, Montréal (Québec) CANADA H2Y 3T8

Email: permis@barreau.qc.ca

1553 – APPLICATION FOR A SPECIAL AUTHORIZATION

For a person practising outside Québec (section 42.4 *Professional Code*)

IMPORTANT: For the current year, I present a:

- First application / date : _____ Third application / date : _____
 Second application / date : _____ More than three applications

PART A ■ APPLICANT'S INFORMATION

1. Personal information

Family name: Falconer First name: Julian
 Complete address: 308 Rushton Rd, York ON M6C 2X7 Canada

2. Professional contact information

Complete address: Falconers LLP, 10 Alcorn Avenue, Suite 204 Toronto Ontario M4V 3A9
 Telephone: 416-964-0495 Fax: 416-929-8179
 E-mail: julianf@falconers.ca

3. Bar membership(s)

I am a member of the following bar(s)
 Name of the bar: Law Society of Upper Canada Date of admission: March 31, 1989
 Member number: 29465R Status: 1B - Partner in a Professional Business in Ontario
 Name of the bar: _____ Date of admission: _____
 Member number: _____ Status: _____

Please attach to this application the original of a certificate of good standing issued by the appropriate officer of the bar of which you are a member, attesting that you are authorized to practise law outside Québec.

4. I am making this application in connection with the following case:

Name and address of the client: Kimberly Murray,
 Court: Quebec Superior Court (Civil) Judicial district: District of Montreal Court number: See below
 Brief description of the case: No. 500-17-120468-221 Kahentinetha et al v Societe Quebecoise des Infrastructures et al.
Application for Declaratory Relief and Interlocutory/Permanent Injunction
 Class action: _____

5. I intend to retain the services of a member of the Barreau du Québec to serve as counsel:

YES NO Lawyer's name: Paul Marcil Member number: 185537-9

6. I am attaching a certificate from my professional liability insurer guaranteeing that my professional services in connection with the above-mentioned case are insured.

YES NO

PART B ■ INFORMATION TO THE CLIENT

Knowledge of french and interpreter's costs:

French is the official language of the province of Québec and a party, witness or lawyer may, if he so chooses, express himself in French during judicial proceedings. Furthermore, the right of a party or witness to obtain the assistance of an interpreter, as such right is conferred by section 14 of the *Canadian Charter of Rights and Freedoms*, generally does not extend to the lawyer for that party or witness and does not contemplate legal persons. Therefore, a unilingual English lawyer may have to bear the costs of an interpreter.

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A Quebec lawyer's coverage for professional liability insurance is \$10,000,000.

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CLIENT'S SIGNATURE REQUIRED: _____  _____

Special authorization:

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CLIENT'S SIGNATURE REQUIRED: _____  _____

Jurisdiction of the local bar:

If a dispute arises regarding the professional services rendered by a Canadian or foreign lawyer who has obtained a special authorization to practise law in Québec, pursuant to section 42.4 of the *Professional Code*, all complaints will have to be submitted to the bar of which that lawyer is a member. The Barreau du Québec has no jurisdiction to deal with any complaint arising from the case.

CLIENT'S SIGNATURE REQUIRED: _____  _____

PART C ■ FEES AND MODE OF PAYMENT

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To pay by credit card (Visa or Mastercard), please visit www.barreau.qc.ca/paiement and select form #1553 or attach a cheque or money order to the Barreau du Québec.

PART D ■ CONSENT TO THE COMMUNICATION OF PERSONAL INFORMATION

The Ministry of Justice and the Ministry of Public Security have reinforced the security of some courthouses. Security controls including detection devices have been installed at the entrance of some buildings or secured areas, including Montreal courthouse and the Court of appeal in Montréal.

The Ministry of Justice grants authorizations to access these courthouses to members of the Barreau du Québec or Canadian or foreign lawyers holding a special authorization granted by the Barreau du Québec.

I consent to the communication of personal information collected in this application (sections A1 to A3) by the Barreau du Québec to the Ministry of Justice in order to obtain an authorization to access courthouses.

SIGNATURE OF THE LAWYER: _____  _____

PART E ■ AUTHORIZATION AND DECLARATION

I undertake to practise law in Québec in accordance with this special authorization.

I undertake to abide by all the obligations set out in *An Act respecting the Barreau du Québec*, the *Code of ethics of advocates* and the other regulations of the Barreau du Québec.

I agree to indicate to the Barreau du Québec, **immediately**, any change in the information provided in this application.



Signature

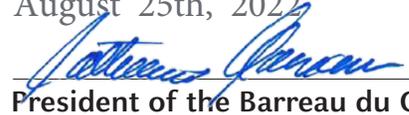
Solemnly affirmed before me at Toronto, this 19 day of August of the year 2022



(Commissioner of Oaths)

No. of the Commissioner: 85215T

Special authorization to practise duly granted on August 25th, 2022



President of the Barreau du Québec

This authorization is valid only for this case, until a final judgment has been rendered within a period not exceeding 12 months. It can be renewed only by the board of directors.

RETURN BY EMAIL OR BY MAIL

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Email: permis@barreau.qc.ca

**SUPERIOR COURT
DISTRICT OF MONTREAL**

KAHENTINETHA, et al

Plaintiffs

vs.

**SOCIÉTÉ QUÉBÉCOISE DES
INFRASTRUCTURES, et al**

Defendants

and

**OFFICE OF THE SPECIAL
INTERLOCUTOR**

Third-Party Intervenor

-
-
- **LIST OF EXHIBITS**
 - **EXHIBITS I-1 to I-7**
-

Original

SEMAGANIS WORME LEGAL

Barristers & Solicitors
Attorneys for Third-Party Intervener

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Fax: (306) 664-7176

EXHIBIT I-8

**Declaration of Voluntary Intervention
for Conservatory Purpose – Kimberly
R. Murray Special Interlocutor (Aug.
31, 2022)**

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

S U P É R I O R C O U R T

(Civil Division)

N^o.: 500-17-120468-221

KAHENTINETHA

KARENNATHA

KARAKWINE

KWETTIIO

OTSITSATAKEN

KARONHIATE

Plaintiffs

vs.

SOCIÉTÉ QUÉBÉCOISE DES INFRASTRUCTURES

ROYAL VICTORIA HOSPITAL

MCGILL UNIVERSITY HEALTH CENTRE

MCGILL UNIVERSITY

VILLE DE MONTRÉAL

STANTEC INC.

ATTORNEY GENERAL OF CANADA

Defendants

and

**OFFICE OF THE INDEPENDENT SPECIAL
INTERLOCUTOR FOR MISSING CHILDREN AND
UNMARKS GRAVES AND BURIAL SITES
ASSOCIATED WITH INDIAN RESIDENTIAL
SCHOOLS, 225 & 227 – 50 Generations Drive, Six
Nations of the Grand River Territory in the city of
Ohsweken and the province of Ontario, N0A 1M0**

**DECLARATION OF VOLUNTARY INTERVENTION FOR CONSERVATORY
PURPOSES**

(Article 185 and following, *Code of Civil Procedure*)

**IN SUPPORT OF THIS INTERVENTION, THE THIRD-PARTY INTERVENOR
DECLARES THE FOLLOWING:**

1. The Plaintiffs have instituted proceedings against the Defendants in the present matter *Kahentinetha et al. v Société Québécoise des Infrastructures et al.* for declaratory relief and an interlocutory and permanent injunction. The dispute centers around a repurposing project for a site poised to be demolished and redeveloped by the Defendants.
2. The site is located on land to which the Plaintiffs claim ownership and indicate there is “high possibility” of unmarked burials of Indigenous people, including children, being located on this site that are related to past atrocities committed against Indigenous peoples.
3. On June 8, 2022, Kimberly R. Murray was announced by the Attorney General and Minister of Justice of Canada as the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools (“Special Interlocutor Murray”). Special Interlocutor Murray was appointed for a two-year term pursuant to an Order-in-Council with a mandate (the “Mandate”) to assist in the identification and protection of the remains of Indigenous children who were taken to Indian Residential Schools and did not return.
4. Special Interlocutor Murray respectfully submits this Declaration to act as a third-party intervenor for conservatory purposes to assist the Plaintiffs in the legal issues in this proceeding, for the reasons set out hereafter. Special Interlocutor Murray is requesting from this Honourable Court the opportunity to make submissions and contribute to the trial record.

MATTER OF PUBLIC INTEREST

5. Special Interlocutor Murray submits there is a significant interest in public law grounding her request to intervene in these proceedings. The Plaintiffs’ claims engage their own constitutional rights, and the issues at stake have a direct correlation with the Mandate and interests of Special Interlocutor Murray. With respect, this Honourable Court can set an example that burial sites of Indigenous children should be treated with the utmost integrity and respect.
6. As an intervenor for conservatory purposes, Special Interlocutor Murray can provide highly specialized contributions through her knowledge and expertise relevant to all issues of this proceeding and contribute in a useful way to the legal debate. Special

Interlocutor Murray also submits that, in this time of Reconciliation, and both national and provincial commitments to advancing the same, the issues in these proceedings have a significant public interest component and the interests of Special Interlocutor Murray are implicated.

INTEREST IN THE OUTCOME

7. Special Interlocutor Murray has a genuine interest in the issues being argued before this Honourable Court. Her Mandate is to “identify needed measures” from a legal perspective regarding the process of identifying, recovering, and protecting unmarked burial sites.
8. This is the first opportunity available to the Special Interlocutor to engage in the legal process and ensure legal disputes exercise sufficient, culturally appropriate, and effective means to locate, investigate, identify, protect, and repatriate the missing children who were taken and never returned home from Indian Residential Schools. As the proposed redevelopment site may contain remains of Indigenous children, Special Interlocutor Murray’s interest in the proceedings is both direct and genuine.

RESOLUTION OF ISSUES

9. As a member of the Kahnésatake Mohawk Nation, who has held several leadership roles in various organizations such as Aboriginal Legal Services in Toronto, Ontario, and the Truth and Reconciliation Commission of Canada (“TRC”), Special Interlocutor Murray not only has knowledge and information to contribute to these proceedings, but her responsibilities as the Special Interlocutor are also directly implicated.
10. Special Interlocutor Murray’s experience in overseeing the data collection process as Executive Director of the TRC and the challenges faced therein, support her interest in the proceedings before this Honourable Court. Special Interlocutor Murray oversaw the TRC’s investigation into missing children and unmarked burials, and in that role gained experience navigating the challenges faced in the collection of records and gaps in information. The Executive Summary of Volume 4 of the TRC report that details this investigation is attached as **Exhibit I-1**.
11. The issues at stake in these proceedings involve the rights of Indigenous peoples and Special Interlocutor Murray has directly relevant experience engaging with Indigenous communities as Executive Director of the TRC and Assistant Deputy Attorney General of Ontario’s Indigenous Justice Division. This latter position was created as a result of recommendations from the Ontario Juries Report authored by the Honourable Frank Iacobucci, an excerpt of which is attached as **Exhibit I-2**.
12. Special Interlocutor Murray offers specialized knowledge and a perspective to ensure that the Plaintiffs and all others affected by this dispute have their voice heard in these proceedings.
13. In 2021, the recovery of unmarked burials of Indigenous children at the site of a former Indian Residential School in British Columbia gained national attention. Special Interlocutor Murray was appointed to assist in coordinating searches and investigations

for missing Indigenous children, and reviewing the current legal framework applied to unmarked burials.

14. As Executive Oversight Lead of the Survivors' Secretariat at Six Nations of the Grand River, Special Interlocutor Murray became deeply familiar with and utilized various techniques and technologies in death investigations and the identification of unmarked burials. Attached as **Exhibit I-3** is the mandate and announcement of the Survivors' Secretariat.
15. Special Interlocutor Murray is knowledgeable and experienced in using the various forms of technology used to identify potential burial sites, including ground penetrating radar, light detection and ranging, cadaver dogs, and underwater side scan sonar. **Exhibit I-4** is a blog post authored by Special Interlocutor Murray entitled "How Technology is Helping Survivors Uncover the Truth", dated March 25, 2022. The post provides greater detail on technology's use in this process. These skills and areas of knowledge are directly related to the issues before this Honourable Court.
16. Special Interlocutor Murray has direct knowledge of the consequences of the lack of records and documentation that has led to the search for unmarked graves and burials of Indigenous children across Canada as a result of the Indian Residential School system. This understanding supports her interest and belief that there are burials potentially located on the reconstruction site of the Royal Victoria Hospital and thus, her direct and substantial interest in the proceeding.
17. Regarding the investigation required to examine the sufficiency of the Plaintiffs' claims that there is a "high possibility" of the site at issue containing an unmarked burial site, Special Interlocutor Murray can offer her expertise and knowledge in determining this question. Special Interlocutor Murray oversaw the collection and interpretation of large quantities of documents that led to the discovery of unmarked burial sites while in her role at the TRC. Special Interlocutor Murray has extensive experience using the latest technology to discover burial sites, as recently as 2021-2022 in British Columbia and with Six Nations of the Grand River. Special Interlocutor Murray has engaged with communities, institutions, archaeological experts, and others involved in determining the location of unmarked burial grounds.

INADEQUATE DEFENCE OF PLAINTIFFS' INTERESTS

18. The Plaintiffs in this matter have not retained legal counsel, and there is no indication they intend to retain legal counsel for this matter. Special Interlocutor Murray's conservatorship would provide the Plaintiffs afflicted in this dispute much needed resources and assistance whether or not the Plaintiffs retain counsel. Special Interlocutor Murray can provide a broader perspective of the unmarked burial sites issue based on her extensive experience. This perspective, from both a legal and factual context, exceeds the capabilities of the Plaintiffs in contributing to the legal debate.
19. Special Interlocutor Murray shares in the Plaintiffs' interests for a full investigation regarding the presence of Indigenous remains on the disputed site. Special Interlocutor Murray submits that this Honourable Court will be in a better position to rule on the merits with the benefit of her submissions and contributions included in the evidentiary record. The interests of justice will be better served if the request to intervene is granted.

20. On June 6, 2022, Special Interlocutor Murray was appointed by Order-in-Council for the purpose of acting as a special advisor to the Minister of Justice, as described in the Order-In-Council attached as **Exhibit I-5**. Part of the Mandate is to “identify needed measures” and develop a new “legal framework” for the protection of unmarked graves and burial sites of Indigenous children. The Special Interlocutor’s Mandate is attached as **Exhibit I-6**. By intervening for conservatory purposes in the proceedings before this Honourable Court, Special Interlocutor Murray respectfully submits that she will be directly impacted by the conclusions made by the Court as it will affect the work required of her position.
21. Special Interlocutor Murray’s Mandate also states that she is to “facilitate listening and action by engaging in conversations” that include “provinces, territories, local communities, as well as other relevant institutions.” Special Interlocutor Murray proposes to intervene for conservatory purposes to provide her perspective and knowledge to this Honourable Court on a matter that will have a impact on both her role over the next two years and how potential burial sites of Indigenous children are dealt with going forward.
22. This Honourable Court is being called to make determinations which would affect the site identified as containing potential burials of Indigenous children. The Mandate of Special Interlocutor Murray clearly sets out the responsibility to assist in the identification of burial sites of Indigenous children, as well as the preservation and protection of these remains. The central issue to be determined by the Court is whether demolition and construction may continue at the site of the Royal Victoria Hospital. Should this occur before an adequate and complete search of the grounds for unmarked burials has occurred, it affects the work of Special Interlocutor Murray and triggers her interest in the proceedings before this Honourable Court.
23. As set out in the Mandate of Special Interlocutor Murray, part of her role is to “examine existing federal, provincial and territorial laws, regulations, tools, and practices that currently apply and have applied to protect unmarked graves and burial sites.” Special Interlocutor Murray therefore has a direct interest in the proceedings in order to be able to examine, analyze, and provide comment on the practices currently used when dealing with the potential burials of Indigenous children – in this case, in the City of Montreal.
24. Not only are the procedures and policies followed by the Defendants and this Honourable Court in reference to the potential burials of Indigenous children a concern which invokes the Mandate of Special Interlocutor Murray, but her work may also assist the Court in considering what procedures should be used going forward..
25. As part of its determinations, this Honourable Court must decide whether it is probable that the proposed site of redevelopment may contain the remains of Indigenous children. Special Interlocutor Murray respectfully supports all reasonable measures of inquiry to ensure there are not any remains on the site, and therefore address the legitimate and important concerns of the Plaintiffs.
26. The Exhibits attached to this application demonstrate Special Interlocutor Murray’s background, knowledge, and expertise as it relates to the identification and protection of unmarked graves and burial sites associated with Indian Residential Schools and other public institutions, and her responsibilities and rights that are affected by these proceedings.

27. Special Interlocutor Murray has retained legal counsel for this proceeding from Donald Worme and Julian N. Falconer, both of whom have retained special authorization from the Barreau du Québec to provide legal counsel in this matter, as confirmed in the authorizations issued by the Barreau du Québec attached hereto as **Exhibit I-7**.
28. As it is in the public interest and given the importance of the issues in dispute, Special Interlocutor Murray respectfully requests to be added as a third-party intervenor, authorized to intervene for conservatory purposes and:
- a. Make submissions at trial;
 - b. Add to the record; and,
 - c. Take any other steps as appropriate.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ALLOW the intervention of the Third-Party Intervenor for conservatory purposes according to the modalities foreseen in its declaration of intervention or according to the modalities of intervention that the court shall fix; or

ALLOW the intervention of the Third-Party Intervenor as a friend of the court, in the alternative.

THE WHOLE without legal costs.

TORONTO, August 31, 2022

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Avocat-conseil, Barreau No. 185537-9

AFFIDAVIT OF KIMBERLY R. MURRAY, SPECIAL INTERLOCUTOR

1. I the undersigned, Kimberly R. Murray, domiciled and residing at the city of Toronto, province of Ontario, do solemnly affirm that:
 - a) I am proposing to intervene for conservatory purposes, as proposed in the Declaration of Voluntary Intervention;
 - b) All the facts set out therein are true; and
 - c) I respectfully submit that I have knowledge, experience and expertise related to the issues before this Honourable Court and that I have a direct interest therein.

Introduction

2. To assist this Honourable Court, I propose to provide background information on my professional history and qualifications.
3. I am a Mohawk and a member of Kahnésatake Mohawk Nation. I earned my law degree in 1993 and am presently completing a Master of Laws in Constitutional Law, both at Osgoode Hall Law School. In my legal practice over the past three decades, I have developed expertise in Indigenous legal principles and systems, Aboriginal law, and the challenges faced by Indigenous people and communities when they interact with the Canadian judicial system. Of particular relevance to this proceeding, I have developed significant expertise with respect to:
 - The circumstances leading to the deaths of children who were required to attend Indian Residential Schools;
 - Where the missing children's remains are likely to be located; and
 - Understanding the practical and legal considerations and frameworks in the context of searching, investigating, protecting, commemorating and, where desired, repatriating the missing children.
4. Early in my career, I worked from 1995 to 2010 as a staff lawyer and then Executive Director at Aboriginal Legal Services of Toronto. I then served in executive leadership roles with the Truth and Reconciliation Commission of Canada ("TRC"), the Indigenous Justice Division ("IJD") at Ontario's Ministry of the Attorney General ("MAG"), and as the Executive Lead of the Survivors' Secretariat at Six Nations of the Grand River. I am currently the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools ("Special Interlocutor") appointed by federal Order-in-Council.
5. In these roles, I have gained a unique perspective and experiences that can assist this Honourable Court in these proceedings. Further, this is a perspective that is currently not being provided to the Court. As part of my national mandate, I am required to review, analyze, and provide comment on the procedures being applied to the identification, protection, and in some cases repatriation of the remains of Indigenous children that

were taken to Indian Residential Schools. This means that my rights are directly engaged by the proceedings therein.

Role with the Truth and Reconciliation Commission

6. While at the TRC, I served as the Executive Director. In this role, I reported to the three (3) Commissioners and was responsible for overseeing the implementation of Schedule “N” of the Indian Residential School Settlement Agreement (the “Settlement Agreement”). This included overseeing the entirety of the document collection process related to unmarked burials and missing children who died while being forced to attend Indian Residential Schools. More than five (5) million documents were collected from both the federal government and various church/religious institutions that operated Indian Residential Schools. These documents detailed the experiences of First Nations, Inuit, and Métis children that were forced to attend these institutions across Canada, many of whom were taken and never returned home.
7. Part of my role as the Executive Director was ensuring that all the records received were properly tagged and categorized. I organized the review of the records by the appropriate individuals, and directed the academic research done by writers of the final reports. It is through this review and research that I oversaw the writing and editing of the TRC’s Final Report which is split into six (6) volumes. Volume 4 specifically describes the missing children and unmarked burials, as well as the challenges faced in the collection of records and gaps in information. The Executive Summary of Volume 4 is attached to this affidavit as **Exhibit I-1**.
8. As Executive Director, I supervised the compilation of a master list of Indigenous children who had died during their mandatory attendance at Indian Residential Schools across the country. Many of the children whose deaths were recorded were taken from Indian Residential Schools to hospitals.
9. In addition to overseeing the work to identify the names of children that had died while being forced to attend Indian Residential Schools, I retained the services of an archaeologist to determine possible locations of unmarked burials based on various factors, including the history of the institutions, the grounds they were located on, the proximity of churches and cemeteries, and information from archival records and historical photographs.
10. Unfortunately, pursuant to the Settlement Agreement, it was only the federal government and certain religious entities that were required to provide records relating to Indian Residential Schools to the TRC. As a result, I witnessed a significant gap in the records provided to the TRC – a serious gap in information that strongly suggests there are unmarked burials across Canada that have yet to be confirmed. This gap has continued since the end of the TRC’s mandate notwithstanding its Call to Actions that called on other institutions, including provincial governments, to search for records of deceased children. Not all of the federal government and church records were provided to the TRC, and many municipal/provincial organizations and other institutions that were involved in administering or overseeing Indian Residential Schools were not required to provide their documents. I provide these comments in order to contextualize the real possibility that the Royal Victoria Hospital may be one such site with unmarked burials.

11. As referenced in **Exhibit I-1**, the TRC found that “the tragedy of the loss of children was compounded by the fact that burial places were distant or even unknown,” and these sites are commonly “abandoned, disused, and vulnerable to accidental disturbance.” The report calls for “a national strategy for the documentation, maintenance, commemoration, and protection of residential school cemeteries,” and my appointment as Special Interlocutor is an initiative to address that.
12. As a result of my experience overseeing and coordinating the work related to Volume 4 of the TRC Report, I have first-hand knowledge of the steps required to identify unmarked burials and the possible identities of missing children. I also have a concrete understanding of the link between hospitals, universities, and Indian Residential Schools. Through the review of records collected by the TRC, I have knowledge that certain hospitals were utilized to send sick children from Indian Residential Schools to and, as a result, it is a reasonable possibility that the remains of children may be found on these sites.
13. Through my experience with the TRC, I not only navigated challenges relating to record collection and informational gaps, but I also liaised between First Nations, Inuit and Métis communities and public institutions. I worked to resolve a wide variety of challenges related to these gaps. As such, I learned where to look for relevant information relating to the location of unmarked burials and the identities of the missing children; how to analyze and draw inferences from the vast number of records received; and some of the best practices with respect to searching and investigating sites for unmarked burials.
14. My extensive experience at the TRC can save the parties significant time and resources in searching, collecting, and analyzing this information. I can also provide information relating to the importance of respecting Indigenous principles, laws, and cultural protocols so that the spirits of the children and their remains are treated with dignity and respect. The information that I am well-positioned to share will assist this Honourable Court in this hearing.

Indigenous Justice Division (“IJD”)

15. Following my work with the TRC, I was appointed by Ontario’s MAG to lead the implementation of the recommendations from the First Nation Representations on Ontario Juries Report authored by the Honourable Frank Iacobucci (“Iacobucci Report”). Attached to this my affidavit as **Exhibit I-2** is a copy of the recommendations from the Iacobucci Report. The creation of my position as the Assistant Deputy Attorney General at IJD was recommendation number five (5).
16. Part of the mission of the IJD was to support the reclamation of ‘Indigenous legal principles and systems and strengthen justice for Indigenous communities within Ontario’. Throughout my appointment, I helped to move this mandate forward by incorporating different methods to facilitate a higher level of participation by Indigenous people in the judicial system, including their involvement on juries.
17. The importance of an engagement process with First Nation, Inuit, and Métis communities cannot be overstated. For generations, the justice system has shut communities out of the process and made decisions concerning their affairs with woefully insufficient input and participation. In the case of potential unmarked burial

sites, engagement with Indigenous communities is required to carry out its fact-finding mission and appropriately consider the legal issues at hand.

18. At IJD, with the guidance of the IJD's Elders' Council, I built relationships with First Nation, Inuit, and Métis communities to address systemic barriers facing Indigenous people and communities in the Canadian legal system. The experience I have gained through these relationships and the work I did in that role to assist Indigenous communities in searching for and identifying the burials of missing children will assist this Honourable Court with a better understanding of the issues to be dealt with in these proceedings.
19. In addition to my professional role with MAG, I have developed relevant experience as an educator. I co-facilitated the Intensive Program in Indigenous Lands, Resources and Governments at Osgoode Hall Law School at York University for several years. This program focuses on revitalizing and assisting communities with exercising and applying Indigenous laws and systems. My involvement co-facilitating this program increased my knowledge and understanding of community-level concerns.
20. These collective experiences enable me to provide expertise and knowledge from a broader perspective, which is currently not being provided in these proceedings and would be useful to this Honourable Court in its determinations.

Unmarked Burials: Survivors' Secretariat (Mohawk Institute)

21. Following the May 2021 announcement by Tk'emlúps te Secwépemc First Nation that they had potentially identified over 200 unmarked burials of children at the former Kamloops Indian Residential School in British Columbia, I was approached by the elected Chief and Council of Six Nations of the Grand River ("Six Nations") to assist in coordinating the work to search for missing children and unmarked burials at the former Mohawk Institute Residential School ("Mohawk Institute").
22. The Mohawk Institute, located in Brantford, Ontario, operated for over 136 years and was the longest running Indian Residential School in Canada. During this time, countless Indigenous children from over 30 different communities were forced to attend the Mohawk Institute. There are over 600 acres of land to search at various sites associated with the Mohawk Institute, including the site of the old Lady Willingdon Hospital.
23. Through discussions with the leadership at Six Nations, and later with a group of Survivors, I was hired as the Executive Oversight Lead and assisted them in beginning the death investigation and search for unmarked burials, and to establish the Survivors' Secretariat.
24. During my work for the Survivors' Secretariat, I was guided directly by the Survivors of the Mohawk Institute. There are several components of the mandate of the Survivors' Secretariat, including the gathering of statements, research, and document collection, and monitoring the death investigations. As the Executive Oversight Lead, I was involved in all aspects of this work. Attached to this my affidavit as **Exhibit I-3** is the mandate of the Survivors' Secretariat.
25. In this role, I oversaw the search for missing children and unmarked burials. Using information and statements from Survivors, records provided to the TRC (and then

transferred to the National Centre for Truth and Reconciliation), and maps of the grounds relating to the Mohawk Institute, I worked collaboratively with Survivors and other community members to determine the best approach to searching the 600 acres where potential burials might be found. As such, I thoroughly researched and became familiar with the various techniques and technologies that can be used for these types of searches, including ground penetrating radar (“GPR”), light detection and ranging (“LiDAR”), cadaver dogs, and underwater side scan sonar.

26. GPR uses high frequency radio waves to document the distribution of features underground. LiDAR, on the other hand, uses laser light pulses to generate three-dimensional maps of the Earth’s surface. These three-dimensional maps can be used to look for subtle changes in the ground that indicate disturbances caused by humans—such as a burial. These forms of ground penetrating technology require training and specialized skills to analyse the data generated. Attached to this affidavit as **Exhibit I-4** is a copy of the blog post I co-authored entitled “How Technology is Helping Survivors Uncover the Truth”, dated March 25, 2022, describing the various technologies that are available to support searches and investigations for unmarked burials.
27. As noted, specialized skills are required to analyse the data generated from the various technologies that can be used to identify reflections or anomalies on or below the surface to identify potential burials. Many companies have GPR technology and have the experience in using the technology to locate utility lines, cables, and concrete. However, very few experts exist in Canada and around the world that have the experience and skill to identify burials. Through my work at the TRC, the Survivors’ Secretariat, and now as the Special Interlocutor, I have had the opportunity to meet and consult with many of these experts. The knowledge I gained from meeting these experts, and the resources I possess as a result, are key contributions that I can provide to this Honourable Court in making the determinations required in the present proceedings.
28. I further assisted the Survivors’ Secretariat by facilitating discussions with Six Nations Police, Brantford Police, and the Ontario Provincial Police to establish a police task force to investigate who died, how they died, and where they are buried. An Indigenous Human Rights Monitor and Indigenous Cultural Monitors were appointed to monitor the work of the police task force to ensure that Indigenous laws and protocols were respected. With the assistance of Survivors, I created the Terms of References for these Monitors.

Independent Special Interlocutor’s Mandate

29. On June 6, 2022, I was appointed by federal Order-in-Council as the Independent Special Interlocutor. I was tasked with producing an interim and final report with recommendations on a new federal legal framework to preserve and protect former Indian Residential Schools and other sites, and assist Indigenous communities in locating, identifying, investigating, protecting, preserving, commemorating, and, where desired, repatriating the remains of children buried in unmarked burials recovered at Indian Residential Schools or related institutions. Attached to this affidavit as **Exhibit I-5** is a copy of the Order-in-Council approving my appointment.
30. My Mandate states that, as part of my role as the Independent Special Interlocutor, I must work with First Nations, Inuit, and Métis communities to facilitate dialogue, engage

in discussion, and listen to the experiences of those trying to find and identify missing children. Attached to this affidavit as **Exhibit I-6** is a copy of my Mandate.

31. My Mandate requires me to evaluate and report on the strengths and weaknesses of the processes currently used to recover missing children and locate unmarked burials. Thus, my right and ability to intervene in these proceedings for conservatory purposes is set out as part of the obligations of my Mandate. I will be able to provide my nationwide perspective to assist this Honourable Court in its deliberations on the current processes that apply to the issues in these proceedings.
32. As is clear from my Mandate, I have a direct and substantial interest in the proceedings before this Honourable Court. The outcome of the proceedings will either result in the protection or destruction of potential burials of Indigenous children. As Special Interlocutor, I have been tasked with the significant responsibility of finding, identifying, and where possible returning Indigenous children to their rightful homes. As Special Interlocutor, I am also tasked with overseeing the respectful and culturally appropriate treatment of burial sites of children associated with residential schools. As such, the issues before this Honourable Court directly affect my ability to fulfil this responsibility.
33. It is crucial that these discussions are informed by Indigenous laws, customs, practices, and protocols, all of which I have developed an expertise in throughout my career. My understanding of Indigenous customs that I can impart to this Honourable Court can assist in facilitating the conversation between Indigenous organizations, communities, and all levels of government involved in these proceedings.
34. My contributions to these proceedings will be based on my experience and the responsibilities within my current Mandate. These contributions may include assistance with the collection and analysis of information, engaging in dialogue with First Nation, Inuit, and Métis communities, providing relevant information relating to the identification of burial sites based on my experience, and assisting on any other matters that arise before this Honourable Court.

Proposed Interest, Ramifications and Reconciliation

35. The issues that are before this Honourable Court have the potential to have widespread ramifications in respect of the processes for identifying, recovering, and protecting Indigenous child remains, not only in Québec but across the country. This is the first opportunity my office has had to participate in proceedings before a court since my Mandate began on June 13, 2022. This proceeding can set a precedent for future cases involving the national effort to locate, investigate, identify, and protect the missing children who were taken and never returned home from Indian Residential Schools.
36. My intervention will not create any undue delay or prejudice to the rights of other parties. I seek to intervene to provide necessary information and assistance to this Honourable Court on the determination of the issues in the present proceedings and to protect my rights therein. I intend to participate in the discussions/debate at trial, add to the record, and participate in any mediation/resolution discussions. The perspective which I seek to provide is unique, one which comes from my over 20 years of experience working with Survivors and Indigenous communities and considering the best approaches to the sacred work of locating unmarked burials and identifying the missing children buried on the sites of former Indian Residential Schools and related institutions.

37. In today's Canada, promises of doing more to advance the concept of Reconciliation with Indigenous peoples is no longer enough. Action is needed. It is crucial that governments, institutions, and the courts take concrete action to facilitate the meaningful, transparent investigations that Canada committed to when confirming my appointment. This Honourable Court can set an example that burial sites of Indigenous children should be treated with the utmost integrity and respect.

The Plaintiffs' Claim

38. As within the purview of my mandate, I have reviewed the court records and materials relevant to the claim by *Kahentinetha et al.* Based on this review and my analysis, I am concerned that there may indeed be unmarked burials at the site in dispute..

39. I note that I have arrived at this determination based on my experience as outlined above. Especially, my experience with the TRC and the Mohawk Institute Survivors' Secretariat, where I was involved in the efforts to recover unmarked burials and identify the missing Indigenous children who attended Indian Residential Schools. This experience has given me insight into indicators of potential burial sites.

40. The Royal Victoria Hospital was one of the few hospitals in Quebec approved to accept Indigenous children as patients. As alleged in the materials provided by the Plaintiffs, these Indigenous children were potentially victims of horrific psychiatric experimentation. As such, there is a reasonable possibility that there are unmarked burials of Indigenous children there and therefore the responsibilities within my mandate are invoked and will be affected.

41. In addition to my proposal to intervene for conservatory purposes as my rights in my role as Special Interlocutor will be directly affected, I believe that my contributions may also assist in finding practical solutions to the issues and be helpful to the Parties.

42. I have retained legal counsel from Donald Worme and Julian N. Falconer, both of whom have retained special authorization from the Barreau du Québec to provide legal counsel in this matter. The authorizations from the Barreau are attached hereto as **Exhibit I-7**.

Conclusion

43. Based on my prior experience and expertise gained from decades of work relating to the issues directly in dispute in this proceeding, I respectfully submit that I can assist this Honourable Court by providing information that will assist in determining the issues before it. Specifically, my knowledge and perspective will help this Honourable Court to better understand the history of the sites in question, how those sites relate to Indian Residential Schools, and the Plaintiffs' claim to ownership. By providing this information, I will be fulfilling the responsibilities set out in my mandate which demonstrate the interest I have in these proceedings.

44. If leave is granted, I commit to adhering to any deadlines and terms as established by this Honourable Court. My intervention will not cause any undue delay or prejudice to the parties.

45. I make this affidavit in support of my proposed intervention in these proceedings and for no other or improper purpose.

AND I HAVE SIGNED:



Kimberly R. Murray
Independent Special Interlocutor

SOLEMNLY AFFIRMED BEFORE ME
at Toronto this 31st day of August, 2022



Commissioner of Oaths
for the Province of Ontario
Mitchell Goldenberg
LSO #85215T

N^o.: 500-17-120468-221

**SUPERIOR COURT
DISTRICT OF MONTREAL**

KAHENTINETHA, et al

Plaintiffs

vs.

**SOCIÉTÉ QUÉBÉCOISE DES
INFRASTRUCTURES, et al**

Defendants

and

OFFICE OF THE SPECIAL INTERLOCUTOR

Third-Party Intervenor

- **DECLARATION OF VOLUNTARY INTERVENTION FOR CONSERVATORY PURPOSES**
- **AFFIDAVIT**

Original

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Julian N. Falconer (LSO #29465R)

Counsel for the Applicant

EXHIBIT I-9

Truth and Reconciliation Commission of Canada, Final Report Vol. 1

Canada's Residential Schools:
The History, Part 1
Origins to 1939

The Final Report of the
Truth and Reconciliation
Commission of Canada

Volume 1



Truth and
Reconciliation
Commission of Canada

Introduction

For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as "cultural genocide."

Physical genocide is the mass killing of the members of a targeted group, and *biological genocide* is the destruction of the group's reproductive capacity. *Cultural genocide* is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next.

In its dealing with Aboriginal people, Canada did all these things.

Canada asserted control over Aboriginal land. In some locations, Canada negotiated Treaties with First Nations; in others, the land was simply occupied or seized. The negotiation of Treaties, while seemingly honourable and legal, was often marked by fraud and coercion, and Canada was, and remains, slow to implement their provisions and intent.¹

On occasion, Canada forced First Nations to relocate their reserves from agriculturally valuable or resource-rich land onto remote and economically marginal reserves.²

Without legal authority or foundation, in the 1880s, Canada instituted a "pass system" that was intended to confine First Nations people to their reserves.³

Canada replaced existing forms of Aboriginal government with relatively powerless band councils whose decisions it could override and whose leaders it could depose.⁴ In the process, it disempowered Aboriginal women.

Canada denied the right to participate fully in Canadian political, economic, and social life to those Aboriginal people who refused to abandon their Aboriginal identity.⁵

Canada outlawed Aboriginal spiritual practices, jailed Aboriginal spiritual leaders, and confiscated sacred objects.⁶

And, Canada separated children from their parents, sending them to residential schools. This was done not to educate them, but primarily to break their link to their culture and identity.

These measures were part of a coherent policy to eliminate Aboriginal people as distinct peoples and to assimilate them into the Canadian mainstream against their will. Deputy Minister of Indian Affairs Duncan Campbell Scott outlined the goals of that policy in 1920, when he told a parliamentary committee that “our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic.”⁷ These goals were reiterated in 1969 in the federal government’s *Statement of the Government of Canada on Indian Policy* (more often referred to as the “White Paper”), which sought to end Indian status and terminate the Treaties that the federal government had negotiated with First Nations.⁸

The Canadian government pursued this policy of cultural genocide because it wished to divest itself of its legal and financial obligations to Aboriginal people and gain control over their land and resources. If every Aboriginal person had been “absorbed into the body politic,” there would be no reserves, no Treaties, and no Aboriginal rights.

Residential schooling quickly became a central element in the federal government’s Aboriginal policy. When Canada was created as a country in 1867, Canadian churches were already operating a small number of boarding schools for Aboriginal people. As settlement moved westward in the 1870s, Roman Catholic and Protestant missionaries established missions and small boarding schools across the Prairies, in the North, and in British Columbia. Most of these schools received small, per-student grants from the federal government. In 1883, the federal government moved to establish three, large, residential schools for First Nation children in western Canada. In the following years, the system grew dramatically. According to the Indian Affairs annual report for 1930, there were eighty residential schools in operation across the country.⁹ The Indian Residential Schools Settlement Agreement provided compensation to students who attended 139 residential schools and residences.¹⁰ The federal government has estimated that at least 150,000 First Nation, Métis, and Inuit students passed through the system.¹¹

Roman Catholic, Anglican, United, Methodist, and Presbyterian churches were the major denominations involved in the administration of the residential school system. The government’s partnership with the churches remained in place until 1969, and, although most of the schools had closed by the 1980s, the last federally supported residential schools remained in operation until the late 1990s.

For children, life in these schools was lonely and alien. Buildings were poorly located, poorly built, and poorly maintained. The staff was limited in numbers, often

poorly trained, and not adequately supervised. Many schools were poorly heated and poorly ventilated, and the diet was meagre and of poor quality. Discipline was harsh, and daily life was highly regimented. Aboriginal languages and cultures were denigrated and suppressed. The educational goals of the schools were limited and confused, and usually reflected a low regard for the intellectual capabilities of Aboriginal people. For the students, education and technical training too often gave way to the drudgery of doing the chores necessary to make the schools self-sustaining. Child neglect was institutionalized, and the lack of supervision created situations where students were prey to sexual and physical abusers.

In establishing residential schools, the Canadian government essentially declared Aboriginal people to be unfit parents. Aboriginal parents were labelled as being indifferent to the future of their children—a judgment contradicted by the fact that parents often kept their children out of schools because they saw those schools, quite accurately, as dangerous and harsh institutions that sought to raise their children in alien ways. Once in the schools, brothers and sisters were kept apart, and the government and churches even arranged marriages for students after they finished their education.

Despite the coercive measures that the government adopted, it failed to achieve its policy goals. Although Aboriginal peoples and cultures have been badly damaged, they continue to exist. Aboriginal people have refused to surrender their identity. It was the former students, the Survivors of Canada's residential schools, who placed the residential school issue on the public agenda. Their efforts led to the negotiation of the Indian Residential Schools Settlement Agreement that mandated the establishment of a residential school Truth and Reconciliation Commission of Canada.

The Commission's final report is divided into the following six volumes.

Volume 1: *The History*

Volume 2: *The Inuit and Northern Experience*

Volume 3: *The Métis Experience*

Volume 4: *Missing Children and Unmarked Burials*

Volume 5: *The Legacy*

Volume 6: *Reconciliation*

The first volume, *The History*, is divided into three sections and, due to its length, is being published in two parts. The first section places residential schooling for Indigenous people in historical context and examines the pre-Confederation roots of the Canadian residential school system. The second section describes the history and the student experience of residential schools from Confederation to 1939. This was the period in which the system was established and expanded. It was also the period of the most intense health crisis. By the end of the 1930s, government officials had come to question the value of the residential school system. The final section covers the years from 1940 to 2000, by which time the system had been brought to an end.

The volumes *The Inuit and Northern Experience* and *The Métis Experience* address topics that are often ignored in the discussion of residential schooling. The 1950s saw a dramatic expansion of residential schooling in northern Canada and the creation of a system in which Inuit children were sent to residences that could be hundreds of kilometres from their home communities. Constant changes in government policy meant that, at some times, Métis children were barred from residential schools, while, at other times, residential schools were the only schools that would accept Métis children.

The *Missing Children and Unmarked Burials Report* addresses three interrelated questions that were added to the Truth and Reconciliation Commission's mandate: how many children died at the schools, what were the conditions that led to their deaths, and where were they buried? The report demonstrates that Aboriginal residential school students died at rates higher than non-Aboriginal students. It also demonstrates that the government failure to provide adequate funding, medical treatment, nutrition, housing, sanitation, and clothing contributed to this elevated death rate. In addition, the report makes it clear that the government had been advised of the implications of its policies and presented with options—which it chose to ignore—that would have reduced the school death rates.

The Legacy volume examines the devastating effects the residential school system has had on former students, their families, and on Canadian society as a whole. It explores the loss of language and culture suffered by Aboriginal people as well as the significant gaps they experience in health, education, and employment outcomes. *The Legacy* volume also analyzes in depth the dramatic overrepresentation of Aboriginal Canadians in the child welfare and correctional systems. In each of the volume's five sections, the Commissioners present a series of Calls to Action intended to redress the injustices and inequities that are the legacy of the residential school system and the long-standing policies of assimilation that gave birth to it.

The *Reconciliation* volume establishes guiding principles and a framework for advancing reconciliation in Canadian society. It identifies the challenges that must be overcome if reconciliation is to flourish in the twenty-first century and highlights the critical role that Aboriginal peoples' cultures, histories, and laws must play in the reconciliation process. The volume demonstrates that although apologies from Canada and the churches were important symbolic events, reconciliation also requires concrete measures to repair the damaged relationship between Aboriginal peoples and the Crown and to establish respectful relationships between Aboriginal and non-Aboriginal peoples. Individual chapters in the volume examine the potential for Indigenous law, public education, dialogue, the arts, and commemoration, and Canadian society more broadly, to contribute to reconciliation. Based on these findings, the Commission makes specific calls to action that, when implemented, will ensure that reconciliation has a strong foundation in Canada, moving into the future.

CHAPTER 12

The struggle over enrolment: 1867–1939

When, in 1895, the Reverend John Semmens went on a journey through what is now northern Manitoba to recruit students for the proposed industrial school at Brandon in southern Manitoba, parents continually told him they were not prepared to send their children so great a distance. The chief and councillors at Cross Lake explained, “We are unwilling to permit our children to go so far away from home to a place which we could never hope to visit in case of their illness or death.” At Norway House, the chief said he had asked for a school there “years ago” and “would not favor an institution any where else.” At Berens River, Semmens was met by the full council, whose members opposed sending students to Brandon “on the one ground of distance.” In the face of what he described as “an organized opposition,” Semmens was able to recruit only two children from that community. In concluding his report of a very unsuccessful trip, Semmens recorded the questions that First Nations parents had posed to him throughout the trip:

Will the children return to us after their course at school?

Is it the object of the Gov’t to destroy our language and our tribal life?

Is it the purpose to enslave our children to make money out of them?

Can the children return at their own wish or at the wish of the parents before the term at school expires?

The offer is good. Will the Government keep this promise or break it as they have others made in like beautiful language?¹

Government officials often branded First Nations parents as being ignorant, superstitious, selfish, and uninterested in their children’s future or education. For example, in 1884, Indian Commissioner (and future Indian Affairs minister) Edgar Dewdney argued that “owing to his peculiar nature, being a creature of the present moment and failing to witness immediate results to his own benefit, as well as prompted, in many instances, by a selfish desire to retain constantly about him the slight labour which his

children may afford him,” an Aboriginal parent “fails to insist on their attendance at school.”²

But the questions posed to Semmens paint a much different picture. Parents worried that their children would not return to them after their schooling was over. They suspected that residential schooling was intended to obliterate their language and culture. They feared that their children were being prepared for a market economy in which human life was just another commodity and their children would be used as free labour. And they viewed with distrust any government statements intended to allay their fears. They suspected that the government and the churches would not live up to the “beautiful language” of the promises they made when trying to recruit children, as they already had previous experience of Treaty promises being broken. The parental concerns were well founded. The government and church leaders who established the industrial schools expected that students would not return home, would forget their language, adopt new cultural values, and become integrated into a new economy. The regimentation and discipline of the capitalist work world meant it was far different from the highly autonomous world in which Aboriginal people had lived for thousands of years, so much so that it might well feel like a form of slavery. Parents also realized that the type of educational and spiritual transformation being proposed by the federal government would separate them from their children, not only for the period of time they were in school, but also quite possibly for eternity. James Smart, the Indian Affairs deputy minister, conceded as much in 1897 when he wrote, “Among those who have not renounced paganism, the belief prevails that the children will be educated into other creeds, which will affect their existence in a future state, and separate them from their parents in the great hereafter.”³

This was not very different from the views of the government and church leaders who believed that those who were converted would go to heaven, while those who remained pagan would go to hell.

Parents, not surprisingly, wanted their children to be recognizable to them in this world as well as the next. Some missionaries and government officials were prepared to acknowledge this desire. In 1887, the principal of the Qu’Appelle school in what is now Saskatchewan noted he had not been able to recruit a single student from some reserves. Joseph Hugonnard wrote, “The Indians are afraid that their children after leaving the school will not go back to the reserves, and that they will stray away from them; they also do not wish their children to acquire the habits of the white people.”⁴ Father E. Claude, principal of the High River school in what is now Alberta, concluded after his failed recruiting drive that parents did not wish to see their children “resemble the white people.”⁵ The following year, Indian agent R. H. Pidcock wrote that because “parents see in education the downfall of all their most cherished customs,” the Alert Bay, British Columbia, boarding school was not well attended.⁶

As time went on, the list of reasons why Aboriginal parents might not wish to send their children to residential school only increased with bitter experience. The amount of work the students were required to do, the poor quality of the education they received, the health risks they encountered, the limited and often inadequate diet, the discipline to which they were subjected, and the physical and sexual abuse that some experienced all served to strengthen parental opposition to the schools. A number of Aboriginal memoirs provide evidence of the role that parents and grandparents played in opposing residential schooling. George Barker, born in 1896 on the Bloodvein Reserve in Manitoba, attended day school on the Hollow Water Reserve. In his memoirs, he wrote:

I liked school and maybe would have continued, but my school friend, Arthur Quesnel, was about to leave to go to the Catholic boarding school in Fort Alexander. He wanted me to go with him, but grandmother wouldn't allow it. She was not too impressed with the white man's teachings. This pretty much ended my life as a school boy.⁷

Lazare John attended the Fort St. James, British Columbia, school for one year. During that year, his mother had moved from the family's home community of Stoney Creek to Fort St. James to be near her son. However, according to the memoirs of Lazare's wife, Mary John, "He was so unhappy away from Stoney Creek that he and his mother returned to our village after one year, and Lazare was never sent to school again."⁸

As a result, recruitment was a persistent problem for residential schools. In his annual report for 1884, Indian Commissioner Dewdney acknowledged that

no little difficulty is met with in prevailing upon Indians to part with their children; and even after the latter have been cared for in the kindest manner, some parents, prompted by unaccountable freaks of the most childish nature, demand a return of their children to their own shanties to suffer from cold and hunger.⁹

Parental resistance to industrial schools was so strong that it actually contributed to the failure and eventual closure of most of the industrial schools on the Prairies. From 1884 onwards, the government put in place an increasingly restrictive set of laws and regulations regarding enrolment and discharge. Many school and government officials were either not well versed in the laws and regulations governing enrolment, or disregarded them. It is clear that, on occasion, officials exceeded the authority granted them by the *Indian Act* and related regulations.

Parents often were compelled to send their children to residential school because federal policy decisions had robbed them of alternatives. For example, federal decisions not to build day schools, or decisions to close the existing day schools, meant that parents who were committed to seeing that their children would get an education were forced to send them to residential school. The federal government's unwillingness to

invest in First Nations economic development, particularly on the Prairies, meant that many families existed in a state of dire poverty and were sometimes dependent on government-supplied relief rations. In such conditions, parents might send their children to school in hopes they would be properly fed and cared for there. In some cases, federal officials denied relief rations to parents in need who refused to send their children to school. The enrolment problems in the schools would have been worse if the schools were not also serving as child-welfare facilities, taking in orphans, the sick, and children whose families were judged to be unable to care for them.

The federal government's First Nations education policy was devised and put in place by men who already made regular use of compulsion in their dealings with First Nations people. When he was the Indian commissioner, Edgar Dewdney used compulsion and the withholding of rations to disrupt a First Nations campaign to negotiate Treaty revisions and establish a First Nations homeland. Dewdney used the 1885 North-West Rebellion as a pretext for persecuting much of the First Nations leadership, despite the fact that the vast majority of First Nations leaders and their people did not participate in the uprising.¹⁰ When he was the assistant Indian commissioner, Hayter Reed advocated and implemented the pass policy. Under this policy, which had no legal authority, First Nations people on the Prairies had to seek government permission to leave their reserve. In the absence of a legal basis for the policy, the government charged individuals who left their reserve without a pass with "trespass." In other cases, it denied rations to those who did not comply with the pass policy.¹¹ Amendments to the *Indian Act*, which banned the traditional Potlatch ceremony on the west coast as well as various sacred dances on the Prairies, are other examples of the policy of compulsion. Between 1900 and 1904, there were at least fifty arrests and twenty convictions for violations of the laws against dancing. One of the convicted, Chief Piapot, then in his mid-eighties, was sentenced to two months in jail.¹²

Regulating attendance: 1884–1893

In 1884, the *Indian Act* was amended to give First Nations band councils responsibility for "the attendance at school of children between the ages of six and fifteen years."¹³ This was the first reference to school attendance in the *Indian Act*. At the time, only four provinces—Ontario, British Columbia, Nova Scotia, and Prince Edward Island—had any compulsory education laws. The Ontario law of the day required that children between the ages of seven and twelve attend school for at least four months a year. British Columbia's law required six months of attendance, and Prince Edward Island's required twelve weeks.¹⁴

Almost immediately after the industrial schools were established, principals began calling on the government to institute some form of compulsory enrolment. It took

Qu'Appelle principal Joseph Hugonnard a year to recruit the thirty students he was initially authorized to enrol.¹⁵ As early as 1885, High River school principal Albert Lacombe urged Indian Affairs “to bring pressure in some way to bear upon those Indians who refuse their children, as by threatening to deprive them of their rations.”¹⁶ In 1886, Hugonnard reported that a recent recruiting expedition to three reserves had netted him only the promise of two new students. “The objections of the Indians are that they do not like to send their children away nor to have them attended to by a doctor, nor to let them work, and also to their taking the habits of the white people.”¹⁷

In 1888, Robert Ashton, the principal of the Mohawk Institute, reported that in the previous year, twenty-one boys and twenty girls had left the institution. The average length of attendance had been two and three-quarter years for boys and two and one-quarter years for girls. In light of the fact that most students were leaving school long before they could derive “much lasting advantage from the course of training provided,” Ashton recommended that the government require parents to commit their children to the school for specific periods of time.¹⁸

When he was Indian commissioner, Edgar Dewdney thought that compulsory attendance was inevitable, but recommended it not be introduced immediately. “As Indians become amenable to restraints on their reserves,” he wrote, “attendance should be made compulsory.”¹⁹ Hayter Reed, his successor as Indian commissioner, was also initially cautious. In 1889, he said, “The time is approaching, when pressure will doubtless have to be brought to bear upon Indian parents to compel them to send their children to school, but this must be done with great caution, and very gradually.” He noted that he had, in certain circumstances—Battleford, for example—“given instruction to Agents to bring pressure to bear, and I will act in the same direction wherever and whenever I feel satisfied that to do so will be attended with good results.”²⁰ By 1892, he had become much more aggressive, recommending that the government enact legislation that would require “children being retained in Industrial Schools pending the Department’s pleasure.” Deputy Minister Lawrence Vankoughnet rejected that idea; he did not think

the Indians of the North West are sufficiently advanced in civilization to render such drastic measures advisable, as respects the control by the Dep’t—which it actually would be—of their children. As you are aware, Indians are particularly sensitive in respect to their children and the Dep’t is preparing them gradually for the more stringent measure of compulsory education by endeavouring to induce the Chiefs and Headmen of the different Bands to co-operate with the Indian Agent for the passage of rules and regulations under the Indian Act rendering attendance at the schools compulsory on the part of Indian parents.²¹

The only real question under debate was when—not if—parents would be compelled to send their children to residential schools.

But, if there was debate about recruitment, there was none about whether parents should be allowed to withdraw their children from the schools once they were there. In 1891, officials in Ottawa were concerned that students at industrial schools, particularly at Qu'Appelle, were being withdrawn long before they could have learned a trade. Reed was instructed to ensure that "no pupils shall be admitted to or taken from or allowed to leave any of the institutions without your express authority having been obtained."²² Reed felt that Hugonnard was giving in too easily to parental requests to remove their children from the school. He visited the school at the same time that a group of parents were seeking to remove six children from the school. "By the exercise of firmness I convinced each of the applicants that they must leave their children unmolested and the Principal's eyes were opened to the fact that resistance would accomplish all I claimed." Reed told Hugonnard that if he felt himself unequal to the task of refusing parents, in the future, he should simply send for him.²³

Compulsion and the disruption of First Nations government

Efforts to force First Nations children to attend residential schools also led the federal government to interfere directly with First Nations governments. The cases of Wahpeemakwa (White Bear) and Ahchacoosahcootakoopits (Star Blanket), in what is now Saskatchewan, stand as examples of the government's willingness to disrupt and ignore First Nations government.²⁴

In the 1880s, Wahpeemakwa was the chief of a Saulteaux-Cree band in the Moose Mountain area of Saskatchewan. Under his leadership, the band members limited the role of missionaries, and many refused to send their children to school, particularly to the residential schools. An Anglican attempt to establish a school on the reserve failed in 1885. Although Indian Affairs removed Wahpeemakwa from his position as chief in 1889, he remained an influential figure. Indian agent David Halpin reported in 1897:

It is very difficult to get the parents to allow the children to be sent away to school, more especially those Indians who are in any way connected with the deposed chief White Bear and his sons, who will have nothing to do with anything in the shape of education, and who try to live as they did before treaty was made with the North-west Indians, and they will hardly allow any one to talk on the subject of education to them and simply say that their 'God' did not intend them to be educated like white people; they will not allow that there would be any benefit to be derived from having their children taught, and say they would much prefer to see their little ones dead than at school.²⁵

The federal government removed Wahpeemakwa's son Kah-pah-pah-mah-am-wa-ko-we-ko-chin from his position as headman in September 1897.²⁶ This move also backfired, and the band continued to refuse to co-operate with the government.

Eventually, Wahpeemakwa was restored as chief. At the same time, departmental secretary J. D. McLean rejected Wahpeemakwa's request for a day school on the reserve, because "it would prove a hindrance to the work of getting children into the Industrial Schools."²⁷ Halpin later reported, "White Bear, since his reinstatement by the department as chief, has not been so much against having children educated, but he still holds back with regard to allowing them to be sent far from home to school."²⁸

Ahchacoosahcootakoopits, or Star Blanket, was the chief of the Star Blanket Band in the File Hills area of southern Saskatchewan. He should not be confused with another chief known as Star Blanket or Ahtahkakoop (Atakakup). Ahchacoosahcootakoopits was the son of Wapiimoosetoosus, one of the Cree chiefs who signed Treaty 4. He had been part of the 1884 movement to seek Treaty improvements, and was arrested but never charged after the 1885 North-West Rebellion.²⁹ Star Blanket opposed Indian agent efforts to repress the Sun Dance, to amalgamate four bands in the File Hills area, and to send children to residential schools. As a result, the federal government deposed him, giving as its grounds his "incompetency." The band refused to accept the government decision and refused to co-operate with the Indian agent. In 1895, Star Blanket was restored to office. At the same time, he agreed to allow one of his sons to attend the residential school in Regina under the conditions that his hair not be cut, and that he would be exempted from religious studies, military drill, or the brass band. In 1898, the federal government once more threatened to depose him for not sending more of his children to residential school.³⁰ So intense was the conflict between the government and Star Blanket that, in 1898, the federal deputy minister of Indian Affairs thought it significant enough to relate in his annual report that "Star Blanket, who so long persistently opposed sending children from his band to school, has during the last month, allowed three to go, two to Qu'Appelle, and one to the boarding school here."³¹ Star Blanket successfully resisted government efforts to have the band surrender some of its land for the File Hills Colony that Indian Commissioner W. M. Graham was developing for former residential school students.³²

Into the early twentieth century, Star Blanket continued to campaign to have the government live up to its Treaty commitments. His 1912 letter to the Duke of Connaught, then governor general, gives eloquent expression to his sense of betrayal.

We have waited patiently for many years for a chance to speak to some one who would carry a message to the Government and our white brothers in the east. The first part of our message Great Chief is one of Good wishes and peace to yourself first and then to the Government. For as I was born with two legs and as these two legs have not yet quarreled, so I wish to live in peace with the white people. When I was in middle life the Government of the Great White Mother sent some wise men to ask us to give them much land. A large camp of Indians was made near Qu'Appelle and there the Government and Indians after much talking signed a treaty, on paper and much was promised as well. One of these

papers has been carefully kept by us, and by it we Indians gave to the Government a large piece of land and held back for ourselves some small pieces as Reserves. In the treaty we made then the Government promised to make a School for every band of Indians on their own Reserve, but instead little children are torn from their mothers' arms or homes by the police or Government Agents and taking [sic] sometimes hundreds of miles to large Schools perhaps to take sick and die when their family cannot see them. The little Ants which live in the earth love their young ones and wish to have them in their homes. Surely us red men are not smaller than these Ants.³³

Indian Affairs official Martin Benson prepared a disingenuous response to this letter. He acknowledged that Treaty 4 did oblige the government to "maintain a school in the reserve," but then said that the educational needs of the children on Star Blanket's reserve were being met by the Qu'Appelle industrial school and a boarding school "in the immediate vicinity of the reserve."³⁴

The *Indian Act* amendments and regulations of 1894

In 1893, Lawrence Vankoughnet was forced into retirement and Hayter Reed was elevated to the position of deputy minister of Indian Affairs. Reed was then able to put his more aggressive policies into practice. In 1894, he reported that parental opposition to sending their children to boarding schools had decreased to the point where the government felt justified in the introduction, "without fear of exciting undue hostility, of measures for securing compulsory attendance at schools."³⁵ In that year, the *Indian Act* was amended to authorize the government to make regulations "to secure the compulsory attendance of children at school." These regulations could be applied to "the Indians of any province or of any named band." The amendments also authorized the government to establish "an industrial school or a boarding school for Indians." (The schools were, of course, already in existence.) The government was also authorized to commit to these schools "children of Indian blood under the age of sixteen years." Once committed, they could be kept there until they reached the age of eighteen.³⁶

Under the authority of this amendment, the government adopted its first school-related regulations, the *Regulations Relating to the Education of Indian Children*. These regulations stated: "All Indian children between the ages of seven and sixteen shall attend a day school on the reserve on which they reside for the full term during which the school is open each year." Exemptions were allowed if the child was being instructed elsewhere, if the child was sick or otherwise unable to attend school, if there was no school within two miles (3.2 kilometres) for children under ten years old, or within three miles (4.8 kilometres) for children over ten, if the child had been

excused from attending school to assist in farm or domestic work at home, or if the child had already passed a high school entrance examination.

Indian agents were authorized to appoint truant officers, who would have “police powers.” The truant officers were to investigate cases of non-attendance, and could lay complaints against non-compliant parents with justices of the peace or Indian agents. Refusal to comply with the order of a truant officer was punishable by a fine of up to \$2, ten days in jail, or both.³⁷

Most of the regulations dealt with day school attendance. However, if an Indian agent or justice of the peace thought that any “Indian child between six and sixteen years of age is not being properly cared for or educated, and that the parent, guardian or other person having charge or control of such child, is unfit or unwilling to provide for the child’s education,” he could issue an order to place the child “in an industrial or boarding school, in which there may be a vacancy for such child.” In Manitoba and the North-West Territories, such an order could be issued without the need to give any notice to the “parent, guardian or other person having charge or control of such child.” In the rest of the country, prior notice was required and, if the parents requested, an inquiry could be held before the child’s committal. Under these orders, a child could be committed to residential schools until the age of eighteen.

If a child placed in the school under these regulations left a residential school without permission, or did not return at a promised time, school officials could get a warrant from an Indian agent or a justice of the peace authorizing them (or a police officer, truant officer, or employee of the school or Indian Affairs) to “search for and take such child back to the school in which it had been previously placed.” With a warrant, one could enter—by force if need be—any house, building, or place named in the warrant and remove the child. Even without a warrant, Indian Affairs employees and constables had the authority to arrest a student in the act of escaping from a residential school and return the child to the school.³⁸

The regulations specifically identified twenty-three industrial residential schools: four in Ontario,³⁹ four in Manitoba,⁴⁰ four in what is now Saskatchewan,⁴¹ four in what is now Alberta,⁴² and seven in British Columbia.⁴³ The regulations also specified eighteen boarding schools: three in Manitoba,⁴⁴ seven in what is now Saskatchewan,⁴⁵ six in what is now Alberta,⁴⁶ and two in British Columbia.⁴⁷ The decision to list the specific schools created enforcement problems in later years as some schools closed and new ones were not specifically listed in the regulations.

In 1895, Regulation 12 was amended. Previously, it had authorized the search for, and return of, any student who had been placed in the school; that is, children who, Indian Affairs had concluded, were not “being properly cared for or educated.” It was amended to allow for the return to the school of *all* truant students, including those who had been voluntarily placed in the school.⁴⁸ Enrolment—at least on paper—was still voluntary; discharge would be much more difficult to obtain.

Reed made sure that these newly granted powers were put into force. Shortly after they were adopted, he instructed the assistant Indian commissioner, “Power is given by these regulations to bring back deserters and you are at liberty to exercise your discretion about putting them into force.” Reed also instructed, “Schools which have not their full complement of pupils, such as Battleford and Regina, can now be filled and the Department would like you to communicate with our Agents with a view to securing orphans to fill vacancies.”⁴⁹

When parents in northern Manitoba resisted sending their children to the Methodist industrial school in Brandon, Reed instructed the school’s principal to call the parents’ attention to *Indian Act* provisions “for the compulsory education of Indian children.” He said that although the department was reluctant to enforce the regulations, it would do so unless parents demonstrated “their willingness to have their children educated.” He suggested the parents could take comfort from the fact that, although students would not be allowed to leave at their own will once they were admitted, their parents would be allowed to visit them at school.⁵⁰

Threats were part of the government arsenal. In 1895, when members of the Arrows Band in what is now Saskatchewan refused to send their children away to boarding school, the Indian agent told them

if they would not let them go willingly that in all probability the Department would take them by force and send them to whatever school was thought best. The consequence was that when paying Treaty there on the 22nd inst. the Indians offered me all their children if I would place them in the Duck Lake Boarding School.⁵¹

The government followed up on its threats. In 1896, an Indian agent asked if it was necessary to conduct a trial before returning a child to the school. Reed argued that the regulation allowed a child to be returned to a school on the basis of a warrant issued in relation to the regulation.⁵²

Reed was far from satisfied with the results of the campaign of enforcement he had initiated. His 1896 annual report contained a warning: “In some localities persuasive powers have failed to obtain such an attendance as the number of children would warrant, so it may yet become incumbent upon the department to adopt more stringent measures to secure increased attendance.”⁵³ Through his campaign against day schools, he also worked to limit parental options.

The campaign against day schools

In 1895, Reed announced it was his intention “to do away as far as funds and circumstances will permit with day schools on the reserves and substitute industrial and boarding schools at a distance from them.”⁵⁴ He stated that “much lasting good cannot

be expected from day-schools, owing to the fact that home influences so readily counteract any good which may be attained through them." In 1896, he wrote that in the Northwest, "day-schools are being closed, and it is expected that by the expiration of the present fiscal year the number of schools thus closed will have been materially increased."⁵⁵

Treaties 1 through 6 had committed the government to establishing on-reserve schools, and the later Treaties had stipulated the provision of teachers once reserves had been established. None of them made any mention of residential schools.⁵⁶ However, the federal government was slow to establish day schools. In 1885, Indian Commissioner Edgar Dewdney favoured delaying the opening of a school on a reserve until it was apparent there would be a regular attendance of at least twenty students. Children from reserves without schools were to be sent to "Industrial Schools, in the success of which I have every confidence."⁵⁷ While it is apparent that many parents were not prepared to force their children to attend day school, it was also recognized at the time that the schools provided a very poor quality of education. In an effort to improve the quality of the teachers being recruited, Dewdney recommended in 1885 that the day school salary be increased from \$300 to \$500 a year.⁵⁸ It appears there was little progress on this front: in 1908, Indian Affairs Deputy Minister Frank Pedley recommended that the salaries at Indian Affairs schools in eastern Canada be between \$300 and \$500.⁵⁹

Reed continued with his campaign to close down established schools. In 1894, he told the principal of the Gordon's residential school in what is now Saskatchewan to recruit students from the day school on the Gordon's Reserve. "By this means," Reed wrote, "it may be possible to close up some day schools, and devote the funds which would otherwise be expended on them to increasing the number of pupils at the Boarding School."⁶⁰ The opening of the Anglican boarding school on the Blood Reserve in what is now Alberta had an impact on the three Anglican day schools that were operating on the same reserve by the 1890s. By 1895, one of the day schools had closed and, in another, enrolment had dropped by a third. In some years, the average attendance was six students. By 1904, only one of the three schools was operating.⁶¹

The impact of Reed's campaign to close day schools was apparent in the annual reports of many Indian agents during this period. Again and again, the agents noted there were no school-aged children and no day schools in many of the communities they visited. In 1898, Indian agent J. B. Lash's report on the situation at Piapot's Reserve said, "The industrial schools at Qu'Appelle and Regina have a number of pupils from this reserve, and there are very few children of school age left on the reserve."⁶² He made similar observations about the Muscowpetung and Pasqua (given in the report as Pasquah) reserves.⁶³ That same year, in the report on the Sarcee Reserve, Indian agent A. J. McNeill wrote that "all of school age are now either in the Calgary Industrial or boarding school on the reserve."⁶⁴ The report of E. J. Bangs for the Stony Reserve,

home of the McDougall Orphanage (an early boarding school), noted that the two day schools were “practically closed.”⁶⁵ In British Columbia, a report on the Ewawoos, Texas Lake, and Ohamil bands noted that most of the children were attending the Mission or Yale boarding schools.⁶⁶

The impact of the day school policy can be detected in the following 1909 reports on conditions on the Ochapowace, One Arrow, and Beady’s and Okemassis bands: “Most of the children in this band of school age attend boarding school”; “There is no day school on this reserve. The children of school age are sent to the Duck Lake boarding school”; and, “There is no day school on these reserves, the children of school age being sent either to the Duck Lake boarding school or the Regina industrial school.”⁶⁷

Even after Reed left office in 1897, the lack of day schools in the West left parents with limited options. In 1913, R. B. Heron, the principal of the File Hills school, supported a request from parents for a new day school for children from the Pasqua, Muscowpetung, and Piapot reserves (all reserves that Indian agent Lash had earlier noted as being devoid of school-aged children). The parents said File Hills was too far from their reserves. As a result, at least thirty children were not being sent to school. Heron wrote to his superiors in Toronto that if the Presbyterians did not establish a day school that would allow it to “get these 30 children (and there are many more will [sic] be of school age in a short time), most of them will be drafted into the nearest school—the R.C. school at Lebret [the Qu’Appelle school].”⁶⁸ The inspector of Indian agencies at the time, W. M. Graham, opposed the move. Instead of building a day school, he thought, the department should simply force the parents to send their children to File Hills. There would be, he said, “no evil consequences if the act were put into force.”⁶⁹ After the 1918 closure of a day school on the Quamichan Reserve in British Columbia, families had little alternative but to send their children to the Kuper Island residential school.⁷⁰

Policy change under the Liberals

Hayter Reed was dismissed as deputy minister after the Liberal victory in the 1896 federal election. His replacement, James Smart, backed away from Reed’s approach to compulsory enrolment. In 1898, he wrote that “the Department’s policy is as long as possible to refrain from compulsory measures, and try the effect of moral suasion and an appeal to self-interest.”⁷¹ The Liberals were looking for ways to cut Indian Affairs spending—they viewed industrial schools as being costly failures and recognized that day schools were much less expensive to operate. Forcing more children to attend residential schools would only increase government costs.

Residential school principals, who still struggled to fill their schools, opposed the new approach. Principal Hugonnard at Qu’Appelle said:

Without compulsory education it will be impossible to maintain this attendance as those Indians who can be induced to send their children to school prefer to keep them near them by sending them to the numerous boarding schools on the reserves—of course the majority having children at home refuse to send them to any school at all.⁷²

In 1898, the principal of the Anglican boarding schools on the Blackfoot Reserve complained:

We have at present on the rolls twenty-nine boys and eleven girls. With accommodation for so many more children it is sad to see that so many are allowed to grow up under the influence of camp life without any of the benefits of these institutions. Unfortunately the Indians of 'treaty seven' are for the most part strangely prejudiced against education.⁷³

The following year, Battleford principal Edward Matheson chided the government for not enforcing the existing attendance regulations: "The policy of the department—that of insisting on the education of the children—is the proper one. But one thing remains, and that is to *put the policy into force*. Until this is done the full results desired cannot be shown [emphasis in original]."⁷⁴

In 1902, Red Deer principal C. E. Somerset wrote, "There has been an average attendance of sixty-two during the year, although the number authorized by the department is eighty. I shall be glad if some means can be devised whereby parents will be persuaded to allow their children to be sent to this school."⁷⁵

At Qu'Appelle, Hugonnard took matters into his own hands. In 1901, he was accused of "stealing" boys of the She-Sheep's Band and taking them to school by force. The mother of two of the boys, known as the "Widow Penna," told Indian agent Magnus Begg, "The Rev. gentlemen and the two police-men overtook her about 25 miles from Qu'Appelle and 40 miles from the Reserve, and without speaking to her, told the police to put the boys in the waggon [sic], she said the eldest boy clung to her but they pulled him away."⁷⁶

When Begg told her she could visit her boys at the school, she said the "distance was too long, the snow too deep, and she was sick and wanted her children back." Other band members told Begg that "there would be trouble" as a result of Hugonnard's treatment of the boys. He took this to mean that the police would have difficulty in retrieving runaways from the school. When band members asked if Hugonnard's actions were legal or approved by the Indian commissioner, Begg told them he did not know. In a letter to Indian Commissioner David Laird, he noted that under Section 9 of the 1894 regulations, "a child may be committed by a Justice of the Peace or an Indian Agent without giving notice. The Rev. Father Hugonnard is neither, but of course I did not read this part of the section to the Indians."⁷⁷

Hugonnard claimed he had a warrant from a Fort Qu'Appelle justice of the peace authorizing him to take two boys into custody. He did so because the boy's mother was a widow and "with her wandering mode of life she could not bring the children up properly, and utterly refused to send them to any school." He also said he had been asked to take the boys into custody by the boys' brother-in-law, who had been supporting the family.⁷⁸ Laird pointed out to Hugonnard that it was government policy not to apply the regulations to families living in the Indian agency from which he had taken the boys.⁷⁹ Indian Affairs officials were not prepared to inform parents of their rights, or to order that a school principal return children to their parents, even though, in taking them by force, he had overstepped his authority.

By the end of the first decade of the twentieth century, there were still many parts of western Canada where a significant number of Aboriginal children were not in school. In 1910, for example, of 213 school-aged children in the Duck Lake Agency, only 133 were enrolled in school. The figures for the Carlton Agency were 107 of 200; for the Onion Lake Agency, 57 of 190; and 92 of 131 in the Pelly Agency.⁸⁰ When parents did opt to send their children to a residential school, it is clear that they preferred the smaller boarding schools that were located on or close to reserves. The enrolment rate in the boarding schools and industrial schools reported on by David Laird, the Indian commissioner for Manitoba and the North-West Territories in the 1902–03 school year, provides a clear demonstration of this preference. The thirty-six boarding schools that provided complete attendance information to Indian Affairs for that year had a total pupilage of 1,255—and, at the end of the year, they had an enrolment of 1,274. In other words, they had enrolled slightly more than 100% of the students they were allowed. The ten industrial schools had a total pupilage of 1,140, but only 977 students (or 86% of their authorized enrolment).⁸¹

While parents clearly preferred boarding schools as an alternative to the more distant industrial schools, they also resisted the boarding schools. In 1906, J. R. Matheson, the principal of the Anglican boarding school at Onion Lake, lamented:

The teacher or Missionary is entirely powerless in the matter of persuading or forcing the parents to send their children to school. The Indians either simply laugh or point blank refuse, or in some instances take the children away or coax them to run away after they have been in the school for some time, and all efforts to get them back are utterly futile.

He wrote that schools were languishing because government officials were "afraid to enforce the law, or there is no law for them to enforce. Which is it?"⁸²

Limitations with the existing regulations also were becoming apparent. In 1903, J. A. J. McKenna, the assistant Indian commissioner of the North-West Territories, wrote to the department:

The Principal of the Boarding School at Norway House experiences great difficulty in retaining children at school. The Indians through mere caprice insist on taking their children away at all seasons. I find that the school is not mentioned in section 8 of the Regulations and that therefore the Principal has no authority to retain the pupils. His hands would be strengthened if it were known that he had a legal right to keep children in school. I would therefore recommend that the section be amended by adding the name of the school.⁸³

He pointed out that at least fourteen schools were not listed in the regulations and were therefore in the same situation.⁸⁴

The Liberals resisted church requests to tighten up their laws on recruitment. In 1904, Indian Commissioner David Laird responded negatively to requests that the government force parents to send their children to residential schools.⁸⁵ In 1908, the government adopted a new set of regulations that addressed the ambiguities in the 1894 regulations. The 1908 *Regulations Relating to the Education of Indian Children* stated, "All Indian children between the ages of six and fifteen shall attend a day school on the reserve on which they reside." This change, to "six and fifteen" from the "seven and sixteen" in the previous regulations, now brought the regulations into agreement with the provisions in the *Indian Act* about attendance. Truant officers were no longer granted "police powers" (it had been determined that the *Indian Act* did not provide the authority to grant such powers). Rather than listing the schools, the regulations stated that all boarding schools and industrial schools receiving per capita grants for the education of "Indian children" were designated as industrial and boarding schools for the purposes of the regulations. The rest of the provisions remained essentially unchanged.⁸⁶ Smart's successor as deputy minister, Frank Pedley, wrote that "no rule should be adopted which would provide for the arbitrary separation of parents and children."⁸⁷

As in other matters, Indian Affairs was slow to develop an age policy for industrial and boarding schools. Industrial schools had been intended to teach older students the skills that they would need to survive in the Euro-Canadian economy. It was expected that as the students learned these skills, they would make their own schools self-supporting. Implicitly and explicitly, this would require students who were old enough to have the strength and interest to undergo such training. But parental resistance to sending children to schools, coupled with the financial enticement of the per capita funding system, led the school principals to also recruit students who were too young for industrial training. Even though he was supposed to be operating an industrial school that trained students for entering the workforce, in 1885, High River principal Albert Lacombe sought government permission to limit his enrolment to children younger than nine years of age.⁸⁸ In his 1887 annual report, Qu'Appelle principal Joseph Hugonnard actually opposed recruiting older students. The younger

ones were more obedient and apt to learn. However, he noted, “we need to have some of the older boys to learn the trades and work on the farm.”⁸⁹

Under the Liberals, a policy slowly began to emerge. In August 1898, J. D. McLean wrote in response to an inquiry about the age limits for boarding schools that “the Department does not consider it advisable to make any hard and fast rule as to the age at which pupils should be admitted to such schools.” However, under “ordinary circumstances,” he said, “no pupils should be taken into such schools under the age of 8 years or over that of 14.” At the age of fourteen, McLean thought, the students should “be sufficiently advanced to enter an Industrial school.”⁹⁰ By 1900, a policy had been developed: the minimum age for admission to boarding schools was to be seven, and age ten for industrial schools. The government acknowledged that it might make exceptions and allow for the enrolment of students younger than those ages, but in such cases, the schools would receive only half the per capita grant.⁹¹ This measure was meant to discourage industrial school principals from enrolling students whom the department deemed to be too young. It also meant that in cases where younger students were enrolled, the school had less money to feed, clothe, house, and educate the students. In 1911, the policy was changed to make seven the minimum age for admission to both industrial schools and boarding schools.⁹² The full grant would be paid for all students whose enrolment had been authorized by the federal government.⁹³

The churches urged the federal government to continue with Reed’s policy of closing day schools—particularly church-supported day schools. Indian Affairs official Martin Benson concluded that the churches were simply attempting to shift their mission-related costs onto the federal government. In commenting on a 1901 Methodist proposal for the establishment of a boarding school in northwestern British Columbia, he noted that in that region of the province, there were five professional teachers, seven Aboriginal teachers, eighteen missionary teachers, and twenty-five “missionary ladies,” all working out of thirty-three churches and seventeen school houses. This, he said, was likely to be a drain on the resources of the various missionary societies, so he was not surprised that they were anxious to be relieved of these costs “by the establishment of boarding schools which would provide for their maintenance by the Government.” But, he said, “the Department should not be asked to break up the Indian home such as it is and the Regulations for compulsory attendance were not passed for their purpose.”⁹⁴

Benson was well aware of the limitations of the day schools, claiming they did little to educate or civilize, and served instead as a “resting place for some lazy, incompetent individual with just sufficient energy to draw a small salary.” But rather than close them, he thought, the government should improve them by recruiting practical men and women with more than textbook knowledge. Such teachers “would be ready and willing to do anything useful and right, and ... eager to find some right thing to do for the real good of the people.”⁹⁵ In response to a 1907 Anglican proposal to close

day schools and open a boarding school in The Pas, he wrote that “there is no reason why day schools should not be made effective. This could be done by raising the present salaries and holding out inducements to efficient teachers to take charge of these schools.” He pointed out that over the previous six and a half years, \$2 million had been spent on residential schools in the West. “If a portion of this sum had been expended in bettering the Indians’ condition on the reserve and improving the existing day schools, better results would have been obtained.”⁹⁶

As noted in the previous chapter, by 1908, the Liberals were considering a radical policy change that would close many industrial and boarding schools and replace them with improved day schools. Although that policy was abandoned, the churches and the government were still in conflict over the issue of enrolment. In 1909, the Anglican Synod recommended, “All Government donations in excess of Treaty obligations should be withheld from such parents as refuse to send their children to school.”⁹⁷ The following year, Indian Affairs departmental secretary J. D. McLean told Edmonton-area Indian agent U. Verreau that “it is not the policy of the Department to use compulsion for the purpose of placing children in industrial or boarding schools, except in cases provided for in the Regulations relating to the Education of Indian Children.” McLean argued that, with great effort on the part of staff and missionaries, parental apathy could be overcome to “persuade the Indians to avail themselves of the opportunities offered by these schools.”⁹⁸

Rev. M. C. Gandier, the principal of the Gleichen, Alberta, school, reported in 1913 that the school had opened the year before with accommodation for forty students and an enrolment of just thirteen. “Compulsion,” he wrote, “has to be used to get the parents to bring their children to the school.”⁹⁹ This view was supported by British Columbia Indian agent Thomas Deasy, who also wrote that “we shall never make the Indian realize the importance of education until we take hold of him and compel attendance at school.” Left at home, he thought, children fell under the influence of the older members of the community, who were

imbued with their old customs and habits; they realize little the necessity for morality or compliance with our laws and customs. Their forefathers lived without the assistance of the whites, and the Indian has nothing in common with us. Some of the older men consider their ways best, and there is a something underlying the character, habits and traits of the Indian that it will be hard to eliminate.¹⁰⁰

Although the churches and government officials thought the government should be enforcing its attendance regulations more strictly, the Liberals were not as lax in enforcement as the church criticism implies. In March 1901, Indian Commissioner David Laird recommended that the Indian agent for the Sarcee Band, A. J. McNeill, “exert if not exactly compulsion, fairly energetic measures, for instance, cutting the rations down, etc.”¹⁰¹ In December, McNeill reported he had taken the recommendations to

heart. To recruit five more students for the Sarcee boarding school, he had resorted “to the extreme measure of stopping the rations of the whole Band for the past eleven days.” The band, he said, was “rather hostile at first,” but had eventually come to realize “they cannot quite do as they like.”¹⁰² Laird pointed out that it might have been sufficient to simply stop the rations of the recalcitrant families, as opposed to those of the whole band, and instructed him not to take such measures in the future without approval from his superiors.¹⁰³

The Indian Affairs annual report for 1906 notes that in the Kwawkwewlth Agency, “a few parents were fined for not sending their children to school.”¹⁰⁴ That same year, Laird, responding to a situation at Onion Lake where the school-aged children of twelve families receiving government relief were not attending school, sought and received authorization from Ottawa to

withhold rations from such parents for the children at home who are fit to attend school, but are not sent thereto. This is a hardship of which they could relieve themselves by complying with the wish of the Department and sending their children to the school of their choice where they would be fed and clothed.¹⁰⁵

Admission and discharge policy

As parents were to discover to their sorrow, once they enrolled their child in a residential school, there was no question that the child’s continued residence at the school was anything other than compulsory. It was departmental policy that no child could be discharged without departmental approval—even if the parents had enrolled the child voluntarily. The government had no legislative basis for this policy.

As early as 1891, it was government policy to require parental consent for admission to residential school whenever the parents of one faith wanted to have their child educated at a school operated by a different church.¹⁰⁶ Samuel Lucas, the Indian agent on the Sarcee Reserve in what is now Alberta, reported in 1893 that “eight parents or guardians have signed an agreement to give up their children for an indefinite time.”¹⁰⁷ In 1895, A. E. Forget, then the assistant Indian commissioner for the Northwest, issued a circular to all industrial school principals and Indian agents, instructing them that “in all cases of pupils admitted into Boarding and Industrial Schools it is desired that a written application for such admission be taken from the parents by the Agents, Principal, or other official to whom the application is made.” Ottawa would provide blank application forms for this purpose.¹⁰⁸

Onion Lake Roman Catholic principal W. Comiré wrote in 1897 that parents “seem unwilling to sign the forms of application for admission required by the department. They prefer to keep the liberty of leaving or withdrawing their children from the school at will.”¹⁰⁹ By 1892, the department required that all parents sign an admission form

when they enrolled their children in a residential school. In signing the form, parents gave their consent that “the Principal or head teacher of the Institution for the time being shall be the guardian” of the child. In that year, the Department of Justice provided Indian Affairs with a legal opinion to the effect that “the fact of a parent having signed such an application is not sufficient to warrant the forcible arrest against the parents’ will of a truant child who has been admitted to an Industrial School pursuant to the application.” It was held that, without legislative authority, no form could provide school authorities with the power of arrest.¹¹⁰ Despite this warning, Indian Affairs would continue to enforce policies regarding attendance for which it had no legal authority well into the twentieth century.¹¹¹

The form in use in 1900 stipulated that the parent was making application for admission “for such term as the Department of Indian Affairs may deem proper.” The form also still required parents to consent to the provision that the “principal or head teacher of the institution for the time being shall be the guardian of the said child.”¹¹²

Sometimes, parents persuaded the school principal to discharge their child in spite of the regulation. In August 1894, Whitefish Lake Chief James Seenum (also known as Pakan) called on the Red Deer school to try to take his son out of the school. Principal John Nelson initially said no, the boy could not be discharged without the permission of the department. Nelson later wrote that if Seenum had “manifested an arrogant spirit I might have easily resisted his entreaties, but he seemed almost heart broken and wept when he realized the unfavourable prospect of securing his son’s discharge.” The principal was so moved that he told Seenum that although he could not discharge the boy, he “would not say he should not take him,” adding that such a measure would likely displease the government. Seenum took the hint and left the school with his son.¹¹³ Chief Henry Prince of the St. Peter’s Reserve in Manitoba was not so fortunate. When he removed his son from the St. Boniface school in 1895, the school officials had a police constable seek the boy’s return. Prince resisted their efforts, and was charged and convicted for interfering in police work.¹¹⁴

In some cases, Indian Affairs refused to discharge children who had been voluntarily enrolled until they turned eighteen. In 1903, when the government refused to discharge two brothers who were over fifteen, the students ran away from the Middlechurch school. They were apprehended and returned to the school on the basis of a warrant issued under the 1894 regulations. Their father, William Cameron, went to court and got a writ of habeas corpus. Normally, such a writ requires that the person under arrest be brought before a court. According to Martin Benson, Judge Richards of the Manitoba Court of Queen’s Bench found on the father’s behalf, and wrote, “The regulations for the detention of children until they reach the age of 18 years do not apply to children who have been voluntarily placed in the school and that to such children the parents have a right to get them out of the school at any time they wish to demand them.”¹¹⁵

In other words, the government's discharge policy for students who had been voluntarily enrolled had no legal basis. But this court victory did not change the policy. In 1907, it was still government policy that children, whether voluntarily enrolled by their parents or committed under the provisions of the *Indian Act*, could not be removed without the minister's permission.¹¹⁶ In his report for the year ending March 31, 1910, Duncan Campbell Scott, then superintendent of Indian Education, wrote that "pupils of residential schools are not usually allowed to leave the institutions until they reach the age of 18."¹¹⁷ Clearly, the government was willing to ignore court rulings.

For their part, the churches thought the discharge policy was not strict enough. Principal Father Hugonnard thought that eighteen was too low a discharge age, and that "many who go back to pure Indian surroundings will be liable to lose many of the benefits of the education they have received." He believed students should be discharged only "when the character is sufficiently formed, and when there is reasonable hope of the ex-pupil not lapsing into an uncivilized mode of life."¹¹⁸ In 1904, Dr. Sutherland, the general secretary of the Methodist Missionary Society, lobbied the federal government to increase the discharge age from eighteen to twenty-one.¹¹⁹

In the early twentieth century, British Columbia Indian agent A. W. Neill observed that school-discharge policies effectively discouraged parents from enrolling their children. While many wanted to see their children get some schooling, he wrote in 1906, parents "think the time is too long to be separated from them. They would agree to part with them for, say five years, but think that to put a child into the school at seven or eight years of age, and not get it out again until it is eighteen years old is too long."¹²⁰ He made the same point five years later, observing that

the system of keeping the children in until they are 18 years of age is against the success of the school. It makes parents reluctant to sign them in, it leads to trouble in the maintenance of order and discipline in the school, and too often tends to lower the vitality of the pupils, so that the health of ex-pupils is often found to be undermined.¹²¹

Neill's reports not only highlight parental resistance to enrolling their children, but they also demonstrate the degree to which the government and the schools ignored the legal rights of parents when it came to discharging students. Until 1908, the federal school regulations set the maximum age for compulsory school attendance for Aboriginal children at sixteen. In that year, the age was lowered to fifteen.¹²² While the regulation allowed the government to commit a child to a residential school until the age of eighteen, that was only in situations where it had been concluded that the child was being neglected or was not being properly educated. These conditions would not apply when parents were voluntarily enrolling a child. Yet, it is clear from Neill's letters that British Columbia schools and Indian Affairs had taken the position that even voluntarily enrolled children would not be discharged until they were eighteen.¹²³

house.”⁴⁵² After a typhoid outbreak at the Kuper Island school in 1939, all the students were inoculated.⁴⁵³

The per capita system of funding punished schools that followed policy and did not enrol children with infectious illnesses. In 1936, Blue Quills, Alberta, principal Joseph Angin complained that Indian agent W. E. Gullion, whom he described as a “hypocrite,” had undermined the school by forbidding parents to return their children to school at the end of summer holiday after an outbreak of whooping cough in the community. Angin argued that it made no sense to keep seventy-five children home from school because “only 6 or 7 were sick.” Angin was particularly concerned because Gullion’s decision would affect the amount of the school’s per capita grant.⁴⁵⁴ While Angin claimed that Gullion had acted against the instruction of the local doctors, Gullion maintained that they had supported his decision. He claimed that Angin, in contravention of his orders, had “started to urge the Indians to take their children back to school.”⁴⁵⁵

Limiting and opposing parental involvement

Into the late 1930s, parents were still expressing concern that they were not being properly informed about the health of their children. In 1931, Mrs. W. F. Dreaver informed Indian Affairs that she was refusing to return her daughter, Mary, to the Anglican school at Onion Lake because of the poor medical treatment her son had received there. She wrote that her son had returned to the school in the fall of 1930. At admission, he was examined and declared to be in good health. He became sick, but his parents were not informed of the illness until December. In response to the telegrams that the concerned parents sent the school, Henry Ellis, the school principal, assured them their boy would soon be out of bed. Eventually, the parents were able to get him back home, a trip they had to pay for themselves. The local doctor, who had originally approved him for entrance to the school, announced he was “far gone with T.B.” He died a few months later. Mrs. Dreaver said that rather than send her daughter to a school where “the children are neglected,” she would send her to the local day school.⁴⁵⁶ She apparently succeeded: the school records show that Mary Dreaver had been discharged that term and was attending the Mistawasis day school.⁴⁵⁷

Despite such incidents, schools continued to keep parents uninformed when their children became ill. In November 1936, a student from the Edmonton, Alberta, school died in the Edmonton hospital. Apparently, his parents had not been informed of his hospitalization, since Indian Affairs later instructed the Indian agent to inform the principals of St. Albert and Edmonton “that in future, when a pupil is placed in hospital due to serious illness the parents or guardian should be immediately notified.”⁴⁵⁸ A parent from northwestern Ontario wrote to Indian Affairs in March 1937, asking “if

you could be good enough to arrange that parents be notified of any sickness or death of their children at Pelican School [at Sioux Lookout], while in attendance there. It is always through other sources that we find out of the children's welfare, and not by the school authorities."⁴⁵⁹

Religious control over the delivery of medical services also generated conflicts with parents. In 1936, Andrew Gordon, a member of the Pasqua First Nation in Saskatchewan, tried to withdraw his older daughter, Edith, from the Qu'Appelle school. In making the request, he noted that he had attended the school as a youth for fourteen years, adding they "were 14 years of my life wasted." He stated that he was a pagan in religion, but had sent both his daughters to the school. However, his eleven-year-old daughter had died from pneumonia at the school. He thought she was given proper treatment by the Fort Qu'Appelle doctor and the Indian Affairs nurse. His daughter had asked him to keep the nuns and priests out of her room. She said they were telling her that she

was going to die for her father's sins, that she must get her father to join the catholic faith before she died, and many other things. The child was so earnest about this that my wife stayed with her as much as possible, but the moment she might be away for meals or a little sleep this Nun would get in and worry the child, and on my wife's return, she would find her in tears.

Despite his requests to the school principal, Gordon said, a nun continued to visit and worry his daughter, who, after rallying briefly, died. Gordon said the school staff told him he should be glad his daughter was in heaven, where she was "praying for you to be saved from your sins." Given these events, Gordon asked that he be allowed to have his other daughter officially discharged from the school.⁴⁶⁰ School officials denied Gordon's allegations, saying the deceased "girl was not bothered in any way at all." The Indian agent, Frank Booth, noted that Gordon was an "outstanding Indian," who was convinced that his statements were true and would be able to see to the education of his daughter if she were discharged. Therefore, he recommended that the daughter be discharged.⁴⁶¹ Despite this, J. D. Sutherland, the acting superintendent of Indian Education, denied the request, saying that "it is considered that Gordon's daughter received every possible care and attention previous to her death."⁴⁶² As a result, the older daughter, Edith, was not discharged until the fall of 1938, when she turned sixteen.⁴⁶³

The pressure on staff

Outbreaks of infectious illness could put tremendous stress on staff. Thirty-six students were bedridden as a result of a measles outbreak at the Sioux Lookout school in 1936.⁴⁶⁴ Earl Maquinna George, who attended the Ahousaht, British Columbia,

EXHIBIT I-10

Indian Residential Schools Settlement Agreement

May 8, 2006

CANADA, as represented by the Honourable Frank Iacobucci

-and-

PLAINTIFFS, as represented by the National Consortium
and the Merchant Law Group

-and-

Independent Counsel

-and-

THE ASSEMBLY OF FIRST NATIONS and INUIT REPRESENTATIVES

-and-

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA,
THE PRESBYTERIAN CHURCH OF CANADA,
THE UNITED CHURCH OF CANADA AND
ROMAN CATHOLIC ENTITIES

**INDIAN RESIDENTIAL SCHOOLS
SETTLEMENT AGREEMENT**

May 8, 2006

**INDIAN RESIDENTIAL SCHOOLS
SETTLEMENT AGREEMENT**

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May 8, 2006

**Indian Residential Schools
Settlement Agreement**

WHEREAS:

A. Canada and certain religious organizations operated Indian Residential Schools for the education of aboriginal children and certain harms and abuses were committed against those children;

B. The Parties desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools;

C. The Parties further desire the promotion of healing, education, truth and reconciliation and commemoration;

D. The Parties entered into an Agreement in Principle on November 20, 2005 for the resolution of the legacy of Indian Residential Schools:

- (i) to settle the Class Actions and the Cloud Class Action, in accordance with and as provided in this Agreement;
- (ii) to provide for payment by Canada of the Designated Amount to the Trustee for the Common Experience Payment;
- (iii) to provide for the Independent Assessment Process;
- (iv) to establish a Truth and Reconciliation Commission;
- (v) to provide for an endowment to the Aboriginal Healing Foundation to fund healing programmes addressing the legacy

of harms suffered at Indian Residential Schools including the intergenerational effects; and

- (vi) to provide funding for commemoration of the legacy of Indian Residential Schools;

E. The Parties, subject to the Approval Orders, have agreed to amend and merge all of the existing proposed class action statements of claim to assert a common series of Class Actions for the purposes of settlement;

F. The Parties, subject to the Approval Orders and the expiration of the Opt Out Periods without the Opt Out Threshold being met, have agreed to settle the Class Actions upon the terms contained in this Agreement;

G. The Parties, subject to the Approval Orders, agree to settle all pending individual actions relating to Indian Residential Schools upon the terms contained in this Agreement, save and except those actions brought by individuals who opt out of the Class Actions in the manner set out in this Agreement, or who will be deemed to have opted out pursuant to Article 1008 of *The Code of Civil Procedure of Quebec*;

H. This Agreement is not to be construed as an admission of liability by any of the defendants named in the Class Actions or the Cloud Class Action.

THEREFORE, in consideration of the mutual agreements, covenants and undertakings set out herein, the Parties agree that all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any

Class Member or Cloud Class Member ever had, now has or may hereafter have arising in relation to an Indian Residential School or the operation of Indian Residential Schools, whether such claims were made or could have been made in any proceeding including the Class Actions, will be finally settled based on the terms and conditions set out in this Agreement upon the Implementation Date, and the Releasees will have no further liability except as set out in this Agreement.

ARTICLE ONE INTERPRETATION

1.01 Definitions

In this Agreement, the following terms will have the following meanings:

“Aboriginal Healing Foundation” means the non-profit corporation established under Part II of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970 to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including intergenerational effects.

“Agreement in Principle” means the Agreement between Canada, as represented by the Honourable Frank Iacobucci; Plaintiffs, as represented by the National Consortium, Merchant Law Group, Inuvialuit Regional Corporation, Makivik Corporation, Nunavut Tunngavik Inc., Independent Counsel, and the Assembly of First Nations; the General Synod of the Anglican Church of Canada, the Presbyterian Church in Canada, the United

EXHIBIT I-11

Mandate of the Truth and Reconciliation Commission of Canada (Also Schedule N to IRSSA)

SCHEDULE "N"

MANDATE FOR THE TRUTH AND RECONCILIATION COMMISSION

There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future. The truth telling and reconciliation process as part of an overall holistic and comprehensive response to the Indian Residential School legacy is a sincere indication and acknowledgement of the injustices and harms experienced by Aboriginal people and the need for continued healing. This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation.

Principles

Through the Agreement, the Parties have agreed that an historic Truth and Reconciliation Commission will be established to contribute to truth, healing and reconciliation.

The Truth and Reconciliation Commission will build upon the "Statement of Reconciliation" dated January 7, 1998 and the principles developed by the Working Group on Truth and Reconciliation and of the Exploratory Dialogues (1998-1999). These principles are as follows: accessible; victim-centered; confidentiality (if required by the former student); do no harm; health and safety of participants; representative; public/transparent; accountable; open and honourable process; comprehensive; inclusive, educational, holistic, just and fair; respectful; voluntary; flexible; and forward looking in terms of rebuilding and renewing Aboriginal relationships and the relationship between Aboriginal and non-Aboriginal Canadians.

Reconciliation is an ongoing individual and collective process, and will require commitment from all those affected including First Nations, Inuit and Métis former Indian Residential School (IRS) students, their families, communities, religious entities, former school employees, government and the people of Canada. Reconciliation may occur between any of the above groups.

Terms of Reference

1. Goals

The goals of the Commission shall be to:

- (a) Acknowledge Residential School experiences, impacts and consequences;
- (b) Provide a holistic, culturally appropriate and safe setting for former students, their families and communities as they come forward to the Commission;

- (c) Witness,¹ support, promote and facilitate truth and reconciliation events at both the national and community levels;
- (d) Promote awareness and public education of Canadians about the IRS system and its impacts;
- (e) Identify sources and create as complete an historical record as possible of the IRS system and legacy. The record shall be preserved and made accessible to the public for future study and use;
- (f) Produce and submit to the Parties of the Agreement² a report including recommendations³ to the Government of Canada concerning the IRS system and experience including: the history, purpose, operation and supervision of the IRS system, the effect and consequences of IRS (including systemic harms, intergenerational consequences and the impact on human dignity) and the ongoing legacy of the residential schools;
- (g) Support commemoration of former Indian Residential School students and their families in accordance with the Commemoration Policy Directive (Schedule "X" of the Agreement).

2. Establishment, Powers, Duties and Procedures of the Commission

The Truth and Reconciliation Commission shall be established by the appointment of "the Commissioners" by the Federal Government through an Order in Council, pursuant to special appointment regulations.

Pursuant to the Court-approved final settlement agreement and the class action judgments, the Commissioners:

- (a) in fulfilling their Truth and Reconciliation Mandate, are authorized to receive statements and documents from former students, their families, community and all other interested participants, and, subject to (f), (g) and (h) below, make use of all documents and materials produced by the parties. Further, the Commissioners are authorized and required in the public interest to archive all such documents, materials, and transcripts or recordings of statements received, in a manner that will ensure their preservation and accessibility to the public and in accordance with access and privacy legislation, and any other applicable legislation;

¹ This refers to the Aboriginal principle of "witnessing".

² The Government of Canada undertakes to provide for wider dissemination of the report pursuant to the recommendations of the Commissioners

³ The Commission may make recommendations for such further measures as it considers necessary for the fulfillment of the Truth and Reconciliation Mandate and goals.

- (b) shall not hold formal hearings, nor act as a public inquiry, nor conduct a formal legal process;
- (c) shall not possess subpoena powers, and do not have powers to compel attendance or participation in any of its activities or events. Participation in all Commission events and activities is entirely voluntary;
- (d) may adopt any informal procedures or methods they may consider expedient for the proper conduct of the Commission events and activities, so long as they remain consistent with the goals and provisions set out in the Commission's mandate statement;
- (e) may, at its discretion, hold sessions in camera, or require that sessions be held in camera;
- (f) shall perform their duties in holding events, in activities, in public meetings, in consultations, in making public statements, and in making their report and recommendations without making any findings or expressing any conclusion or recommendation, regarding the misconduct of any person, unless such findings or information has already been established through legal proceedings, by admission, or by public disclosure by the individual. Further, the Commission shall not make any reference in any of its activities or in its report or recommendations to the possible civil or criminal liability of any person or organization, unless such findings or information about the individual or institution has already been established through legal proceedings;
- (g) shall not, except as required by law, use or permit access to statements made by individuals during any of the Commissions events, activities or processes, except with the express consent of the individual and only for the sole purpose and extent for which the consent is granted;
- (h) shall not name names in their events, activities, public statements, report or recommendations, or make use of personal information or of statements made which identify a person, without the express consent of that individual, unless that information and/or the identity of the person so identified has already been established through legal proceedings, by admission, or by public disclosure by that individual. Other information that could be used to identify individuals shall be anonymized to the extent possible;
- (i) notwithstanding (e), shall require in camera proceedings for the taking of any statement that contains names or other identifying information of persons alleged by the person making the statement of some wrong doing, unless the person named or identified has been convicted for the alleged wrong doing. The Commissioners shall not record the names of persons so identified, unless the person named or identified has been

convicted for the alleged wrong doing. Other information that could be used to identify said individuals shall be anonymized to the extent possible;

- (j) shall not, except as required by law, provide to any other proceeding, or for any other use, any personal information, statement made by the individual or any information identifying any person, without that individual's express consent;
- (k) shall ensure that the conduct of the Commission and its activities do not jeopardize any legal proceeding;
- (l) may refer to the NAC for determination of disputes involving document production, document disposal and archiving, contents of the Commission's Report and Recommendations and Commission decisions regarding the scope of its research and issues to be examined. The Commission shall make best efforts to resolve the matter itself before referring it to the NAC.

3. Responsibilities

In keeping with the powers and duties of the Commission, as enumerated in section 2 above, the Commission shall have the following responsibilities:

- (a) to employ interdisciplinary, social sciences, historical, oral traditional and archival methodologies for statement-taking, historical fact-finding and analysis, report-writing, knowledge management and archiving;
- (b) to adopt methods and procedures which it deems necessary to achieve its goals;
- (c) to engage the services of such persons including experts, which it deems necessary to achieve its goals;
- (d) to establish a research centre and ensure the preservation of its archives;
- (e) to have available the use of such facilities and equipment as is required, within the limits of appropriate guidelines and rules;
- (f) to hold such events and give such notices as appropriate. This shall include such significant ceremonies as the Commission sees fit during and at the conclusion of the 5 year process;
- (g) to prepare a report;
- (h) to have the report translated in the two official languages of Canada and all or parts of the report in such Aboriginal languages as determined by the Commissioners;

- (i) to evaluate commemoration proposals in line with the Commemoration Policy Directive (Schedule "X" of the Agreement).

4. Exercise of Duties

As the Commission is not to act as a public inquiry or to conduct a formal legal process, it will, therefore, not duplicate in whole or in part the function of criminal investigations, the Independent Assessment Process, court actions, or make recommendations on matters already covered in the Agreement. In the exercise of its powers the Commission shall recognize:

- (a) the unique experiences of First Nations, Inuit and Métis former IRS students, and will conduct its activities, hold its events, and prepare its Report and Recommendations in a manner that reflects and recognizes the unique experiences of all former IRS students;
- (b) that the truth and reconciliation process is committed to the principle of voluntariness with respect to individuals' participation;
- (c) that it will build upon the work of past and existing processes, archival records, resources and documentation, including the work and records of the *Royal Commission on Aboriginal Peoples* of 1996;
- (d) the significance of Aboriginal oral and legal traditions in its activities;
- (e) that as part of the overall holistic approach to reconciliation and healing, the Commission should reasonably coordinate with other initiatives under the Agreement and shall acknowledge links to other aspects of the Agreement such that the overall goals of reconciliation will be promoted;
- (f) that all individual statements are of equal importance, even if these statements are delivered after the completion of the report;
- (g) that there shall be an emphasis on both information collection/storage and information analysis.

5. Membership

The Commission shall consist of an appointed Chairperson and two Commissioners, who shall be persons of recognized integrity, stature and respect.

- (a) Consideration should be given to at least one of the three members being an Aboriginal person;
- (b) Appointments shall be made out of a pool of candidates nominated by former students, Aboriginal organizations, churches and government;

- (c) The Assembly of First Nations (AFN) shall be consulted in making the final decision as to the appointment of the Commissioners.

6. Secretariat

The Commission shall operate through a central Secretariat.

- (a) There shall be an Executive Director in charge of the operation of the Commission who shall select and engage staff and regional liaisons;
- (b) The Executive Director and the Secretariat shall be subject to the direction and control of the Commissioners;
- (c) The Secretariat shall be responsible for the activities of the Commission such as:
 - (i) research;
 - (ii) event organization;
 - (iii) statement taking/truth-sharing;
 - (iv) obtaining documents;
 - (v) information management of the Commission's documents;
 - (vi) production of the report;
 - (vii) ensuring the preservation of its records;
 - (viii) evaluation of the Commemoration Policy Directive proposals.
- (d) The Executive Director and Commissioners shall consult with the Indian Residential School Survivor Committee on the appointment of the Regional Liaisons.
- (e) Regional liaisons shall:
 - (i) act as knowledge conduits and promote sharing of knowledge among communities, individuals and the Commission;
 - (ii) provide a link between the national body and communities for the purpose of coordinating national and community events;
 - (iii) provide information to and assist communities as they plan truth and reconciliation events, coordinate statement-taking/truth-sharing and event-recording, and facilitate information flow from the communities to the Commission.

7. **Indian Residential School Survivor Committee (IRSSC)**

The Commission shall be assisted by an Indian Residential School Survivor Committee (IRSSC).

- (a) The Committee shall be composed of 10 representatives drawn from various Aboriginal organizations and survivor groups. Representation shall be regional, reflecting the population distribution of Indian Residential Schools (as defined in the Agreement). The majority of the representatives shall be former residential school students;
- (b) Members of the Committee shall be selected by the Federal Government, in consultation with the AFN, from a pool of eligible candidates developed by the stakeholders;
- (c) Committee members are responsible for providing advice to the Commissioners on:
 - (i) the characteristics of a “community” for the purposes of participation in the Commission processes;
 - (ii) the criteria for the community and national processes;
 - (iii) the evaluation of Commemoration Policy Directive proposals;
 - (iv) such other issues as are required by the Commissioners.

8. **Timeframe**

The Commission shall complete its work within five years. Within that five year span, there are two timelines:

Two Year Timeline

- (a) Preparation of a budget within three months from being launched, under the budgetary cap provision in the Agreement;
- (b) Completion of all national events, and research and production of the report on historic findings and recommendations, within two years of the launch of the Commission, with the possibility of a 6 month extension, which shall be at the discretion of the Commissioners.

Five Year Timeline

- (a) Completion of the community truth and reconciliation events, statement taking/truth sharing, reporting to the Commission from communities, and closing ceremonies;
- (b) Establishment of a research centre.

9. Research

The Commission shall conduct such research, receive and take such statements and consider such documents as it deems necessary for the purpose of achieving its goals.

10. Events

There are three essential event components to the Truth and Reconciliation Commission: National Events, Community Events and Individual Statement-Taking/Truth Sharing. The Truth and Reconciliation process will be concluded with a final Closing Ceremony.

(A) National Events

The national events are a mechanism through which the truth and reconciliation process will engage the Canadian public and provide education about the IRS system, the experience of former students and their families, and the ongoing legacies of the institutions.

The Commission shall fund and host seven national events in different regions across the country for the purpose of:

- (a) sharing information with/from the communities;
- (b) supporting and facilitating the self empowerment of former IRS students and those affected by the IRS legacy;
- (c) providing a context and meaning for the Common Experience Payment;
- (d) engaging and educating the public through mass communications;
- (e) otherwise achieving its goals.

The Commission shall, in designing the events, include in its consideration the history and demographics of the IRS system.

National events should include the following common components:

- (f) an opportunity for a sample number of former students and families to share their experiences;
- (g) an opportunity for some communities in the regions to share their experiences as they relate to the impacts on communities and to share insights from their community reconciliation processes;
- (h) an opportunity for participation and sharing of information and knowledge among former students, their families, communities, experts, church and government officials, institutions and the Canadian public;

- (i) ceremonial transfer of knowledge through the passing of individual-statement transcripts or community reports/statements. The Commission shall recognize that ownership over IRS experiences rests with those affected by the Indian Residential School legacy;
- (j) analysis of the short and long term legacy of the IRS system on individuals, communities, groups, institutions and Canadian society including the intergenerational impacts of the IRS system;
- (k) participation of high level government and church officials;
- (l) health supports and trauma experts during and after the ceremony for all participants.

(B) Community Events

It is intended that the community events will be designed by communities and respond to the needs of the former students, their families and those affected by the IRS legacy including the special needs of those communities where Indian Residential Schools were located.

The community events are for the purpose of:

- (a) acknowledging the capacity of communities to develop reconciliation practices;
- (b) developing collective community narratives about the impact of the IRS system on former students, families and communities;
- (c) involving church, former school employees and government officials in the reconciliation process, if requested by communities;
- (d) creating a record or statement of community narratives - including truths, insights and recommendations - for use in the historical research and report, national events, and for inclusion in the research centre;
- (e) educating the public and fostering better relationships with local communities;
- (f) allowing for the participation from high level government and church officials, if requested by communities;
- (g) respecting the goal of witnessing in accordance with Aboriginal principles.

The Commission, during the first stages of the process in consultation with the IRSSC, shall develop the core criteria and values consistent with the Commission's mandate that will guide the community processes.

Within these parameters communities may submit plans for reconciliation processes to the Commission and receive funding for the processes within the limits of the Commission's budgetary capacity.

(C) Individual Statement-Taking/Truth Sharing

The Commission shall coordinate the collection of individual statements by written, electronic or other appropriate means. Notwithstanding the five year mandate, anyone affected by the IRS legacy will be permitted to file a personal statement in the research centre with no time limitation.

The Commission shall provide a safe, supportive and sensitive environment for individual statement-taking/truth sharing.

The Commission shall not use or permit access to an individual's statement made in any Commission processes, except with the express consent of the individual.

(D) Closing Ceremony

The Commission shall hold a closing ceremony at the end of its mandate to recognize the significance of all events over the life of the Commission. The closing ceremony shall have the participation of high level church and government officials.

11. Access to Relevant Information

In order to ensure the efficacy of the truth and reconciliation process, Canada and the churches will provide all relevant documents in their possession or control to and for the use of the Truth and Reconciliation Commission, subject to the privacy interests of an individual as provided by applicable privacy legislation, and subject to and in compliance with applicable privacy and access to information legislation, and except for those documents for which solicitor-client privilege applies and is asserted.

In cases where privacy interests of an individual exist, and subject to and in compliance with applicable privacy legislation and access to information legislation, researchers for the Commission shall have access to the documents, provided privacy is protected. In cases where solicitor-client privilege is asserted, the asserting party will provide a list of all documents for which the privilege is claimed.

Canada and the churches are not required to give up possession of their original documents to the Commission. They are required to compile all relevant documents in an organized manner for review by the Commission and to provide access to their archives for the Commission to carry out its mandate. Provision of documents does not require provision of original documents. Originals or true copies may be provided or originals

may be provided temporarily for copying purposes if the original documents are not to be housed with the Commission.

Insofar as agreed to by the individuals affected and as permitted by process requirements, information from the Independent Assessment Process (IAP), existing litigation and Dispute Resolution processes may be transferred to the Commission for research and archiving purposes.

12. National Research Centre

A research centre shall be established, in a manner and to the extent that the Commission's budget makes possible. It shall be accessible to former students, their families and communities, the general public, researchers and educators who wish to include this historic material in curricula.

For the duration of the term of its mandate, the Commission shall ensure that all materials created or received pursuant to this mandate shall be preserved and archived with a purpose and tradition in keeping with the objectives and spirit of the Commission's work.

The Commission shall use such methods and engage in such partnerships with experts, such as Library and Archives Canada, as are necessary to preserve and maintain the materials and documents. To the extent feasible and taking into account the relevant law and any recommendations by the Commission concerning the continued confidentiality of records, all materials collected through this process should be accessible to the public.

13. Privacy

The Commission shall respect privacy laws, and the confidentiality concerns of participants. For greater certainty:

- (a) any involvement in public events shall be voluntary;
- (b) notwithstanding 2(i), the national events shall be public or in special circumstances, at the discretion of the Commissioners, information may be taken in camera;
- (c) the community events shall be private or public, depending upon the design provided by the community;
- (d) if an individual requests that a statement be taken privately, the Commission shall accommodate;
- (e) documents shall be archived in accordance with legislation.

14. **Budget and Resources**

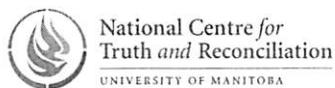
The Commission shall prepare a budget within the first three months of its mandate and submit it to the Minister of Indian Residential Schools Resolution Canada for approval. Upon approval of its budget, it will have full authority to make decisions on spending, within the limits of, and in accordance with, its Mandate, its establishing Order in Council, Treasury Board policies, available funds, and its budgetary capacity.

The Commission shall ensure that there are sufficient resources allocated to the community events over the five year period. The Commission shall also ensure that a portion of the budget is set aside for individual statement-taking/truth sharing and to archive the Commission's records and information.

Institutional parties shall bear the cost of participation and attendance in Commission events and community events, as well as provision of documents. If requested by the party providing the documents, the costs of copying, scanning, digitalizing, or otherwise reproducing the documents will be borne by the Commission.

EXHIBIT I-12

**Hamilton, Scott. Where are the
Children Buried? Truth and
Reconciliation Commission Report.
11 April 2015.**



HOME / YOUR RECORDS / REPORTS

Reports

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Highlighted Reports

We would like to bring these reports to the country's attention as there is more work to be done and more children to be found to honour and protect them.

Where are the Children Buried? (PDF)

Dr. Scott Hamilton, Dept. of Anthropology, Lakehead University, Thunder Bay, Ontario
shamilto@lakeheadu.ca

Where are the Children Buried? Figures and Illustrations (PDF)

Figures and illustrations accompanying Dr. Scott Hamilton's report "Where are the Children Buried?"

Truth and Reconciliation Commission Reports

Reports listed here were issued or created by the Truth and Reconciliation Commission of Canada (TRC). These digital copies can be accessed or duplicated at no charge from the NCTR's website. All reports are in the public domain.

Full print copies of the TRC reports can be purchased from [McGill-Queen's University Press](#). At this time, the NCTR does not offer print copies for sale.



Honouring the Truth, Reconciling for the Future (PDF)

2015

Summary of the final report of the Truth and Reconciliation of Canada.



What We Have Learned (PDF)

2015

Principles of Truth and Reconciliation

National Centre for Truth and Reconciliation Reports

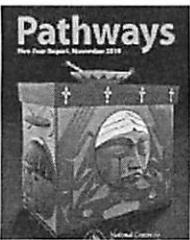
Reports listed here were issued or created by the National Centre for Truth and Reconciliation.



The 2019-2020 NCTR Annual Report (PDF)

2019-2020

The National Centre for Truth and Reconciliation's annual report for November 2019 to December 2020.



Pathways (PDF)

2014-2019

Pathways The National Centre for Truth and Reconciliation's Five-Year Report for 2014 to 2019.

Modern Reports

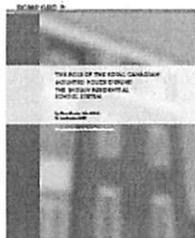
Reports listed here are relevant and important reports issued in recent years related to the Residential School system.



Independent Assessment Process Final Report (PDF)

2021

Issued by the Independent Assessment Process (IAP) Oversight Committee.



The Role of the RCMP During the Indian Residential School System (PDF)

2011

Composed of internal RCMP research, this report documents some aspects of its

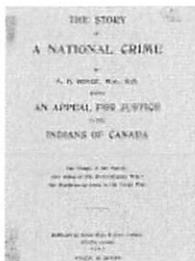
Government Reports

Reports listed here are central historical reports related to the Residential School system.



1879

Commissioned by Prime Minister Sir John A. Macdonald, recommendations in this report led to the creation of government funded Industrial schools in Canada.



The Story of A National Crime (PDF)

1922

Working for the federal government, Peter Bryce repeatedly reported that tuberculosis and poor conditions in residential schools were decimating Aboriginal populations.

Legislation

Reports listed here were created by the Canadian Government regarding First Nations, Métis and Inuit peoples.

1869 Gradual Enfranchisement Act (PDF)

1869



A number of pieces of legislation, including the Gradual Civilization Act (1857) and Gradual Enfranchisement Act (1869) were consolidated in the Indian Act of 1876.

1876 Indian Act (PDF)

1876



Aboriginal Healing Foundation Reports

We gratefully acknowledge the Legacy of Hope Foundation for granting access to the Aboriginal Healing Foundation publications. Visit <https://ahf2.ca/> to order hard copies.



Cultivating Canada: Reconciliation through the Lens of Cultural Diversity (PDF)

The final volume in a series published by the AHF as it prepared to close its doors, this volume is the AHF's final word in terms of its research agenda.



AHF Final Report: Volume 1 (A Healing Journey: Reclaiming Wellness) (PDF)

The final report and summary of the Aboriginal Healing Foundation.

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Where are the Children buried?

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Introduction

This report addresses the question where deceased Indian Residential School (IRS) students are buried. This is difficult to answer because of the varying circumstances of death and burial, coupled with the generally sparse information about Residential School cemeteries. It requires a historic understanding of school operations that contextualizes the patterns underlying death and burial. When documentation is insufficient, this historical perspective also aids prediction which former school sites are most likely to be associated with cemeteries. Also important is identifying the locations of the former schools as precisely as possible (an issue complicated by the fact that some schools were rebuilt in various locations under the same name), and then seeking out physical evidence of a nearby cemetery (or cemeteries). In some cases information is readily available, but in others there was little to be found in the available archival documents. In those situations attention shifted to an internet-based search, coupled with examination of maps and satellite images. This report concludes with recommendations how to address the gaps in our current knowledge about school cemeteries, and how best to document, commemorate and protect them.

This report represents a collective effort. Alexandra Maass initiated the research by gathering information from disparate sources, and preparing reports for schools with a reported cemetery. Scott Hamilton authored this report with input from Doug Smith. Hamilton built upon Maass' work by developing a historical interpretative context, documenting the location and condition of Residential School sites, and searching for evidence of cemeteries in maps and satellite imagery. The satellite imagery derives from either Google Earth™ or Birdseye™, the latter through a Garmin™ subscription service. This imagery is internet-based and available Canada-wide. Downloadable imagery of sufficient quality is a relatively recent phenomenon, and is not yet of uniformly good

quality throughout the country. That being said, much of it was of surprisingly good quality, with resolution of 2-5 metres or better. This allowed ready visual interpretation of larger ground features, and also cost-effective examination of school grounds located throughout Canada. Once the area of interest has been identified, a more comprehensive examination is possible by purchasing higher resolution satellite imagery from commercial vendors. Hamilton's work focused on the surviving documents, and did not involve contact with First Nations, churches that operated the schools, or municipalities within which the schools are now located. As addressed more fully in the recommendations section, building upon this foundation with locally based research initiatives are the obvious next steps.

In effect, this report offers an overview and 'gap analysis' to suggest where further research is required. It is divided into two parts. The first part (represented by this report) is a general overview, with specific schools used to illustrate key issues associated with IRS cemeteries. The second document is a more substantive resource that summarizes each school's location and construction sequence, duration of operation, and reported cemeteries. It includes maps, sketches, photos and satellite images, detailing the former school properties in as much detail as is currently possible. It also identifies 'information voids' where we either do not presently know the school location, or have not been able to identify a cemetery. This evaluation of current knowledge should be used as a starting point for seeking local knowledge to confirm or correct it, and as a catalyst for dialogue how to protect and maintain IRS cemeteries with their many marked and unmarked graves.

School Mortality

Over about 140 years of operation at over 150 Indian Residential School locations, TRC research indicates that at least 3,213 children are reported to have died¹. This is a conservative estimate in light of the sporadic record keeping and poor document survival, and the early state of research into a vast (and still growing) archive. Most of these children died far from home, and often without their families being adequately informed of the circumstances of death or the place of burial. For the most part, the surviving

¹ This estimated total reflects TRC analysis of the Registers of Confirmed Deaths as of November 18, 2014.

records do not provide this information, and this report marks an early effort at searching for these resting places.

It is clear that communicable diseases were a primary cause of poor health and death for many Aboriginal people during the 19th and early 20th Centuries. Some children might have contracted disease at home prior to attending school, but others were likely infected within crowded, often unsanitary, and poorly constructed residential schools. It is also likely that significant numbers of chronically ill children died within a few years after school discharge.

In his 1906 annual report, Dr. Peter Bryce, the chief medical officer for Indian Affairs, outlined the extent of this Aboriginal health crisis, and noted that “the Indian population of Canada has a mortality rate of more than double that of the whole population, and in some provinces more than three times.” Tuberculosis was the prevalent cause of death. He described a cycle of disease in which infants and children were infected at home and sent to residential schools, where they infected other children. The children infected in the schools were “sent home when too ill to remain at school, or because of being a danger to the other scholars, and have conveyed the disease to houses previously free.”²

Dr. Bryce again raised the issue of tuberculosis in the schools in 1909. In that year, he and Lafferty undertook a detailed examination of all 243 students at seven schools in southern Alberta. Bryce prepared a report of their work, and concluded that there was a “marked” presence of tuberculosis among all age groups. In some schools, “there was not a child that showed a normal temperature.” He noted that, although they were not included in his study, four boys recently discharged from the High River, Alberta, school were in an “advanced state of the illness.” And, “in no single instance in any school where a young child was found awaiting admission, did it not show signs of tuberculosis.”

Bryce also provided a national context for the school’s death rates. Using the statistics for the Shingkwauk Home in Ontario, the Sarcee school in Alberta, and the Cranbrook school in British Columbia for the period from 1892 to 1908, he calculated an annual

² Canada, *Annual Report of the Department of Indian Affairs, 1906*, 274–275.

death rate, from all causes, of 8,000 deaths per 100,000. (He included deaths at school and “soon after leaving” in making this calculation.) By comparison, according to Bryce, the 1901 Canadian census showed a death rate, from all causes, for those between five and fourteen years of age, of an equivalent of 430 per 100,000.³ TRC statistical research reported elsewhere demonstrates that this pattern of much higher death rates compared to children within the general Canadian population persisted as late as 1945. Thereafter, the death rate among Aboriginal children attending residential schools declined to levels more consistent with the general population.

While the appalling death rates within the Residential Schools to the middle of the 20th Century far exceeded that among non-Aboriginal Canadians, it must be considered in the context of health care and medical knowledge in early Canada. Many of the early residential schools were established within the first 50 years of Canadian Confederation, at a time of rapid economic development and large-scale immigration into regions with large Aboriginal populations. The more frequent contact resulted in rapid spread of disease to Indigenous populations with limited resistance to infectious disease. Provincial and municipal governments were either not yet established or were in their infancy, and public health and cemetery regulations were comparatively undeveloped. Given the lack of regulation at the time, it appears that most residential school graveyards were established informally, and have left little in the way of formal documentation. This also likely contributed to a suspected under-reporting of mortality in the schools, particularly in late 19th Century. This would have been particularly the case when school staff faced emergency situations during disease outbreaks that resulted in multiple deaths. In such circumstances, they may have been caring for many sick people with insufficient medical assistance, and with little help in preparing and burying those who died. It is also clear that insufficient consideration was made for the continuing care of graveyards upon closure of the Indian Residential Schools. Uncertainty over responsibility for closed schools and cemeteries (i.e. the churches that operated the facilities, or the federal government who financed and administered the system) remains an important issue. That

³ Library and Archives Canada, RG10, volume 3957, file 140754-1, P. H. Bryce to F. Pedley, 5 November 1909.

is, what entity should accept responsibility for the documentation, ongoing maintenance, protection, and commemoration of IRS cemeteries?

Some students died at the schools, while other seriously ill children were returned home, or admitted to hospitals or sanatoria where some may have later died. Some of the deceased were returned to their families for burial, but most others were likely buried in cemeteries on school grounds, or in nearby church, reserve or municipal cemeteries. We have no clear sense of the relative frequency with which these alternatives were employed, nor how circumstances varied with Church policy, through time, or across geography and political jurisdiction.

While some graves and cemeteries associated with the residential schools are known and are still maintained, others are now unknown or incompletely documented in the literature, and may even have passed from local memory. Some burial places are within or near old school grounds, but few seem to have been formally identified and designated by the provincial and territorial agencies responsible for cemetery regulation. Many of these inactive and overgrown cemeteries are not readily identifiable and are not maintained. Without formal documentation, it becomes more difficult to offer protection from contemporary or future land development. Even when considering presently known and maintained cemeteries, some graves may lie unrecognized after the decay and disappearance of wood grave markers and enclosing graveyard fences. This presents a serious challenge for identifying, commemorating, or protecting unmarked graves and undocumented cemeteries. Possible strategies for remediating this situation are offered later in this report.

Residential Schools in Historical Context

Indian Residential School operations encompass much of Canada's nationhood. Often established before regions achieved provincial status, many early Residential Schools derive from Christian missionary work. Their establishment and operation was closely tied to the colonial development, and also early Canadian policies designed to facilitate agricultural settlement and economic development. There is a growing literature base

regarding these schools, of which books by J. S. Milloy⁴ and J. R. Miller⁵ are the most prominent, and contribute much to this general discussion.

While efforts at schooling Aboriginal children date back to colonial New France⁶, the early Church-operated boarding schools considered here date from the 1830s. The early mission schools were often established within or near Native communities, and often contained a school, a church, rectory or convent, a cemetery and sometimes a small hospital. They also often contained farm buildings, gardens or a sawmill to improve self-sufficiency, and to provide vocational training.

Only eight mission schools intended specifically for Aboriginal education were operating at the time of Confederation (Table 1), but they sharply increased in number shortly after Canada's 1870 purchase of Rupert's Land, and with federal funding provisions for residential schools. This federal interest in Aboriginal education was one outcome of treaty making throughout the newly acquired territory after 1871. As described in more detail elsewhere, these schools were intended to provide basic literacy, to unilaterally acculturate children to non-Aboriginal social and religious values, and to provide vocational skills calculated to facilitate assimilation.

Beginning in 1883, the Canadian government also began to establish 'industrial schools'. These larger institutions were calculated to provide both academic and 'industrial' training, with an eye to aid employment and integration within the increasingly dominant Euro-Canadian society. This often involved farm operations, with boys doing much of the outside labour (farm chores, gardening, firewood cutting, construction), and girls doing much of the indoor labour (sewing, cleaning, washing and cooking). These schools were also more frequently located near non-aboriginal communities, with students drawn from distant reserves. While the churches continued to run the industrial schools, the federal government initially paid the cost of construction and operation. Such schools also appear to be less frequently associated with a mission and church. In the early 1890s funding of these schools was placed on a *per capita*

⁴ 1999 *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986*. Univ. of Manitoba Press

⁵ 1996 *Shingwauk's Vision: A History of Native Residential Schools*. Toronto, University of Toronto Press.

⁶ Auger, Donald J. 2005, *Indian Residential Schools In Ontario*. Nishnawbe Aski Nation, page 4.

system, but by the 1920s the federal government stopped differentiating between industrial and regular residential schools.

These acculturative policies and practices seriously impacted children who were already vulnerable to communicable disease. As the Residential School system expanded in the late 19th Century, and in light of the general mortality patterns within Aboriginal communities of early Canada, rates of student illness and death remained high. This would have been compounded by poor health screening at admission, coupled with the generally poor living conditions within the schools. However, accurately determining the annual number of student deaths is not currently possible given the poor state of the records. It is also difficult to determine where deceased children might have been buried. Thus, this report summarizes the existing cemetery information, and offers suggestions (based upon the sum of probabilities) which schools most likely suffered mortality and had cemeteries.

Patterns in school numbers and enrollment.

This section reviews numeric information addressing the growth of the IRS system, coupled with what we know about the changing pattern of student illness and death. In the absence of reliable mortality records, these patterns offer a means of identifying schools that are more likely to have suffered student mortality, and therefore, are more likely to be associated with a cemetery. The schools considered here date from as early as 1828 (Mohawk Institute, Ontario) to as late as 1996. Most of the schools operated within a roughly 90-year period between the early 1880s through to the early 1970s. Figure 1 offers a cumulative summary of the annual number of schools operating within each province or territory. It reports the rapid growth in school numbers after 1870 (especially in western Canada and northern Ontario), and a post-1950 increase in schools and hostels in the Arctic (including northern Québec).

The total number of schools sharply increased after the late 1880s, forming an irregular plateau until the late 1930s (Figure 1). Thereafter they briefly declined during the 1940s and early 50s, but again climbed sharply to reach a peak of 90 in 1964. After

about 1972 school numbers rapidly decreased in all jurisdictions, with the last schools persisting until as late as 1996 in Saskatchewan, Nunavut and the North West Territories.

Figure 1 includes the annual number of reported student deaths, and reveals wild fluctuations from year to year. While these sharp fluctuations may reflect the impact of periodic epidemics that swept through the schools, it is more likely to be due to poor record keeping or sporadic survival of records. Perhaps the only reliable trend is apparent with the abrupt decline in annual mortality after about 1948, and the generally low rates thereafter until the closure of the last residential schools in 1996.

Figure 2 simultaneously presents the annual number of operating schools, coupled with the reported enrollment and number of deaths. To meaningfully present all three variables on a single chart, the numbers of schools and mortalities are scaled using the left vertical axis, and total annual student enrollment is scaled using the right vertical axis. Note that on Figure 2 the number of students enrolled in day schools is also plotted from 1930 through to 1965 (from 1965 onwards Indian Affairs ceased to provide annual reports on the number of residential school students). Consistent with the increasing numbers of residential schools, annual student enrollment climbed after the late 1880s, and again after 1920, to reach a peak of over 10,000 annual enrolments by the early 1950s (Figure 2). Thereafter enrolment numbers stabilized and then declined in face of the continued enrolment growth at the day schools (Figure 2). By the late 1960s the numbers of schools in operation also declined sharply. Analysis presented elsewhere in TRC reports indicates that these enrollment numbers are less reliable prior to ca. 1890 and after 1962. Therefore, Figure 2 does not plot enrolment numbers after about 1965.

Mortality Patterns

Figure 2 demonstrates that while the number of schools increased after the mid 1870s, these predominately church-run (and government financed) ‘industrial’ and ‘boarding’ schools had comparatively low student enrollments until after 1890, and did not increase sharply until after the mid 1920s. In 1920 an Indian Act amendment gave the Department of Indian Affairs the authority to send any school-aged First Nations child to either a day school or a residential school. In many isolated communities with insufficient numbers to

justify a day school, there was no alternative to enrolment in a residential school. The decade-long decline in the numbers of schools in the 1940s and early 1950s coincides with the era of peak student enrollment in the residential schools. In part this reflects destruction of a number of schools. Between 1940 to 1949 school buildings at the following locations were destroyed by fire.

- 1940: Carcross, Yukon Territory.⁷
- 1940: Ahousaht, British Columbia.⁸
- 1941: Alberni, British Columbia.⁹
- 1942: File Hills, Saskatchewan.¹⁰
- 1943: Fort George, Quebec, (the Anglican school).¹¹
- 1943: Onion Lake, Saskatchewan (the Anglican school).¹²
- 1945: Wabasca, Alberta.¹³
- 1946: Norway House, Manitoba.¹⁴
- 1947: Lac la Ronge, Saskatchewan.¹⁵
- 1948: Delmas, Saskatchewan (Thunderchild).¹⁶

Other schools were closed because of the high risk of fire. In 1946 the Mount Elgin school in Munsey, Ontario was closed because of the fire hazard.¹⁷ In 1950 the Saskatchewan fire commissioner's office also condemned the Round Lake, Saskatchewan

⁷ Canada, Department of Mines and Resources, *Report of Indian Affairs Branch for the Fiscal Year Ended March 31, 1940*, 186.

⁸ Canada, Department of Mines and Resources, *Report of Indian Affairs Branch for the Fiscal Year Ended March 31, 1940*, 186.

⁹ Canada, Department of Mines and Resources, *Report of Indian Affairs Branch for the Fiscal Year Ended March 31, 1941*, 166.

¹⁰ TRC, NRA, Library and Archives Canada, Volume 6303, File 653-5, part 6, E.S. Jones to The Secretary, Indian Affairs Branch, Department of Mines and Resources, 10 April 1943; Canada, Department of Mines and Resources, *Report of Indian Affairs Branch for the Fiscal Year Ended March 31, 1942*, 136 [FHR-000252]

¹¹ TRC, NRA, Library and Archives Canada, RG10, Vol. 6112, File 350-5, pt. 1, Thomas Orford to Secretary, Indian Affairs, 3 February 1943. [FGA-001026]

¹² Canada, Department of Mines and Resources, *Report of Indian Affairs Branch for the Fiscal Year Ended March 31, 1944*, 155.

¹³ TRC, NRA, Library and Archives Canada, RG10, Vol. 6378, File 767-5, pt. 3, H.A. Alderwood to R.A. Hoey, 3 January 1945; Canada, Department of Mines and Resources, *Report of Indian Affairs Branch for the Fiscal Year Ended March 31, 1945*, 169. [JON-003675]

¹⁴ TRC, NRA, Library and Archives Canada, RG10, Vol. 6268, File 581-1 pt. 2, R.A. Hoey to Acting Deputy Minister, 29 May 1946. [NHU-000117]

¹⁵ TRC, NRA, Provincial Archives of Alberta, Anglican Diocese of Athabasca Fonds, Edmonton, AB, Acc. PR1970.0387/1641, Box 41, Anglican Diocese of Athabasca Fonds, File A320/572, Indian Schools - General, Official Correspondence of Bishop Sovereign, 1941-1947, Report of Fire at All Saints' School, Lac la Ronge, Sask. 2 February 1947. [PAR-123539]

¹⁶ TRC, NRA, Library and Archives Canada, RG10, Vol. 8756, File 671/25-1-010, J.P.B. Ostrander to Indian Affairs Branch, 19 January 1948. [THR-000266-0001]

¹⁷ TRC, NRA, Library and Archives Canada, RG10, Vol. 6210, File 468-10, pt. 5, Samuel Devlin to Indian Affairs, 20 May 1946. [MER-003806-0001]

school.¹⁸ It is not until the early 1970s that the number of residential schools in operation declined sharply, coinciding with the post-1950 trend of increasing First Nations day school enrollment (Figure 2). This marked the rapid end of Indian Residential School operations. These trends are important when considering annual mortality numbers.

Figure 2 reveals that the first two thirds of the IRS era (up to the late 1940s) was characterized the early growth of residential schools, and high death rates. The sharp 'peaks and valleys' in the annual mortality curve (Figure 2) are likely a function of incomplete reporting, coupled with periodic disease epidemics. The late 19th Century was a time of comparatively undeveloped health care, with epidemiologically vulnerable Indigenous populations coming in sustained contact with Euro-Canadian newcomers. The pattern of illness and death within the schools likely mimics that apparent on the Reserves, but the crowded and generally poor living conditions within the schools may have exacerbated the problem.

The comparatively low numbers of annual deaths reported in Figure 2 during the 19th Century is deceptive and may be a function of both sporadic reporting and the comparatively low numbers of children enrolled in the schools. TRC statistical analysis reported elsewhere notes a high annual death rate (deaths per 1,000) during the late 19th Century. This suggests that chronic illness and death was also a severe problem in the early schools contrary to the visual impression left from Figures 1 and 2. The first half of the 20th Century coincides with the rapid increase in student enrolment, particularly after the early 1920s (Figure 2). With larger numbers of children living within these generally inadequate facilities, they faced a high risk of disease transmission, contributing to continued high annual mortality. Interestingly, school mortality observed during the devastating 1918-19 Spanish Influenza epidemic appears as only one of several 'moderate' peaks in reported deaths (Figure 2). It is not clear whether this reflects under-reporting at a time of crisis, or that the extraordinary nation-wide contagion and death did not differ much from the 'normal' pattern found in the Residential Schools at the time.

The magnitude of crisis deriving from an epidemic sweeping through the schools is almost unimaginable from a 21st Century perspective. Several of the schools were

¹⁸ TRC, NRA, Library and Archives Canada, RG 10, Volume 6333, File 661-2, part 6, R.E. Tiffin, Fire Commissioner to J.P.B. Ostrander, 31 August 1950: [RLS-000552]

overwhelmed by the 1918–19 influenza pandemic. In 1918 all but two of the children and all of the staff contracted influenza at the Fort St. James, British Columbia, school and surrounding community. In the end seventy-eight people, including students, died. Initially, Father Joseph Allard, who served as the school principal conducted funeral services at the mission cemetery. But, as he wrote in his diary, “The others were brought in two or three at a time, but I could not go to the graveyard with all of them. In fact, several bodies were piled up in an empty cabin because there was no grave ready. A large common grave was dug for them.”¹⁹ Tragically, the 1918-19 influenza epidemic was only one of many that repeatedly swept through residential schools at various times during their history, likely contributing to the wild fluctuations in annual mortality (Figure 2).

It was not until after World War II that the annual number of reported deaths declined to less than 15 per year (Figure 2). This likely reflects more effective public health measures coupled with use of antibiotics, and improvement in school operations. Given the severity of tuberculosis-related illness within the schools, the 1950s availability of drug-based treatment coupled with widespread inoculation was particularly important for the declining death rates. This is notable as it coincides with the time of the maximum number of schools and student enrollments (Figure 2).

In summary, the early industrial and boarding schools likely experienced frequent death despite their comparatively modest enrollments (Figure 2). Epidemics reported at the early schools suggest that chronic illness and death likely exceeded that reported in Figure 2. This is consistent with Bryce’s (1907, 1922) observations of high mortality in the boarding schools that has been discussed at length in the established literature (see Milloy 1999).

Death among IRS students likely remained comparatively common until the mid 1940s, whereupon it became an increasingly rare event. While affected by unreliable data, the trends in annual death within the schools can be defined by two eras represented by a vertical dashed line in Figure 2. For the sake of this discussion, we should assume that most schools dating prior to 1948 experienced student illness and/or death, with a

¹⁹ Father Allard’s diary quoted in Cronin, *Cross in the Wilderness*, 219.

very high probability of chronic illness and multiple deaths occurring at schools operating in the late 19th Century.

Table 1 lists the schools (in their various locations) and their duration of operation in decade-long intervals. The decade columns are shaded to illustrate the shifting probability that specific schools experienced student illness and/or death. It demonstrates that a significant number operated for a long time and prior to 1945, during the time of high risk of student mortality. While student illness and death occurred into the recent past, the short-lived and comparatively recent schools and hostels dating after ca. 1948 have the lowest probability of student death. Table 1 indicates that such schools are more commonly found in the northern territories and northern Québec. In the absence of more definitive means of identifying schools with associated cemeteries, this may be our most useful indicator of the existence of residential school cemeteries. While comparatively few schools have cemeteries explicitly reported, it should be assumed that most (particularly those dating to prior to 1945) experienced death, and that the children were buried on school grounds or at some other nearby cemetery.

The colonization of northwestern Canada

Many of the early Residential Schools were established after 1885 throughout western and northern Canada, and operated at a time of rapid immigration and development (Figure 3). These demographic and political transformations had profound impacts upon Aboriginal people, and are important for understanding the changing character of the residential schools and their operations. Specific schools are used as examples of different situations (with accompanying graphics). Readers seeking a more comprehensive summary are directed to the companion report filed with the TRC.

After the 1870 purchase of Rupert's Land, and its integration into the North West Territories, Canada faced significant challenges. One included negotiation of a succession of treaties that began in the grassland/parkland region (Figure 3). These so-called 'numbered' treaties reflect the temporally sequenced development of western Canada, with treaties being signed as various regions became subject to Euro-Canadian immigration and development interest. The earliest ones were negotiated where European

homestead settlement was first anticipated, with subsequent ones encompassing much of subarctic western Canada (Figure 3).

These treaties provided modest provisions for Indigenous groups who were facing serious economic and demographic crises. It also ensured their confinement upon reserves under the authority of Indian Agents, thereby facilitating large-scale Euro-Canadian agricultural settlement. This also involved encouraging Aboriginal acceptance of Christianity and conventional Victorian values, including a sedentary agrarian lifestyle. These Euro-Canadian notions of 'progress' were envisioned as inevitable, and were consistent with the Christian Churches' interest in missionary work throughout the British Empire. Not surprisingly, these missionaries were at the vanguard in establishing the early Aboriginal schools throughout the new Canadian territories. This is dramatically evident in Figure 3 that reports only a few church-financed boarding schools in operation at the time of Confederation (Figure 3: Map1), but a very rapid increase in the number of federally funded schools within 25 years of the 1870 purchase of Rupert's Land (Figure 3: Map 2).

The early missions and schools were often built near reserves that were established shortly after treaty signing. They included both day and boarding schools, and recruited local children as well as those from more distant communities. Both local and non-local children were sometimes boarded at the schools. This was calculated to promote the children's acculturation through sustained school attendance, and by removing them from regular family influence. It also ensured enrolment in school while parents were engaged in traditional harvest activities away from the reserve community (i.e. trap lines, hunting and fishing trips).

While agricultural settlement occurred rapidly throughout the prairie west after the 1885 completion of the Canadian Pacific Railway, communities were small and widely dispersed. Extra-regional transportation was limited, and dependent upon the slowly developing railway networks built primarily to support agriculture. Health care, municipal and education services, and other community infrastructure were generally underdeveloped, but was the most advanced within the predominately Euro-Canadian settlements.

Infrastructure on the Reserves remained modest, and was frequently associated with the Indian Agency, the Hudson's Bay Company (HBC) trade store, and the church mission. It may have also featured a day school or residential school and sometimes a small hospital, and often became the hub of the Aboriginal reserve settlement. Two examples include Moose Factory (Figure 4, 5) and Fort Providence (Figure 6 to 9), both of which developed as northern Aboriginal communities associated with Indian Residential Schools and cemeteries.

While often focused on educating the young, the missionaries sought to convert the entire Aboriginal community to Christianity and Euro-Canadian social norms. Lifestyle transformation, especially burial ritual, was important, often leading to development of a community cemetery near the mission church. As more families settled into the mission/trade post settlements, and in light of the high incidence of disease and death, such cemeteries likely grew rapidly. This is evident with both the St. Thomas Anglican churchyard cemetery at Moose Factory (Figure 4) and the All Saints Roman Catholic cemetery at Fort Providence (Figure 7). Similar development of a community cemetery through early IRS operations is apparent at St. Margaret's Catholic mission, school, church and cemetery complex at Couchiching First Nation near Fort Frances (Figure 10-11), at the Sechelt First Nation near Vancouver (Figure 12-14), and at Norway House First Nation (Rossville) in northern Manitoba (Figure 15-17). In all cases, the cemeteries likely accommodated both deceased IRS students and members of the mission church. This significantly complicates the task of identifying the graves of deceased school children: some who were members of the host community, but others who might have been from distant First Nations.

The church, boarding school, hospital and cemetery complex remain an enduring feature within many contemporary communities. Sometimes as old buildings deteriorated or burned down, they were replaced with new structures on or near the original sites. In other situations the Residential Schools were abandoned upon closure (Birtle IRS, Spanish IRS), others were torn down (Fort William IRS), while still others were refurbished and transformed to serve new functions (Blue Quills IRS). But in many cases the old church and its cemetery remain in operation. This is evident at Lebret, Saskatchewan where the Sacred Heart Catholic church and cemetery remain operating

within the town site, while the adjacent residential school was closed and demolished (Figure 18, 19, 20). At Marieval IRS (on Cowesess First Nation, Saskatchewan), the original school was demolished and replaced with a day school, but the church, rectory and cemetery remain (Figure 21, 22, 23, 24). St. Martin's (Desmarais) Residential School at Wabasca Lake in northern Alberta was demolished upon school closure, but the hospital and cemetery grounds remain in operation (Figure 25). Similar refurbishment and reuse is evident at St. Eugene's IRS near Cranbrook, BC (Figure 26). In this case the old residential school was transformed into a hotel resort and cultural centre adjacent to a golf course²⁰. The school cemetery remains visible on land adjacent to the golf course fairways (Figure 26, 27), but it is not clear whether the cemetery remains in use. In the case of both Alberni and Kamloops Indian Residential Schools, the property was taken over by a local First Nation, and the facilities continue to serve community functions. At Alberni IRS, the school grounds serve Band administrative functions, with the unmarked old school cemetery located behind the structures and parking lot (Figure 28)²¹. In the case of Kamloops IRS, the facility was transformed into a cultural centre (Figure 29)²². Online research has not yet revealed the cemetery at the latter school.

Residential Schools often went through a succession of rebuilding episodes as older structures became too small, became unusable, were destroyed by fire, or became redundant and were re-established in a more suitable location. This could result in a school (often with the same name or administered by the same church) moving from one location to another. One example is the sequence of school operations that began at All Saints IRS at Lac La Ronge (Saskatchewan, 1907 to 1947), but was later moved to Prince Albert, Saskatchewan (1947 to 1996)²³. The school name was changed from All Saints to Prince Albert IRS in 1953. The Prince Albert school also received students transferred from nearby St Albans IRS (1944-1951), which in turn had received students from St. Barnabas IRS at Onion Lake (1892-1943) upon its closure.

²⁰ <https://www.aadnc-aandc.gc.ca/eng/1100100021303/1100100021310> accessed Jan 18, 2015.

²¹ Alex Maass, TRC Cemetery report for Alberni IRS. She cites an email communication from Mr. Porgeng of the B.C. Archaeology Branch dated April 13, 2012 to locate the cemetery immediately south of the Nuu-chah-nulth Tribal Council Buildings.

²² Alex Maass, TRC Cemetery Report indicating that the original IRS is now the 'Chief Louis Center' operated by the Secwepemc Kamloops Indian Band.

²³ <http://www.anglican.ca/relationships/histories/all-saints-school-sk> accessed Jan 18, 2015.

Another example of geographic shifts in operation is evident with the residential school that began at Lac La Biche (Alberta), and then moved to Saddle Lake and then finally to near St. Paul, Alberta. Cemeteries are likely associated with at least the two oldest schools in this sequence. The first one was named Notre Dame des Victories or Hospice St. Joseph, and was operated by the Catholic Church at Lac La Biche between 1862 and 1898²⁴. The site is a national historic site, and the church, convent building and cemetery have been restored and maintained (Figure 30). This mission school declined in importance as reserves developed, and the Sisters of Charity moved it to the Saddle Lake region, where it operated with federal funding from 1898 to 1932 on the Blue Quills First Nation (Figure 31)²⁵. The school (and associated cemetery) may have been in close proximity to the mission church, and perhaps was replaced with the *Kihew Asiniy* Education Centre (Figure 31). The final phase of this Indian Residential School (also known as Blue Quills) was located about 5 km west of St. Paul, Alberta (Figure 32), and operated between 1932 and 1970. Thereafter it was taken over by the Blue Quills Native Education Council, and in 1990 it became the Blue Quills First Nations College (Figure 32). No cemetery is reported (nor visible on the satellite imagery) at this latter site.

While most of the Indian Residential schools were established in remote or rural locations, some were established in major centres, and became enclosed by urban development. This includes St. Paul's IRS (1899-1959), established adjacent to the Squamish First Nation (North Vancouver), Fort William IRS (Thunder Bay), and Cecilia Jeffery IRS and St. Mary's IRS (both in Kenora). The Squamish IRS was demolished in 1959 and the land was redeveloped as St Thomas Aquinas Catholic High School, with the nearby cemetery completely surrounded by residential development (Figure 33 and 34)²⁶. St. Joseph's IRS, after initially operating on Fort William First Nation, was moved into the town of Fort William (now Thunder Bay) where it operated until 1968 (Figure 35)²⁷. It was then demolished, and replaced with Pope John Paul II Elementary School. At least

²⁴ <https://hermis.alberta.ca/ARHP/Details.aspx?DeptID=1&ObjectID=4665-0427> accessed Jan 18, 2015.

²⁵ <http://archives.almogau.ca/main/taxonomy/term/1342>, <http://www.bluequills.ca/wp-content/uploads/2012/02/BQ-30th-Anniversary-Book.pdf>,

<http://oblatesinthewest.library.ualberta.ca/eng/impact/indianschools.html> accessed Jan 18, 2015,

²⁶ Alex Maass, TRC Cemetery report who cites Brenda Norrel 2008 (apparently the author of a no longer accessible file at www.nciv.net), <http://irsr.ca/st-pauls-indian-residential-school/>, accessed Jan 18, 2015.

²⁷ Auger, Donald J. 2005, Indian Residential Schools in Ontario, Nishnawbe Aski Nation, pp. 99-107

some of the children who died while attending this school were buried at St. Patrick's Cemetery (Figure 35). Cecilia Jeffery IRS was first established at Shoal Lake along the Manitoba/Ontario border (1902-1929), but was moved to land adjacent to Round Lake in Kenora, Ontario where it operated from 1929 to 1974²⁸. The latter property is presently used for Treaty #3 administrative functions, with two adjacent cemeteries lying untended and overgrown between Homestake Road and the Canadian Pacific Railway tracks (Figure 36). St. Mary's IRS is also located in Kenora, and has been partially redeveloped as a marina, with a parking lot now occupying the former school site (Figure 37, 38, 39)²⁹. The cemetery associated with this school is documented in early 20th Century photographs (Figure 40), but its location (apparently on the hillside east of the school buildings) has not yet been identified.

In some circumstances, the Indian Residential School was wholly or partially demolished upon closure, but the associated cemetery receives continued maintenance and care. Examples include the cemeteries near the Elkhorn IRS (Manitoba) (Figure 41) and the Spanish IRS (Ontario) (Figure 42), and two discrete cemeteries within the Onion Lake First Nation (Saskatchewan) (Figure 43, 44). The latter two are likely associated with either St. Anthony's Catholic or St. Barnabas Anglican Indian Residential Schools.

Since the early residential schools operated at a time of high death rates, and were associated with missions located close to reserves, the mission cemeteries likely contain both the bodies of local school children and other community members (see Sechelt cemetery in 1914 in Figure 14). Given the rather limited transportation capacity of early Canada, it would have been difficult and expensive to return deceased non-local students to their home communities. Instead, they too were likely buried in the school/mission cemeteries. As discussed below, this is certainly consistent with expectations of the Department of Indian Affairs of the time.

As the larger Industrial and Residential Schools became established after 1883, there was a tendency to locate them nearer to predominately Euro-Canadian settlements, but still segregated from them. Most of the students were non-local, and those who died were

²⁸ Alex Maass, TRC Cemetery report, also Auger (2005: 63-76)

²⁹ Alex Maass, TRC Cemetery report, also Auger (2005: 53-62)

likely buried in school cemeteries (rather than at municipal cemeteries where they had no family or ethnic connection). The industrial schools were often imposing facilities with expansive farm operations, but often without the mission church that was a common feature of the earlier Residential Schools. Examples of farm-oriented industrial schools are the Brandon³⁰ (Figure 45) and Birtle³¹ (Figure 46, 47) operations, both located in southwestern Manitoba. Both were also established on the edge of predominately Euro-Canadian farm communities, and received Aboriginal children from widely dispersed locations.

Research conducted as part of Katherine Nichols' Anthropology Master's degree at University of Manitoba indicates that two cemeteries are associated with the Brandon Indian Residential School (Nichols 2014:Per. Comm.). She cites local informants who indicate one was used during the earlier phase of school operations. It was located near the Assiniboine River, about 1,400 metres south of the school in what became Curran Park (Figure 45). This is consistent with vague internet-based reports of a Brandon Indian Residential School cemetery within Curran Park³². This cemetery was closed at some point in favour of the second cemetery, located ca. 500 metres north of the school on the Assiniboine River valley wall (Figure 45). Curran Park has been sold and redeveloped as a private campground (Turtle Crossing Campground). The location and condition of the IRS cemetery is not presently known, but repeated redevelopment of the property points to the importance of documentation of such cemeteries to facilitate appropriate land use planning and redevelopment.

The Birtle Indian Residential School remains standing as an abandoned facility on the north valley wall of Birdtail Creek (Figure 46). This large property contained a succession of two large school/residence buildings, with an extensive barnyard located to the east (Figure 46, 47). Some of these abandoned buildings remain standing, however the school cemetery was not identified in the available documents, nor is it visible in the

³⁰ Alex Maass, TRC Cemetery Report, <http://thechildrenremembered.ca/school-locations/brandon/> accessed Jan 18, 2015.

³¹ <http://www.mhs.mb.ca/docs/sites/birtleresidentialschool.shtml> accessed Jan 18, 2015, also 'The New Leaf', Newsletter published by South West Branch of the Manitoba Genealogical Society of Brandon, Manitoba, Edition 14, June, 2012, ISBN #026122-98-01.

³² (<http://geneofun.on.ca/cems/MB>)

satellite imagery. It likely lies abandoned and overgrown by brush and tall grass somewhere along the valley wall.

As health infrastructure developed in the early 20th Century, seriously ill children were more frequently sent to a hospital or a tuberculosis sanatorium. If these students died while at a hospital, they may have been buried at those facilities, in a nearby municipal cemetery, or in the cemetery of a nearby Indian Residential School. The complexity of these arrangements is evident with the burial of Inuit and First Nations patients who died while admitted at the Charles Camsel Hospital in Edmonton³³. Deceased Protestant patients were buried at the Edmonton-Poundmaker Indian Residential School (Figure 48, 49), while deceased Catholic patients were buried in the Catholic cemetery on the Stony Plain or Enoch First Nation.³⁴ Perhaps the latter burials are within the cemetery adjacent to the current Roman Catholic Church on the Reserve (Figure 50).

The situation at Coqualeetza IRS (1887-1940) (near Chilliwack, BC) also reflects the complexity of burial arrangements. Alex Maass reports that she could not find reference to a cemetery used during its operation as a residential school (1925-1940), but that there are a few references to student deaths³⁵. However a cemetery was reported in operation (somewhere on Skway I.R. #4) during the school's subsequent use as a tuberculosis sanatorium (1941 to ca. 1967). She speculates that since several First Nations are located near the residential school, at least the local deceased IRS students might have been buried in the cemeteries at either Skwak First Nation reserve 4 or Skowkale First Nation (Fig 51 and 52).

Sometimes deceased students were buried in a municipal cemetery associated with the denomination that was in charge of the Indian Residential School. This may have occurred at the first Chapeau Indian Residential School (1907-1921), in Ontario. It was located on the east bank of the Nebskwashi River, opposite the Chapeau town site (Figure 53). Local reminiscences suggest that children who died while attending this

³³ Alex Maass, TRC Cemetery Report citing various INAC documents.

³⁴ Unpublished Cemetery Report for Edmonton IRS by Alex Maass citing INAC – AB Regional Records Office – Edmonton, 774/36-7 Vol. 2 4/61 – 10/65 ALB-CR, Memorandum Date 03/23/1966 CT Summation Database DocID EDM-002434

³⁵ Alex Maass, TRC Cemetery Report, citing various archival documents.

Anglican school might have been buried in a portion of the Protestant Cemetery, located along the west bank of the Nebskwashi River (Figure 53)³⁶. In 1921, when the school was replaced with a new facility located about 3 km to the south, an IRS cemetery was established near the new location (Figure 54)³⁷.

Another defining feature of the Indian Residential School era is the competition between various Christian denominations in their missionary efforts. Sometimes Catholic and Protestant churches established mission churches, schools and hospitals in close proximity to one another (see closely spaced mission/school complexes at North and South Wabasca Lakes, Figure 25, and also at Onion Lake First Nation, Figure 43, 44). This is also evident with the completing mission, church, school, hospital and cemetery complexes observed at Aklavik in the NWT (Figure 55, 56).

While comparatively few IRS cemeteries are explicitly referred to within the surviving literature, the age and duration of most schools suggests that cemeteries were likely associated with most of them. In search of those cemeteries, the area surrounding each school was systematically examined using the available maps and satellite imagery. In some cases they were not evident, but possible cemeteries were detected in a surprisingly large number of others. Success was dependent on the resolution and clarity of the available satellite imagery, and whether the ground vegetation was sufficiently sparse to permit detection of ground features indicative of cemeteries. This is illustrated with two Indian Residential Schools in Saskatchewan.

File Hills IRS (1899 to 1949) was located immediately west of the Okanesse First Nation (Figure 57)³⁸. While the records do not offer a precise location, a hand-drawn map directing people to a reunion on the property suggests it was at the end of an access road within the nw quarter of section 33, Township 22 Range 11, W2 (Figure 58, 59, 60). The school cemetery is also vaguely reported to be within the ne quarter of section 33 (Figure

³⁶ Alex Maass, TRC Cemetery Report, email correspondence between Maass and Ms. Ann Louise Etter (a Chapleau Resident) reports a communication from Mr. Michael Morris (a former mayor of Chapleau) who described a portion of the 'old Protestant cemetery' within Chapleau as containing Aboriginal Graves. Ms. Etter speculated that these graves might be those of school children who died while attending the first Chapleau IRS, located nearby on the opposite site of the Nebshwashi River.

³⁷ Alex Maass, TRC Cemetery Report, see also Auger (2005:135-146).

³⁸ Alex Maass, TRC Cemetery Report, see also personal communications between Maass and Cecile Fausak dated April 24, 2012 regarding location of cemetery are reported by Messrs. John Stonechild and Frances Tuckanow.

58, 60). Local informants indicated that it was 400-800 metres removed from the school, in the brush a short distance from a cart trail (see caption in Figure 60). This is not particularly useful locational information, but close examination of satellite imagery reveals a cart trail near a cluster of elongated grey/white features, all oriented in the same direction (Figure 60). These features cannot be unequivocally identified from the available imagery, but their approximate size and orientation suggest grave shafts, or perhaps individual picket fences surrounding each grave. Such tentative interpretations require either ‘ground truthing’ to determine the actual nature of the features, or solicitation of local information to confirm, reject or refine the interpretation.

Sturgeon Landing IRS (1926-1952) is located at the north end of Namew Lake along the Saskatchewan/Manitoba border (Figure 61)³⁹. Its location is poorly documented, but was on either the east or west bank of the Sturgeon-Weir River at its outlet. The satellite imagery does not reveal either school foundations or a cemetery near the current settlement on the east bank (Figure 62). However examination of the west bank reveals an extensive clearing, with a trail running through it (Figure 62). Several probable cultural features were observed along the trail (Figure 62, 63). Zone 1 (Figure 63) contains a number of grey-white oval discolorations that are oriented approximately north/south. These disturbances lie parallel to one another and are arranged in rows, suggesting a small graveyard. Immediately to the south in Zone 2 (Figure 63) a series of linear scars are observed in the ground surface. It is not clear whether they represent plow scars, drainage ditches or foundation trenches, but may be remnant features associated with the school. Again, such remotely sensed indicators of possible settlement require review, validation or correction by local knowledge holders.

Burial policy

As in so many other aspects of the Canadian residential school system, the federal government appears to have been slow to develop a formal policy governing the burial of students who died at the schools. Instead, the burial of deceased students appears to be rather *ad hoc*, and varied from school to school. The Department of Indian Affairs seems to have expected the churches to cover funeral costs, and to bury students in mission or

³⁹ <http://www.sjsh.org/162-field-sturgeon-landing.html> accessed Jan 18, 2015

residential school cemeteries. The earliest government policy directive identified by the Truth and Reconciliation Commission dates from 1958, fully 75 years after the rapid expansion of the residential school system. It states that the department was prepared to authorize only minimum funeral expenditures, and would only pay for transporting students to their home reserves if the cost of transportation was less than the cost of burying the student where they died. This is consistent with practice throughout the system's history; namely to keep burial costs low and oppose sending the bodies of deceased students back to their home community.

Since the schools were virtually all church-run, Christian burial was the norm. Such burials were likely within cemeteries on school grounds, or at a nearby church mission. These cemeteries likely served all members of the denomination, including the missionaries themselves. For example, the cemetery at the Roman Catholic St. Mary's Mission (near Mission, BC), was intended originally for priests and nuns from the mission as well students from the residential school. Three Oblate bishops were buried there along with settlers, their descendants, and residential students.⁴⁰

When the Battleford school in closed in 1914, Principal E. Matheson reminded Indian Affairs that there was a school cemetery that contained the bodies of seventy to eighty individuals, most of who were former students. He worried that unless the government took steps to care for the cemetery it would be overrun by stray cattle.⁴¹ Matheson had good reason for wishing to see the cemetery maintained: several of his family members were also buried there.⁴² These concerns proved prophetic since the location of this cemetery is not recorded in the available documentation, nor does it appear in an internet search of Battleford cemeteries (Figure 64, 65). It may be indicated by a rectangular area with surface modifications located to the southwest of the actual school grounds (Figure 66). As indicated in Figure 65, this locality is within the land formerly owned by the Residential School, and likely was located immediately west of the historically reported IRS stable.

⁴⁰ Fraser River Heritage Park, The OMI Cemetery, <http://www.heritagepark-mission.ca/omicemetery.html> accessed 4 November 2014.

⁴¹ Wasylyow, "History of Battleford Industrial School for Indians," 268.

⁴² TRC, CAR, Anglican Diocese of Saskatoon, List of Burials in Battleford Industrial School Graveyard, no date. [24b-c000001-List_of_burials_in_Battleford_Industrial_School_graveyard_1895-1914.]

The rationale guiding standard practice when addressing IRS student deaths is evident in Principal J.F. Woodsworth's correspondence regarding the aftermath of the 1918 influenza epidemic that struck the Red Deer (Alberta) IRS. Apparently all the students and many of the staff came down with influenza, with five students dying. Four died at the school, while a fifth died while running away. That boy's body was returned to his home community, the Saddle Lake Reserve, perhaps because of the extraordinary circumstances experienced at the school the boy had fled.

Everyone was so sick that it was impossible for us to bury the dead. There was no one here to dig graves in our own school cemetery [sic]. I thought the best thing to do was to have the undertaker from Red Deer take charge of and bury the bodies. This was done, and they now lie buried in Red Deer. The charges for this extra accommodation amount to about \$30.00 a child; that is for the four who died here. In view of the emergency and the totally unexpected nature of the case I shall be glad if the Department will bear part of this expense. I believe the total undertaker bill is \$130.00. I instructed the undertaker to be as careful as possible in his charges, so he gave them a burial as near as possible to that of a pauper. They are buried two in a grave.⁴³

Because of incapacity of school staff to bury the children within the school cemetery, the burial costs in the Red Deer municipal cemetery were judged to be "unavoidable", and Indian Affairs Deputy Minister Duncan Campbell Scott agreed to reimburse the school for the costs.⁴⁴ While Scott made no reference to an existing policy, the letter demonstrates that under normal circumstances the schools were expected to cover the burial costs of students who died at school. The most cost-effective way of doing that would be to undertake burial in a cemetery on school grounds. Indian Affairs would only pay for a child's burial under unusual circumstances, and if it paid, it expected the costs to be kept as low as possible. In this the department conformed to the general practice of the period in the treatment of those who died in institutions. It was not uncommon for hospitals to have cemeteries into which indigent patients were buried, while workhouses

⁴³ TRC, NRA, Library and Archives Canada, RG10, volume 3921, file 116,818-1B, J.F. Woodsworth to Secretary, Indian Affairs, 25 November 1918. [EDM-000956]

⁴⁴ TRC, NRA, Library and Archives Canada, RG10, Vol. 3921, File 116, 818-1B, Reel C-10162, Duncan Campbell Scott to J.F. Woodsworth, 5 December 1918. [EDM-000957]

for the poor also had cemeteries. Many Canadians ended up in unmarked paupers' graves.⁴⁵

The Department of Indian Affairs was universally reluctant to send deceased students home for burial. In her memoirs, Eleanor Brass recalled how the body of a boy, who hung himself at the File Hills (Saskatchewan) school in the early twentieth century, was buried on the Peepeekisis Reserve even though his parents lived on the Carlyle Reserve.⁴⁶ In 1913 two girls, Anna Lahache from Kahnawake and Jennie Robertson from Garden River, drowned while on a picnic expedition at the Spanish, Ontario school.⁴⁷ School officials buried Jennie at the school after being unable to reach her mother within four days.⁴⁸ Anna's body was not recovered until a week after the drowning. While Anna's mother requested that her body be returned home for burial, it was decided that it was too badly decomposed and the cost too high.⁴⁹ In 1938 a mother requested that the body of her son, who was dying of tubercular meningitis at the Spanish school, be sent to her in Cornwall, Ontario, for burial upon his death.⁵⁰ The response from Indian Affairs to the school was:

I have to point out that it is not the practice of the Department to send bodies of Indians by rail excepting under very exceptional circumstances. Bodies so shipped have to be properly prepared by the undertakers for transshipments under the laws of the province, and the expense of a long

⁴⁵ For examples of a pauper's cemetery at a workhouse in Canada, see: Wellington County, House of Industry Cemetery, <http://www.wellington.ca/en/discover/cemeteryhoi.asp#Follow%20link%20to%20the%20House%20of%20Industry%20Cemetery%20page>, accessed 5 November 2014 and Canada's Historic Places, York County Municipal Home Cemetery, <http://www.lieuxpatrimoniaux.ca/en/rep-reg/place-lieu.aspx?id=13125>, accessed 5 November 2014. For an example of a cemetery with a special section for paupers, see: Canada's Historic Places, Beechwood Cemetery National Historic Site of Canada <http://www.historicplaces.ca/en/rep-reg/place-lieu.aspx?id=1210>, accessed 5 November 2014. For an example of a hospital with an attached pauper's cemetery, see: Bourget, "Chapels of Rest and Cemeteries," 1.

⁴⁶ Brass, *I Walk in Two Worlds*, 26.

⁴⁷ Library and Archives Canada, RG 10, Volume 6217, file 471-1, part 1, N. Dugas to Dear Sir, 25 August 1913. [Story no 1.1.jpg]

⁴⁸ Library and Archives Canada, RG 10, Volume 6217, file 471-1, part 1, N. Dugas to Secretary, Indian Affairs, 2 September 1913. [Story no 1.1.6.jpg]

⁴⁹ Library and Archives Canada, RG 10, Volume 6217, file 471-1, part 1, N/ Dugas to J.D. McLean, 28 August 1913. [Story no 1.1.7.jpg]

⁵⁰ Library and Archives Canada, RG 10, Volume 6219, file 471-13, part 2, J. Howitt to the Secretary, Indian Affairs 20 August 1938. [Story no. 2.1.jpg]

journey such as this would be, would entail an expenditure which the Department does not feel warranted in authorizing.⁵¹

The boy's body was buried at Spanish.⁵²

Not all requests were rejected. Clara Tizya, who grew up in Rampart House near Old Crow in northwestern Yukon, recalled "in the early 1920's a girl had died at Carcross Indian Residential School and when they sent the body back, there were many rumours about the children receiving bad treatment and this scared the parents or gave them an excuse for not sending their children to school. And so for the next 25 years, no children were sent out to the Carcross Indian Residential School."⁵³

As noted earlier, the earliest currently known Indian Affairs policy document that deals with the burial issue and the cost of shipping bodies dates from 1958. The Social Welfare section of the Indian Affairs field manual for that year provides Indian Affairs staff with direction on the burial of "destitute Indians." This general policy seems to have been also applied to the death of children while in the care of an Indian Residential School. Burial costs were only to be covered by Indian Affairs when they could not "be met from the estate of the deceased." There was no fixed rate of payment: instead "The amount payable by the local municipality for the burial of destitute non-Indians is the maximum generally allowed." Those who died away from their home reserve were to be buried where they died. "Ordinarily the body will be returned to the reserve for burial only when transportation, embalming costs and all other expenses are borne by next of kin. Transportation may be authorized, however, in cases where the cost of burial on the reserve is sufficiently low to make transportation economically advantageous."⁵⁴

The reluctance to pay the cost of sending bodies home continued into the 1960s. Initially, Indian Affairs was unwilling to pay for shipping the body of twelve-year-old Charlie Wenjack back to his parent's home community in Ogoki, Ontario. The boy had died from exposure in October 1966 after running away from the Presbyterian school in Kenora, Ontario (Cecilia Jeffrey IRS, Round Lake-Kenora). Eventually, the government

⁵¹ Library and Archives Canada, RG 10, Volume 6219, file 471-13, part 2, R.A. Hoey to Howitt, 23 August 1938. Story no. [2.2.jpg]

⁵² Shanahan, *The Jesuit Residential School at Spanish*, 96.

⁵³ Tizya, "Comment," 103-104.

⁵⁴ TRC, NRA, DIAND Library Main, JL103 C377, 1958, Indian Affairs Branch Field Manual, "Chapter 13 Social Welfare," Section 13.14. [120.08514]

agreed to pay the transportation costs, which involved both rail and air fees.⁵⁵ But eight years later, when thirteen-year-old Charles Hunter drowned while attending the Fort Albany IRS, Ontario, without consulting his parents it was decided to bury him in Moosonee rather than send his body home to Peawanuck. It was not until 2011, after significant public efforts by a sister that Charles Hunter's body was exhumed and returned to Peawanuck for a community burial.⁵⁶

In sum, it is clear that throughout much of the history of the Indian Residential Schools, financially driven procedural barriers (if not formal policy) prevented the return of deceased students to their families for burial. Indeed, the return of deceased children likely only occurred in extraordinary circumstances, and most were buried within school cemeteries, in nearby mission, municipal or reserve cemeteries, or at cemeteries used for burial of destitute hospital patients.

Care of IRS cemeteries after school closure

Consistent with the lack of policy regarding burial of deceased residential school students, no plan appears to have existed regarding maintenance of cemeteries after school closure. Consequently, the current condition of school cemeteries varies widely, and validates the concerns expressed in Principal Matheson's 1914 letter about ongoing care of the Battleford IRS cemetery upon school closure.⁵⁷ This draws attention to the urgent need for physical inspection and documentation of cemetery locations, collection of local knowledge, and development of a centralized information repository. Such effort will facilitate recognition and protection of presently undocumented IRS cemeteries by various provincial and territorial agencies responsible for land use planning, environmental impact assessment, and regulation and protection of cemeteries. However,

⁵⁵ TRC, NRA, The Presbyterian Church in Canada Archives, Toronto, ON Acc. 1988-7004, Box 17, File 4, Colin Wasacase to Giollo Kelly, 17 November 1966. [CJC-007910] For Wenjack's age, see: Adams, "The Lonely Death of Charlie Wenjack," 30.

⁵⁶ TRC, NRA, National Capital Regional Service Centre - LAC – Ottawa. File 486/18-2, Vol. 2, Box V-24-83, 06/26/1946 - 09/23/1975, M.J. Pierce to Indian Affairs, 23 October 1974. [FTA-001096] Peter Edwards, "This is about reuniting a family, even in death," *Toronto Star*, 4 March 2011, <http://www.thestar.com/news/gta/2011/03/0/>, accessed 22 August 2014; Peter Edwards, "Star gets action: Charlie Hunter headed home," *Toronto Star*, 24 March 2011 http://www.thestar.com/news/gta/2011/03/24/star_gets_action_charlie_hunter_headed_home.html, accessed 22 August 2014.

⁵⁷ Wasylow, "History of Battleford Industrial School for Indians," 268.

this begs the question where responsibility for such effort lies. As discussed in more detail below, for many of the cemeteries identified, it is not always clear who owns the land, which ones are registered as cemeteries (or heritage sites), and what entity has responsibility to undertake documentation, commemoration and ongoing protection.

Continued care and protection of IRS cemeteries varies along a continuum. At one end of the range, some cemeteries continued operation after closure of the associated residential school. This is most common with mission churches and reserve communities. Examples include cemeteries at Moose Factory First Nation (Figure 5), Couchiching First Nation (Figure 10,11), and Lebret (Figure 18, 19). At schools such as Coqualeetza, deceased school children appear to have been buried in cemeteries at the nearby Skwah and Skowkale First Nations that remained in operation after school closure (Figure 51, 52). This also seems to be the case at Sechelt (Figure 12-14), Cowesses (Figure 22-24), Onion Lake (Figure 43, 44) and Squamish First Nations (Figure 33, 34). In other situations, the residential school grounds (with associated cemetery) became parks or heritage sites, and therefore receive continued maintenance. This includes heritage parks (St. Mary's IRS, Mission Figure 67, 68), or provincial or federal heritage sites such as Notre Dame des Victoires at Lac La Biche, Alberta (Figure 30), Morley IRS (McDougal Orphanage), Alberta (Figure 69), and St. Augustine Mission, (Peace River Alberta, Figure 70). The graves of deceased IRS students may receive some level of continued care through local municipalities or Provincial government agencies, but this appears to be a function of local circumstances. Examples include Spanish IRS (Figure 42), and the Protestant cemetery at Chapleau that might contain children who died at the first Chapleau IRS (Figure 53). Also of note is the ongoing maintenance of the Elkhorn IRS cemetery (Figure 41). The Manitoba Historical Society reports that former staff and students of the school established crosses and a commemorative plaque during at 1990 reunion.⁵⁸ Ongoing maintenance appears to be undertaken by the Manitoba Ministry of

⁵⁸ (<http://www.mhs.mb.ca/docs/sites/elkhornresidentialcemetery.shtml>)

Aboriginal and Northern Affairs and Manitoba Infrastructure and Trade ⁵⁹, but it does not seem that a similar arrangement is in place for other IRS cemeteries in the province.

At the other end of the continuum, the residential school cemeteries lie abandoned, overgrown and overlooked, or even forgotten. Some examples include both Cecilia Jeffrey and St. Mary's IRS located in Kenora (Figure 36 to 40). In the case of Cecilia Jeffrey (Round Lake location), two adjacent grave yards were identified (Figure 36); one overgrown with trees, with no readily visible fence or grave markers, and the other defined by a unmaintained fence, with the grave yard overgrown with tall grass. With St. Mary's IRS, no indication of the cemetery was identified on the former school grounds (Figure 37-40). This is also evident at the Birtle IRS (Figure 46, 47) where the abandoned school buildings remain standing along the valley wall, but no indication of a cemetery was encountered in the records or in the satellite imagery. In the case of Aklavik, the Roman Catholic and Anglican churches each operated churches, residential schools, hospitals and cemeteries (Figure 55, 56). The Catholic cemetery now appears to be overgrown and not maintained, while the Anglican cemetery still appears to be in operation, with some effort at maintenance (Figure 56). This may be because the Catholic Church seems to be locally inactive, but the All Saints Anglican Church remains in operation.

At Fort Providence local initiatives have led to documentation, commemoration and protection of the cemetery associated with the residential school and the early community. An unpublished report commissioned by the TRC ⁶⁰ notes that upwards of 298 deaths were registered at the All Saints Catholic church, and much of the following discussion derives from that report. Apparently most of those buried at the cemetery were school children and/or orphans in the care of the mission. It seems that the old cemetery was last used in 1929, and was replaced with a new one located to the northwest (Figure 7). The old cemetery also contained the bodies of two priests, two brothers and four nuns, but in 1948 they were exhumed and reburied in the new cemetery (Figure 6, 7, 8, 9). It

⁵⁹ Alex Maass unpublished Elkhorn Cemetery Report, citing "The Spirit Lives on" presented by Theresa Nault and documented by Barbara Loffredo http://www.youtube.com/watch?v=wKtUPYjyf_w Accessed March 15, 2013

⁶⁰ Simon Solomon 2011 'The 'Old' cemetery at Fort Providence, NWT'. Copy on file with TRC and cited extensively in Alex Maass' Fort Providence report.

appears that the other burials remained in the original cemetery that became used for agricultural production at some point after its cemetery function ended. This is consistent with a 1944 map that indicates that wheat was being grown in the area (Figure 7). Albert Canadien⁶¹, a Dehcho Dene who attended Sacred Heart IRS, recounts tending gardens in the vicinity, but does not appear to have known it was a cemetery. However, others retained knowledge of the old cemetery, and took action to offer it protection.⁶² In the mid 1970s, after school closure (and after it was no longer being used for agriculture to support the school), Mr. Jean Marie LeMouel undertook cemetery commemoration by marking its corners from his memory of its location. In the 1990s Mr. Eddie Sanderson corroborated the location and established six steel posts to mark a 19 by 17 metre area. In 1994 a monument was raised nearby in honour of the deceased (Figure 71). This effort continued with the documentary research of Mr. Albert Lafferty, and culminated in the 2003 ground penetrating radar survey by Dr. Brian Moorman and Mr. Tom Andrews that is addressed briefly below.

In her cemetery report regarding St. John's IRS at Chapleau, Alex Maass briefly addresses other locally-led efforts at relocating and documenting graves within the overgrown cemetery located south of the second school location (Figure 54). This investigation is not as far advanced as that at Fort Providence, but did involve a physical inspection, photography and plotting the location of grave markers with a GPS unit. Some graves were identified on the basis of decaying wood crosses and fences, rather inconspicuous metal markers, or as shallow depressions marking collapsed graves shafts. It is unlikely that all the graves were identified within the overgrown woodlot. This is common with many of the unmaintained cemeteries.

In some cases, the former Indian Residential Schools lie isolated from any surrounding community, and the available information suggests that they lie abandoned and largely overlooked. Examples include the Shoal Lake location of Cecilia Jeffery IRS that was closed in 1929, and which is now overgrown with coniferous forest (Figure 72). Other abandoned school sites include McIntosh IRS (Figure 73, 74) where the

⁶¹ Canadien, Albert. *From Lishamie.*, Penticton: Theytus Books, 2010.

⁶² Hugenholtz, Chris H, Moorman, Brian J., and Andrews, Tom. *Integration of Geomatics and Traditional Knowledge to Relocate the Original Fort Providence Cemetery, NWT.* Draft paper, nd. Manuscript on file with Simon Solomon

approximate location of the cemetery is recorded on a site map. This map offers sufficient detail to permit relocation of the original school and some of the other outbuildings, as well as the rectangular stand of trees marking the cemetery on a satellite image (Figure 74).

This contrasts with the original Old Sun IRS (1883-1928), where virtually no information was encountered in the records. This school was located in the Bow River valley about 7 km west of Gleichen, Alberta (Figure 75), but in 1931 it was replaced with a new school located immediately south of town (Figure 75). The early mission school was established at the encampment of a band led by NA TO SA PI (Sun Elder or Sun Old Man), in what was called North Camp Flats within Siksika First Nation. The shelter offered by the valley with its many freshwater springs draining from the bank made it an attractive place for such camps, but no precise location for the school and hospital complex is evident in the records. The Siksika Nation was severely affected by disease epidemics in the late 1800s and early 1900s, and this also impacted the Old Sun school. It is likely that numerous graves are associated with this school/hospital complex, but no precise locational information was found, nor were surface features common with other cemeteries observed in the satellite imagery. One possible candidate for the cemetery near North Camp Flats is illustrated in Figure 76, and consists of a square area defined by trees on three sides. Confirmation of this possibility must await the availability of local information.

The school in North Camp Flats was destroyed in a fire in 1928, and in 1929 it was replaced with new brick school located south of Gleichen (Figure 75). This residential school operated until 1971, whereupon it was taken over by the community and became the Old Sun Community College. An extensive cemetery is located to southwest of the school (Figure 75, 76) that is likely associated with the post-1929 school, and perhaps was also used by the larger Siksika community.

The importance of local information to amplify and validate that deriving from archival or internet-based resources cannot be overstated. For example, sometimes virtually no cemetery information is readily available within the archival records, but knowledge of the existence and location of cemeteries is locally held. This includes File

Hills IRS (Saskatchewan), whereby the only archival record of the school cemetery is a reference to a location within a specific quarter section of land, and a local report that it was within 400 to 800 metres of the former school site. Based on this information, it was tentatively identified in the satellite imagery (Figure 59-60).

Similar local knowledge was critically important in relocating the cemetery associated with the Red Deer IRS that closed in 1919 (Figure 77). This information was collected as part of archaeological impact assessment of proposed development (Garcin and Gibson 2008). The burial area included several graves marked with badly decomposed wood markers, but the area was heavily overgrown with forest vegetation, making it difficult to define the extent of the cemetery. In an effort to confirm some possible grave features observed within the area identified by the local resident, the archaeological inspection included a shallow block excavation designed to identify the top of grave shafts visible below the topsoil zone. The excavation report emphasized how the local knowledge was integral in appropriately identifying this poorly documented cemetery, thereby avoiding accidental impact from the proposed development.

Strategies for on-site cemetery documentation

Documenting and protecting Indian Residential School cemeteries from disturbance will become an increasingly important issue as urban development, infrastructure expansion, and re-sale or re-utilization of old school lands becomes more common. This is not a new problem. Archival records report late 19th and early 20th Century leveling and re-use of old cemetery grounds as gardens at Fort Providence and Norway House-Rossville. At Muskowekwan IRS, accidental disturbance of unmarked graves occurred during installation of new sewer lines. There will be other examples of cemeteries that have already been impacted by development, and many more remain vulnerable because of generally poor documentation.

A recent debate about how best to protect and commemorate the Regina IRS (1891-1910) (Figure 78, 79) cemetery serves to illustrate the dilemmas facing many jurisdictions when dealing with the cemeteries, particularly those that now lie abandoned. The Regina IRS cemetery was established on the western edge of the school property at

701 Pinkie Road (Figure 78), but it became privately owned in the 1980s⁶³. In light of proposed development in the area, concern was raised about how best to protect the school cemetery. An unpublished 2014 report prepared by Regina Planning Department indicates that it contains the bodies of First Nations and Métis students as well as the children of the school's first principal. A 2012 archaeological survey⁶⁴ over the south part of the fenced cemetery yielded evidence of 22 graves, but wind-blown sediment mantled and obscured the north half. It was estimated that approximately 40 burials might be within the fenced area, but other graves may lie undetected outside the fenced area. This is a real possibility since archived documents dating to 1921 indicate that the original cemetery fence was destroyed in a prairie fire which might have also destroyed the wood marker crosses of up to 35 or 40 graves.⁶⁵ A sewer line runs immediately north of the fenced cemetery (Figure 78). This 'near miss' is problematic in light of the uncertainty over the full extent of the cemetery, and emphasizes the importance of site documentation to establish sufficiently large protective buffers.

The planning document identified and evaluated various strategies for protection of the cemetery to be considered by the Municipal Heritage Advisory Committee. The first option involved the City of Regina taking no further action, and pointed out that the cemetery is registered under the Saskatchewan Cemeteries Act, 1999, and that under this legislation, the landowner is deemed responsible for ongoing care. The cemetery is also currently registered as an archaeological site and receives some level of protection under the Heritage Property Act.

The second option again references the Cemeteries Act to note that the local municipality has the power to compel the landowner to maintain the cemetery to a suitable standard. This was deemed to be adherence to the guidelines for 'dryland vegetation management' (i.e. regular cutting of grass within and around the cemetery). This recommended option ensured some level of maintenance of the cemetery while

⁶³ Unpublished report dated April 7, 2014 produced for the Regina Municipal Heritage Advisory Committee. Report on file with TRC.

⁶⁴ According to a Metro News article dating to Feb. 27, 2013, this study was conducted by Stantec archaeologists Lisa Hein and David McLeod, and involved near surface geophysical survey (electrical conductivity) designed to identify sediment disturbed by excavation of grave shafts.

⁶⁵ Metro News article dated Feb 27, 2013 citing archives correspondence by Jen McAra.

minimizing the landowner's financial burden (reduce weed growth, and minimize the risk of fire), but fell short of offering enhanced heritage protection.

The final three options explicitly address the advisability of differing levels of municipal and provincial designation, commemoration and protection. The document reveals an interest in protecting and commemorating the cemetery, but each of the last three options was tempered by complex considerations regarding landowner responsibilities, the cost of site documentation required to facilitate heritage designation, and the potential risk to municipalities of precedent-setting decisions with budget implications. Coupled with all the options were concerns about taking action without appropriate consultation with First Nations communities from whom the deceased students originated. These complex issues will be common with many future discussions about how best to address the Indian Residential School cemeteries, particularly those that lie abandoned and unmaintained.

On-site evaluation of IRS cemeteries might involve a range of activities that vary widely in cost and required expertise. At its most basic, it can involve mapping the cemetery and the distribution of visible graves within it. Such graves might be associated with wood, stone or metal markers or monuments, by picket fences encircling the graves, or perhaps only by depressions or hummocks that might represent unmarked graves. Examples of such preliminary documentation include that at the Chapleau IRS Cemetery, Katherine Nichols' ongoing MA research at the Brandon IRS cemetery, and the work reported by Garcin and Gibson (2008) at the Red Deer IRS cemetery. Ground Penetrating Radar surveys were also conducted at Fort Providence IRS⁶⁶, and at Edmonton IRS⁶⁷. Nichols also reports that ground penetrating radar formed part of her ongoing research at Brandon IRS cemetery (Nichols 2014: Per. Comm.).

Cemetery inspection and mapping can be complicated by disturbance and destruction of surface evidence by site-re-utilization, while overlying vegetation can obscure the remnant grave markers and depressions. The full spatial extent of abandoned and

⁶⁶ Unpublished Cemetery report for Fort Providence by Alex Maass that cites Moorman and "Delineation of the 'Old' Graveyard at Fort Providence, Northwest Territories, Unpublished report, Dept. of Geography and Dept. of Geology and Geophysics, University of Calgary.

⁶⁷ Unpublished Edmonton IRS cemetery report by Alex Maass citing Maverick Inspection Ltd., Ground Penetrating Radar Preliminary Report #11810, August 4, 2011

overgrown cemeteries may also not be known, with unmarked graves remaining undetected within and beyond the accepted cemetery limits. Natural undulations in the ground surface can be mistaken for collapsed graves, making it difficult to unequivocally delimit the cemetery extent. Effectively mapping and documenting long-abandoned cemeteries may require implementation of a range of investigation methods that require specialized skills.

In situations of well-maintained cemeteries (such as Elkhorn IRS, Figure 41), relatively straightforward documentation might involve little more than consumer-grade Global Positioning Systems (GPS), cameras, a compass and 50 metre tapes. This might be sufficient to establish a control grid, and map of the distribution of graves making up the cemetery. Such mapping might be sufficient for comparatively well-defined cemeteries such as that at Brandon IRS (Figure 80). However even on this open site it was often difficult to conclusively identify unmarked graves without intensive efforts at ground clearing, and close inspection. Katherine Nichols (2014: Per. Comm.) reports a significant investment of time and effort was associated with her field research.

Site documentation can be quite challenging in more complicated situations involving abandoned cemeteries where individual graves are no longer marked, are dispersed, or are overgrown with vegetation. This is particularly the case when virtually nothing is known about the location of either the Indian Residential School or its cemetery. Such a situation characterizes the first Cecilia Jeffery IRS (1902-1929), located somewhere on a peninsula between Rice Bay and Shoal Lake (Figure 72). In light of the early date of occupation, there are no indications of the former school site in the available satellite imagery, nor are maps available for the site. In this case, relocation of this school and cemetery would require an extensive walking survey throughout this locality (coupled with solicitation of local information). Dense vegetation may impede identification of surface evidence, and very old cemeteries might be difficult to locate in the absence of grave markers. Such work is costly, slow, labour-intensive, and prone to sampling error.

While much better documented, the two cemeteries associated with the second Cecilia Jeffrey IRS (Round Lake, Kenora 1929-1974) will also require a significant amount of fieldwork to more fully document them (Figure 36). This site contains two

sequentially operating cemeteries, the oldest of which is described as 25 feet wide by 325 feet long along the south side of Homestake Road (Figure 81:C), and with the second cemetery area located nearby (Figure 81:D, 82). The long narrow configuration of the older cemetery likely reflects the proximity of bedrock and the limited amount of suitable land on IRS property between Homestake Road and the CPR land. A brief ground inspection in the summer of 2014 revealed no surface evidence of the older cemetery within the sparse forest (Figure 81, 82), but a few white crosses protrude from the tall grass within the fenced cemetery (Figure 82). Investigation of such sites might involve removal of obscuring vegetation, the search for subtle ground undulations indicating collapsed graves, and site mapping using a grid system established with a theodolite or total station (for similar circumstances but variable conditions, see Brandon IRS cemetery [Figure 80], and the Regina IRS cemetery [Figure 78, 79]). Such site investigation can have significant time and financial requirements, and must be carefully planned to ensure that site documentation does not accidentally disturb or destroy the evidence that is being sought. Prior to any documentation, planning discussions are required that includes assorted government agencies, First Nations, municipalities, churches and landowners. This might address suitable methods and documentation standards, and how to finance the operations.

Mapping might also include aerial photography, using conventional cameras or those capable of recording beyond the visible spectrum (i.e. infra-red and ultra-violet). Such imagery can document differential vegetation growth patterns representing graves and other ground disturbances. If appropriately geo-referenced, such images might offer sufficient map resolution when coupled with ground inspection to confirm the observed patterns. Such high-resolution image collection might include satellite imagery, or that collected with conventional aircraft or Unmanned Aerial Vehicles (UAVs or drones). Choosing the appropriate methodology involves considering the required scale of resolution (based upon the minimum size of feature to be detected), the nature of vegetation cover, the degree of ground disturbance, and the available budget. Another airborne remote sensing method that might become more cost-effective in the future is Lidar survey. This involves high-resolution relief mapping using laser beams that can penetrate vegetation canopies to map the obscured ground surface. This can permit non-invasive

high-resolution mapping of surface features (such as collapsed graves) that might not be readily detected through ground inspection.

Cemetery mapping can also involve near-surface geophysical techniques that include Ground Penetrating Radar (GPR), electrical resistivity or conductivity, and magnetic gradiometer surveys. Each of these approaches involves systematic evaluation of the survey area using a control grid. Each type of instrument measures some 'characteristic' of the ground at locations defined by the coordinate system. Changes in these characteristics might reflect normal and natural variation in the sediment, or alternatively, some indication of human modification such as a grave. By systematically plotting these geophysical characteristics, the analyst seeks to non-invasively detect their patterned distribution, and then interpret their origin/function. While much more complicated than presented here, under the right conditions these approaches can detect unmarked graves. However these methods seldom produce results that are immediately and intuitively interpretable, and often require supplemental evaluation. The survey methodology must be designed after considering the size/scale of the features being sought, and also the site circumstances. Finally, the targets or anomalies detected by these methods must also be subjected to post-survey validity testing (ground truthing) to help confirm their nature.

Ground penetrating radar survey involves transmitting a radar beam into the earth, and measuring the time interval before those beams are reflected back to the instrument. Put simply, the greater the time interval before the radar beam returns, the greater the depth of the detected unconformity. These 'returns' might reflect natural changes in sedimentary texture, or alternatively, culturally-derived unconformities, obstructions or voids. Under ideal conditions, plotting the spatial pattern of these unconformities permits detection and interpretation of buried features. Field investigations conducted at Fort Providence employed this methodology, and Figure 83 offers example output from that survey. Katherine Nichols (2014: Per. Comm.) conducted similar research at the Brandon IRS cemetery, but her work is still in production and is not yet available for discussion.

Electrical conductivity and resistivity surveys involve measuring the flow of electricity through the earth between electrodes placed into the ground surface. These electrodes are sequentially placed along a grid throughout the survey area, and the analyst

seeks to map patterned variation in the amount of electricity flowing through the ground. Variation in electrical conductivity might reflect differences in sediment texture, moisture, organic content, constituent artifacts, buried obstructions and filled pits. As earth placed back into the grave shaft will be distinct from the surrounding undisturbed sedimentary matrix, mapping changes in electrical conductivity can reveal patterns representing the grave shafts.

Magnetic gradiometer surveys involve measuring localized differences in the earth's magnetic field. By measuring the varying intensity of the magnetic fields across the survey area, one can estimate the location, intensity and perhaps depth of localized magnetic fields. This becomes archaeologically useful when human activities modify the earth's natural magnetic fields. Archaeologically relevant magnetic patterns might derive from thermal alteration of magnetic minerals within the soil (i.e. hearths), magnetic anomalies deriving from bricks or pottery concentrations, or ferric metals within the sediment. Of interest here is that filled pits (i.e. graves) may contain sediment with magnetic characteristics that differ from the surrounding natural matrix.

All of these approaches require specialized expertise to design the survey, operate the equipment, and differentiate between natural versus human-induced patterns. Applying these methods to archaeological enquiry requires specialized expertise to design the survey at a scale consistent with the nature and magnitude of the features being sought, with attention to natural and cultural factors that might impede interpretation, and with sufficient experience to credibly identify and interpret localized and subtle subsurface features. Experience with geophysical prospection at the scale required to detect graves might not be found in geological exploration or engineering firms. Instead, archaeologists with the appropriate experience might be required, particularly to do the ground-truthing necessary to interpret the detected anomalies. Archaeological investigation using such techniques is not yet common in North America, and the necessary equipment and expertise is not widely available.

The results of near-surface geophysical survey are seldom obvious or self-evident. The detected unconformities can derive from diverse cultural or natural sources, and can be detrimentally affected by subsequent disturbance, variable sediment texture and

moisture regimes, surface or subsurface bedrock or glacial till deposits, surface trash (specifically metallic objects), and magnetic interference from fences, hydro-electric lines, buried electrical lines or water supply trenches. Survey results can also be affected by instrument or operator error, diurnal magnetic variations⁶⁸, or other factors. Effective archaeological interpretation of geo-physical data is dependent upon post-survey inspection of the ground surface, supplemental investigation with a metal detector or soil probe, or test excavation. Given the special circumstances of cemetery investigations, subsurface ground-truthing is often not possible. This might require a precautionary approach whereby protective buffers are established to encompass possible grave shafts. One alternative approach employed at the Red Deer IRS cemetery involved the removal of the top few centimeters of topsoil in a block excavation to the point that rectangular grave shafts became evident in contrast to the undisturbed subsoil surrounding them (Garcin and Gibson 2008). Once the location, arrangement and size of these graves were documented, excavation was discontinued and the block was refilled and restored. Such shallow subsurface testing might be strategically employed, particularly in an effort to evaluate isolated or irregular surface features that might be either graves or natural surface undulations.

What do we now know about IRS cemeteries?

The TRC cemetery research enjoyed mixed success because of the large number of schools, their broad geographic extent and temporal range, and the limited amount of surviving information. Alex Maass focused on developing comprehensive reports for schools where the records revealed evidence of a cemetery. Hamilton took a different approach, and began by considering the temporal pattern of school operations, coupled with the historic trends in reported student mortality. While constrained by the unreliability of the mortality records, the latter approach sought to identify when risk of death was higher within the Indian Residential Schools, and which schools were in operation during those times. Given the high probability of student deaths at the many schools operating prior to 1950, it is likely that most were the scene of chronic illness and

⁶⁸ Atmospheric variation in the earth's magnetic field caused by variable solar radiation that can vary dramatically over a short period of time.

death (Table 1). This rather daunting observation led to a systematic search for each school using maps, photographs and satellite images of former school grounds. This was coupled with a systematic examination of satellite imagery surrounding each school location in search of the nearest cemeteries. The product of this search is presented in the companion volume to this summary report.

Recommendations regarding documentation and protection of IRS cemeteries

Offering recommendations about the future care of IRS cemeteries is a complex and sensitive issue. While former schools might be associated with specific First Nations, the cemeteries may contain the bodies of children from many communities. They may also contain those of teachers (or their children) who died while working at the institutions. In some cases the cemeteries remain in operation and receive ongoing care, particularly when they are part of an existing churchyard, or are located within a reserve or non-Aboriginal community. But many others lie abandoned and largely forgotten. No one set of recommendations will serve all circumstances.

The now-closed Indian Residential Schools continue to impact survivors, their families and their communities, and questions about the fate of missing and deceased children are particularly sensitive. Any physical investigation of the cemeteries must involve close consultation with interested communities, with identification of community-driven objectives, suitable methodologies, and with attention to spiritual and emotional sensitivities. This leads to the first and perhaps most important recommendation.

- 1) Given the painful legacy associated with the Indian Residential Schools, developing strategies for documentation, commemoration and preservation of the cemeteries must be led by the First Nations most affected.**

If it is accepted that the cemeteries require documentation, ongoing maintenance, commemoration and protection from disturbance, then what entity should undertake financial responsibility and supervise such work? On first light, one could suggest that either the federal government that financed IRS operations, or the churches that operated most of the schools, should take the lead. However, regulation of cemeteries is a

provincial and/or territorial responsibility, and much of Canadian environmental impact assessment is regulated at the provincial/territorial/municipal level. Clearly, these levels of government also need to be centrally involved. Finally, diverse Aboriginal communities will also be intensely interested. At issue is how to initiate and coordinate such multi-lateral engagement.

2) It is recommended that the federal government initiate multi-lateral engagement to identify strategies and procedures for the ongoing documentation, maintenance, commemoration and protection of Indian Residential School Cemeteries.

In the event that cemetery documentation and protection is undertaken, then the generally sparse written documentation must be integrated with locally held information. Often this information will be unwritten, and held by school survivors, staff or local residents who remember the schools in operation. This locally held information can be used to verify, correct and amplify archival information collected by the Truth and Reconciliation Commission. It might involve local initiatives to physically document cemetery extent and location, and also identify individual graves within or around the cemetery area.

3) In light of the limited written documentation about IRS cemeteries, additional information must be sought from IRS survivors and other knowledge holders.

When undertaking physical inspection and documentation of the cemeteries, the most cost-effective strategy involves collection and consolidation of information prior to initiating fieldwork. This will refine and narrow the 'search field' to improve efficiency of the physical search, and aid selection of the most effective field methodologies. It also enables solicitation of community wishes regarding the most appropriate approaches to site investigation. This includes preferred protocols regarding prayers and ceremonials prior to a site visit.

4) The collection and integration of archival data and local knowledge should precede any potentially invasive technical inspection and investigation of a cemetery site.

Long-abandoned cemeteries may only yield fragile surface evidence of their existence. This might be limited to decaying grave markers, picket fences, offerings or grave houses. Sometimes shallow depressions or hummocks might be the only remaining

indication of graves, and the cemetery may be overgrown with grass, weeds or woody vegetation. Care must be taken to avoid inadvertent destruction of surface evidence when seeking to document, beautify or commemorate the cemetery area. Obscuring surface vegetation should not be immediately cleared since it might also disturb fragile remnants of grave markers, and differential vegetation growth might suggest grave locations. Site documentation might require archaeological expertise to undertake preliminary mapping and photo-documentation, air photo interpretation coupled with topographic mapping, near-surface geophysical survey, and test excavation.

5) When undertaking cemetery site documentation, maintenance and commemoration, care should be taken to minimize inadvertent damage. Specialized expertise might be required to explore, identify and map individual graves in and around the cemetery.

As infrastructure and resource development accelerates throughout Canada, the risk of damage to relatively undocumented IRS cemeteries increases. Depending upon the jurisdiction, environmental impact assessment is usually required prior to development, and this includes assessment of 'heritage sites' and other cultural values. The latter involves a review of existing documentation, evaluation of the potential for heritage sites within the development zone, and also often a physical search. Such work is often done in phases, with preliminary review of centralized archives and databases to inform subsequent investigation. Local knowledge about IRS cemeteries might not be readily accessible to non-local planners, resource managers and impact assessors. Thus, it is important that locally collected information is shared with agencies responsible for land use planning, environmental impact assessment, and cemeteries protection and regulation.

Such information sharing might be challenging in light of limited documentation, unclear jurisdictional responsibility, and uncoordinated consolidation of information. One option might involve use of already existing information registries within most provincial and territorial jurisdictions. This includes the inventory of known archaeological/heritage sites or the registry of cemeteries, each of which might be augmented with IRS cemetery information. At minimum, such a registry should include the identification, duration and affiliation of each cemetery, its legal description, current land ownership and condition, and its location coordinates (Latitude/Longitude and UTM). These coordinates should be

sufficiently precise to define a polygon that encloses the presently known cemetery. The companion cemetery report that addresses each Residential School includes information useful as first step towards developing such a registry.

- 6) In order to enhance IRS cemetery protection, information must be made available to planning and regulatory agencies. One approach might involve development of an internet-based registry where information is consolidated and effectively managed, and where authorized users can access it.**

Collection, management and querying information about IRS cemeteries can be challenging given unclear jurisdictional responsibility, and in light of concerns over the costs associated with collecting, interpreting and managing information. This is evident with the recent debate about appropriate designation of the Regina Indian Residential School Cemetery noted above. Indeed, the dilemmas addressed in that case are common for many IRS cemeteries. It is generally accepted that IRS cemeteries require documentation, commemoration, ongoing care and protection from disturbance. The challenge is to develop a consultative framework to identify appropriate strategies, and then identify the expertise and resources required to undertake the required work. Addressing these issues is beyond the scope of this project, but is clearly a key issue to be addressed as an outcome of this research.

Conclusion

The Indian Residential School era has an enduring painful legacy that continues to impact Aboriginal communities across Canada. One means of addressing this is to learn of the fate of missing and deceased children who attended the schools. While we know that over 3,200 children died, we remain uncertain where they were buried. The cemeteries that have been documented by the Truth and Reconciliation Commission are, for the most part, abandoned, disused and vulnerable to accidental disturbance. Developing a strategy to address this problem is complicated, and will require long-term and thoughtful discussions about the most appropriate documentation, commemoration and protection procedures. This report should be treated as an opening effort designed to be a catalyst for further investigation.

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1876 *Indian Act*



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CHAP. 18.

An Act to amend and consolidate the laws respecting
Indians.

[Assented to 12th April, 1876.]

WHEREAS it is expedient to amend and consolidate the Preamble.
laws respecting Indians: Therefore Her Majesty, by
and with the advice and consent of the Senate and House
of Commons of Canada, enacts as follows :—

1. This Act shall be known and may be cited as “ *The* Short title
Indian Act, 1876 ;” and shall apply to all the Provinces, and and extent of
to the North West Territories, including the Territory of Act.
Keewatin.

2. The Minister of the Interior shall be Superintendent-Superintendent-
General of Indian Affairs, and shall be governed in the General.
supervision of the said affairs, and in the control and manage-
ment of the reserves, lands, moneys and property of Indians
in Canada by the provisions of this Act.

TERMS.

3. The following terms contained in this Act shall be held Meanings as-
to have the meaning hereinafter assigned to them, unless such signed to
meaning be repugnant to the subject or inconsistent with the terms in this
context :— Act.

1. The term “ band ” means any tribe, band or body of Band.
Indians who own or are interested in a reserve or in Indian
lands in common, of which the legal title is vested in the
Crown, or who share alike in the distribution of any annuities
or interest moneys for which the Government of Canada is
responsible ; the term “ the band ” means the band to which
the context relates ; and the term “ band,” when action is
being taken by the band as such, means the band in council.

2. The term “ irregular band ” means any tribe, band or Irregular
body of persons of Indian blood who own no interest in any Band.
reserve or lands of which the legal title is vested in the Crown,
who possess no common fund managed by the Government
of Canada, or who have not had any treaty relations with the
Crown.

3, The term “ Indian ” means Indians.

First. Any male person of Indian blood reputed to belong
to a particular band ;

Secondly.

Secondly. Any child of such person ;

Thirdly. Any woman who is or was lawfully married to such person :

As to illegitimate.

(a) Provided that any illegitimate child, unless having shared with the consent of the band in the distribution moneys of such band for a period exceeding two years, may, at any time, be excluded from the membership thereof by the band, if such proceeding be sanctioned by the Superintendent-General :

Absentees.

(b). Provided that any Indian having for five years continuously resided in a foreign country shall with the sanction of the Superintendent-General, cease to be a member thereof and shall not be permitted to become again a member thereof, or of any other band, unless the consent of the band with the approval of the Superintendent-General or his agent, be first had and obtained ; but this provision shall not apply to any professional man, mechanic, missionary, teacher or interpreter, while discharging his or her duty as such :

Woman marrying other than an Indian.

(c) Provided that any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents ; but this income may be commuted to her at any time at ten years' purchase with the consent of the band :

Marrying non-treaty Indians.

(d) Provided that any Indian woman marrying an Indian of any other band, or a non-treaty Indian shall cease to be a member of the band to which she formerly belonged, and become a member of the band or irregular band of which her husband is a member :

As to half-breeds.

(e) Provided also that no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian ; and that no half-breed head of a family (except the widow of an Indian, or a half-breed who has already been admitted into a treaty), shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty.

Non-treaty Indian.

4 The term " non-treaty Indian " means any person of Indian blood who is reputed to belong to an irregular band, or who follows the Indian mode of life, even though such person be only a temporary resident in Canada.

Enfranchised Indian.

5. The term " enfranchised Indian " means any Indian, his wife

wife or minor unmarried child, who has received letters patent granting him in fee simple any portion of the reserve which may have been allotted to him, his wife and minor children, by the band to which he belongs, or any unmarried Indian who may have received letters patent for an allotment of the reserve.

6. The term "reserve" means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, but which is unsurrendered, and includes all the trees, wood, timber, soil, stone, minerals, metals, or other valuables thereon or therein. Reserve.

7. The term "special reserve" means any tract or tracts of land and everything belonging thereto set apart for the use or benefit of any band or irregular band of Indians, the title of which is vested in a society, corporation or community legally established, and capable of suing and being sued, or in a person or persons of European descent, but which land is held in trust for, or benevolently allowed to be used by, such band or irregular band of Indians Special Reserve.

8. The term "Indian lands" means any reserve or portion of a reserve which has been surrendered to the Crown. Indian lands.

9. The term "intoxicants" means and includes all spirits, strong waters, spirituous liquors, wines, or fermented or compounded liquors or intoxicating drink of any kind whatsoever, and any intoxicating liquor or fluid, as also opium and any preparation thereof, whether liquid or solid, and any other intoxicating drug or substance, and tobacco or tea mixed or compounded or impregnated with opium or with other intoxicating drugs, spirits or substances, and whether the same or any of them be liquid or solid Intoxicants.

10. The term "Superintendent-General" means the Superintendent-General of Indian Affairs. Superintendent General.

11. The term "agent" means a commissioner, superintendent, agent, or other officer acting under the instructions of the Superintendent-General. Agent.

12. The term "person" means an individual other than an Indian, unless the context clearly requires another construction. Person.

RESERVES.

4. All reserves for Indians or for any band of Indians, or held in trust for their benefit, shall be deemed to be reserved and held for the same purposes as before the passing of this Act, but subject to its provisions. Reserves subject to this Act.

5.

Surveys
authorized.

5. The Superintendent-General may authorize surveys, plans and reports to be made of any reserve for Indians, shewing and distinguishing the improved lands, the forests and lands fit for settlement, and such other information as may be required; and may authorize that the whole or any portion of a reserve be subdivided into lots.

What Indians
only deemed
holders of
lots.

6. In a reserve, or portion of a reserve, subdivided by survey into lots, no Indian shall be deemed to be lawfully in possession of one or more of such lots, or part of a lot, unless he or she has been or shall be located for the same by the band, with the approval of the Superintendent-General :

Indemnity to
Indians dis-
possessed.

Provided that no Indian shall be dispossessed of any lot or part of a lot, on which he or she has improvements, without receiving compensation therefor, (at a valuation to be approved by the Superintendent-General) from the Indian who obtains the lot or part of a lot, or from the funds of the band, as may be determined by the Superintendent-General.

Location
ticket; in
triplicate;
how dealt
with.

7. On the Superintendent-General approving of any location as aforesaid, he shall issue in triplicate a ticket granting a location title to such Indian, one triplicate of which he shall retain in a book to be kept for the purpose; the other two he shall forward to the local agent, one to be delivered to the Indian in whose favor it was issued, the other to be filed by the agent, who shall permit it to be copied into the register of the band, if such register has been established :

Effect of such
ticket limited.

8. The conferring of any such location title as aforesaid shall not have the effect of rendering the land covered thereby subject to seizure under legal process, or transferable except to an Indian of the same band, and in such case, only with the consent of the council thereof and the approval of the Superintendent-General, when the transfer shall be confirmed by the issue of a ticket in the manner prescribed in the next preceding section.

Property of
deceased In-
dian, how to
descend.

9. Upon the death of any Indian holding under location or other duly recognized title any lot or parcel of land, the right and interest therein of such deceased Indian shall, together with his goods and chattels, devolve one-third upon his widow, and the remainder upon his children equally; and such children shall have a like estate in such land as their father; but should such Indian die without issue but leaving a widow, such lot or parcel of land and his goods and chattels shall be vested in her, and if he leaves no widow, then in the Indian nearest akin to the deceased, but if he have no heir nearer than a cousin, then the same shall be vested in the Crown for the benefit of the band: But what-

Proviso.

ever

ever may be the final disposition of the land, the claimant or claimants shall not be held to be legally in possession until they obtain a location ticket from the Superintendent-General in the manner prescribed in the case of new locations.

10. Any Indian or non-treaty Indian in the Province of British Columbia, the Province of Manitoba, in the North-West Territories, or in the Territory of Keewatin, who has, or shall have, previously to the selection of a reserve, possession of and made permanent improvements on a plot of land which has been or shall be included in or surrounded by a reserve, shall have the same privileges, neither more nor less, in respect of such plot, as an Indian enjoys who holds under a location title.

Indians in Manitoba, British Columbia or N. W. Territories, &c., having made improvements.

PROTECTION OF RESERVES.

11. No person, or Indian other than an Indian of the band, shall settle, reside or hunt upon, occupy or use any land or marsh, or shall settle, reside upon or occupy any road, or allowance for roads running through any reserve belonging to or occupied by such band; and all mortgages or hypothecs given or consented to by any Indian, and all leases, contracts and agreements made or purporting to be made by any Indian, whereby persons or Indians other than Indians of the band are permitted to reside or hunt upon such reserve, shall be absolutely void.

Who only may settle in thereon.

Certain conveyances, &c., void.

12. If any person or Indian other than an Indian of the band, without the license of the Superintendent-General (which license, however, he may at any time revoke), settles, resides or hunts upon or occupies or uses any such land or marsh; or settles, resides upon or occupies any such roads or allowances for roads, on such reserve, or if any Indian is illegally in possession of any lot or part of a lot in a subdivided reserve, the Superintendent-General or such officer or person as he may thereunto depute and authorize, shall, on complaint made to him, and on proof of the fact to his satisfaction, issue his warrant signed and sealed, directed to the sheriff of the proper county or district, or if the said reserve be not situated within any county or district, then directed to any literate person willing to act in the premises, commanding him forthwith to remove from the said land or marsh, or roads or allowances for roads, or lots or parts of lots, every such person or Indian and his family so settled, residing or hunting upon or occupying, or being illegally in possession of the same, or to notify such person or Indian to cease using as aforesaid the said lands, marshes, roads or allowances for roads; and such sheriff or other person shall accordingly remove or notify such person or Indian, and for that purpose shall have the same powers as in the execution of criminal

Power to remove persons unlawfully occupying.

Costs of removal.

nal process; and the expenses incurred in any such removal or notification shall be borne by the party removed or notified, and may be recovered from him as the costs in any ordinary suit:

Proviso: residence by consent of Superintendent-General.

Provided that nothing contained in this Act shall prevent an Indian or non-treaty Indian, if five years a resident in Canada, not a member of the band, with the consent of the band and the approval of the Superintendent-General, from residing upon the reserve, or receiving a location thereon.

Removal and punishment of persons returning after removal.

13. If any person or Indian, after having been removed or notified as aforesaid, returns to, settles upon, resides or hunts upon or occupies, or uses as aforesaid, any of the said land, marsh or lots, or parts of lots; or settles, resides upon or occupies any of the said roads, allowances for roads, or lots or parts of lots, the Superintendent-General, or any officer or person deputed and authorized as aforesaid, upon view, or upon proof on oath made before him, or to his satisfaction, that the said person or Indian has returned to, settled, resided or hunted upon or occupied or used as aforesaid any of the said lands, marshes, lots or parts of lots, or has returned to, settled or resided upon or occupied any of the said roads or allowances for roads, or lots or parts of lots, shall direct and send his warrant signed and sealed to the sheriff of the proper county or district, or to any literate person therein, and if the said reserve be not situated within any county or district, then to any literate person, commanding him forthwith to arrest such person or Indian, and commit him to the common gaol of the said county or district, or if there be no gaol in the said county or district, then to the gaol nearest to the said reserve in the Province or Territory there to remain for the time ordered by such warrant, but which shall not exceed thirty days.

Warrant to arrest.

Arrest and imprisonment

14. Such sheriff or other person shall accordingly arrest the said party, and deliver him to the gaoler or sheriff of the proper county, district, Province or Territory, who shall receive such person or Indian and imprison him in the said gaol for the term aforesaid.

Order to be drawn up and filed.

15. The Superintendent-General, or such officer or person as aforesaid, shall cause the judgment or order against the offender to be drawn up and filed in his office, and such judgment shall not be removed by *certiorari* or otherwise, or be appealed from, but shall be final.

Punishment of others than Indians trespassing on reserves.

16. If any person or Indian other than an Indian of the band to which the reserve belongs, without the license in writing of the Superintendent-General or of some officer or person deputed by him for that purpose, trespasses upon any

any of the said land, roads or allowances for roads in the said reserve, by cutting, carrying away or removing therefrom any of the trees, saplings, shrubs, underwood, timber or hay thereon, or by removing any of the stone, soil, minerals, metals or other valuables off the said land, roads or allowances for roads, the person or Indian so trespassing shall, for every tree he cuts, carries away or removes, forfeit and pay the sum of twenty dollars ; and for cutting, carrying away or removing any of the saplings, shrubs, underwood, timber or hay, if under the value of one dollar, the sum of four dollars, but if over the value of one dollar, then the sum of twenty dollars ; and for removing any of the stone, soil, minerals, metals or other valuables aforesaid, the sum of twenty dollars, such fine to be recovered by the Superintendent-General, or any officer or person by him deputed, by distress and sale of the goods and chattels of the party or parties fined : or the Superintendent-General, or such officer or person, without proceeding by distress and sale as aforesaid, may, upon the non-payment of the said fine, order the party or parties to be imprisoned in the common gaol as aforesaid, for a period not exceeding thirty days, when the fine does not exceed twenty dollars, or for a period not exceeding three months when the fine does exceed twenty dollars : and upon the return of any warrant for distress or sale, if the amount thereof has not been made, or if any part of it remains unpaid, the said Superintendent-General, officer or person, may commit the party in default upon such warrant, to the common gaol as aforesaid for a period not exceeding thirty days if the sum claimed by the Superintendent-General, upon the said warrant does not exceed twenty dollars, or for a time not exceeding three months if the sum claimed does exceed twenty dollars : all such fines shall be paid to the Receiver-General, to be disposed of for the use and benefit of the band of Indians for whose benefit the reserve is held, in such manner as the Governor in Council may direct.

Penalties for offences by trespassers.

Levying penalties or imprisonment of offender for non-payment.

Application of fines.

17. If any Indian, without the license in writing of the Superintendent-General, or of some officer or person deputed by him for that purpose, trespasses upon the land of an Indian who holds a location title, or who is otherwise recognized by the department as the occupant of such land, by cutting, carrying away, or removing therefrom, any of the trees, saplings, shrubs, underwood, timber or hay thereon, or by removing any of the stone, soil, minerals, metals or other valuables off the said land ; or if any Indian, without license as aforesaid, cuts, carries away or removes from any portion of the reserve of his band for sale (and not for the immediate use of himself and his family) any trees, timber or hay thereon, or removes any of the stone, soil, minerals, metals, or other valuables therefrom for sale as aforesaid, he shall be liable to all the fines and penalties provided in the next preceding section in respect to Indians of other bands and other persons.

Punishment of Indians so trespassing.

Or removing timber, &c.

Name of offender need not be mentioned in warrant in certain cases.

18. In all orders, writs, warrants, summonses and proceedings whatsoever made, issued or taken by the Superintendent-General, or any officer or person by him deputed as aforesaid, it shall not be necessary for him or such officer or person to insert or express the name of the person or Indian summoned, arrested, distrained upon, imprisoned, or otherwise proceeded against therein, except when the name of such person or Indian is truly given to or known by the Superintendent-General, or such officer or person, and if the name be not truly given to or known by him, he may name or describe the person or Indian by any part of the name of such person or Indian given to or known by him; and if no part of the name be given to or known by him he may describe the person or Indian proceeded against in any manner by which he may be identified; and all such proceedings containing or purporting to give the name or description of any such person or Indian as aforesaid shall *primâ facie* be sufficient.

Sheriffs, &c., to assist Superintendent.

19. All sheriffs, gaolers or peace officers to whom any such process is directed by the Superintendent-General, or by any officer or person by him deputed as aforesaid, shall obey the same, and all other officers upon reasonable requisition shall assist in the execution thereof.

Superintendent to appoint an arbitrator when property is taken from a band for improvements.

20. If any railway, road, or public work passes through or causes injury to any reserve belonging to or in possession of any band of Indians, or if any act occasioning damage to any reserve be done under the authority of any Act of Parliament, or of the legislature of any province, compensation shall be made to them therefor in the same manner as is provided with respect to the lands or rights of other persons; the Superintendent-General shall in any case in which an arbitration may be had, name the arbitrator on behalf of the Indians, and shall act for them in any matter relating to the settlement of such compensation; and the amount awarded in any case shall be paid to the Receiver General for the use of the band of Indians for whose benefit the reserve is held, and for the benefit of any Indian having improvements thereon.

SPECIAL RESERVES.

Crown's name may be used in writs respecting special reserves.

21. In all cases of encroachment upon, or of violation of trust respecting any special reserve, it shall be lawful to proceed by information in the name of Her Majesty, in the superior courts of law or equity, notwithstanding the legal title may not be vested in the Crown.

As to trusteeship of reserves lapsing

22. If by the violation of the conditions of any such trust as aforesaid, or by the breaking up of any society, corporation, or community, or if by the death of any person

or

or persons without a legal succession of trusteeship, in whom the title to a special reserve is held in trust, the said title lapses or becomes void in law, then the legal title shall become vested in the Crown in trust, and the property shall be managed for the band or irregular band previously interested therein, as an ordinary reserve.

REPAIR OF ROADS.

23. Indians residing upon any reserve, and engaged in the pursuit of agriculture as their then principal means of support, shall be liable, if so directed by the Superintendent-General, or any officer or person by him thereunto authorized, to perform labor on the public roads laid out or used in or through, or abutting upon such reserve, such labor to be performed under the sole control of the said Superintendent-General, officer or person, who may direct when, where and how and in what manner the said labor shall be applied, and to what extent the same shall be imposed upon Indians who may be resident upon any of the said lands; and the said Superintendent-General, officer or person shall have the like power to enforce the performance of all such labor by imprisonment or otherwise, as may be done by any power or authority under any law, rule or regulation in force in the province or territory in which such reserve lies, for the non-performance of statute labor; but the labor to be so required of any such Indian shall not exceed in amount or extent what may be required of other inhabitants of the same province, territory, county, or other local division, under the laws requiring and regulating such labor [and the performance thereof.

Indians liable to labor on public roads in reserves, and to what extent.

Powers of Superintendent.

Proviso: as to amount of labor.

24. Every band of Indians shall be bound to cause the roads, bridges, ditches and fences within their reserve to be put and maintained in proper order, in accordance with the instructions received from time to time from the Superintendent-General, or from the agent of the Superintendent-General; and whenever in the opinion of the Superintendent-General the same are not so put or maintained in order, he may cause the work to be performed at the cost of such band, or of the particular Indian in default, as the case may be, either out of their or his annual allowances, or otherwise.

Band to cause roads, &c., to be maintained in order.

Powers of Superintendent.

SURRENDERS.

25. No reserve or portion of a reserve shall be sold, alienated or leased until it has been released or surrendered to the Crown for the purposes of this Act.

Necessary conditions previous to a sale.

26. No release or surrender of a reserve, or portion of a reserve, held for the use of the Indians of any band or of any

On what conditions release or sur-

4½.

surrender to be valid. any individual Indian, shall be valid or binding, except on the following conditions :—

Assent of band. 1. The release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose according to their rules, and held in the presence of the Superintendent-General, or of an officer duly authorized to attend such council by the Governor in Council or by the Superintendent-General ; Provided, that no Indian shall be entitled to vote or be present at such council, unless he habitually resides on or near and is interested in the reserve in question ;

Proof of assent. 2. The fact that such release or surrender has been assented to by the band at such council or meeting, shall be certified on oath before some judge of a superior, county, or district court, or stipendiary magistrate, by the Superintendent-General or by the officer authorized by him to attend such council or meeting, and by some one of the chiefs or principal men present thereat and entitled to vote, and when so certified as aforesaid shall be submitted to the Governor in Council for acceptance or refusal ;

Superintendent-General may grant license to cut trees, &c. 3. But nothing herein contained shall be construed to prevent the Superintendent-General from issuing a license to any person or Indian to cut and remove trees, wood, timber and hay, or to quarry and remove stone and gravel on and from the reserve ; Provided he, or his agent acting by his instructions, first obtain the consent of the band thereto in the ordinary manner as hereinafter provided.

No intoxicant to be permitted at council of Indians. **27.** It shall not be lawful to introduce at any council or meeting of Indians held for the purpose of discussing or of assenting to a release or surrender of a reserve or portion thereof, or of assenting to the issuing of a timber or other license, any intoxicant ; and any person introducing at such meeting, and any agent or officer employed by the Superintendent-General, or by the Governor in Council, introducing, allowing or countenancing by his presence the use of such intoxicant among such Indians a week before, at, or a week after, any such council or meeting, shall forfeit two hundred dollars, recoverable by action in any of the superior courts of law, one half of which penalty shall go to the informer.

Invalid surrenders not confirmed hereby. **28.** Nothing in this Act shall confirm any release or surrender which would have been invalid if this Act had not been passed ; and no release or surrender of any reserve to any party other than the Crown, shall be valid.

MANAGEMENT

MANAGEMENT AND SALE OF INDIAN LANDS.

29. All Indian lands, being reserves or portions of reserves surrendered or to be surrendered to the Crown, shall be deemed to be held for the same purposes as before the passing of this Act ; and shall be managed, leased and sold as the Governor in Council may direct, subject to the conditions of surrender, and to the provisions of this Act.

How to be managed.

30. No agent for the sale of Indian lands shall, within his division, directly or indirectly, unless under an order of the Governor in Council, purchase any land which he is appointed to sell, or become proprietor of or interested in any such land, during the time of his agency ; and any such purchase or interest shall be void ; and if any such agent offends in the premises, he shall forfeit his office and the sum of four hundred dollars for every such offence, which may be recovered in action of debt by any person who may sue for the same.

Agents not to purchase.

Punishment for contravention.

31. Every certificate of sale or receipt for money received on the sale of Indian lands, heretofore granted or made or to be granted or made by the Superintendent-General or any agent of his, so long as the sale to which such receipt or certificate relates is in force and not rescinded, shall entitle the party to whom the same was or shall be made or granted, or his assignee, by instrument registered under this or any former Act providing for registration in such cases, to take possession of and occupy the land therein comprised, subject to the conditions of such sale, and thereunder, unless the same shall have been revoked or cancelled, to maintain suits in law or equity against any wrongdoer or trespasser, as effectually as he could do under a patent from the Crown ;—and such receipt or certificate shall be *prima facie* evidence for the purpose of possession by such person, or the assignee under an instrument registered as aforesaid, in any such suit ; but the same shall have no force against a license to cut timber existing at the time of the making or granting thereof.

Effect of former certificates of sale or receipts, unless rescinded.

Evidence of possession.

Proviso.

32. The Superintendent-General shall keep a book for registering (at the option of the parties interested) the particulars of any assignment made, as well by the original purchaser or lessee of Indian lands or his heir or legal representative, as by any subsequent assignee of any such lands, or the heir or legal representative of such assignee ;—and upon any such assignment being produced to the Superintendent-General, and, except in cases where such assignment is made under a corporate seal, with an affidavit of due execution thereof, and of the time and place of such execution, and the names, residences and occupations of the witnesses, or, as regards lands in the province of Quebec, upon the production

Registers of assignments to be kept.

Entries therein, on what proof made.

duction of such assignment executed in notarial form, or of a notarial copy thereof, the Superintendent-General shall cause the material parts of every such assignment to be registered in such book of registry, and shall cause to be endorsed on every such assignment a certificate of such registration, to be signed by himself or his deputy, or any other officer of the department by him authorized to sign such certificates;—And every such assignment so registered shall be valid against any one previously executed, but subsequently registered, or unregistered; but all the conditions of the sale, grant or location must have been complied with, or dispensed with by the Superintendent-General, before such registration is made.

33. If any subscribing witness to any such assignment is deceased, or has left the province, the Superintendent-General may register such assignment upon the production of an affidavit proving the death or absence of such witness and his handwriting, or the handwriting of the party making such assignment.

34. On any application for a patent by the heir, assignee or devisee of the original purchaser from the Crown, the Superintendent-General may receive proof in such manner as he may direct and require in support of any claim for a patent when the original purchaser is dead, and upon being satisfied that the claim has been equitably and justly established, may allow the same, and cause a patent to issue accordingly; but nothing in this section shall limit the right of a party claiming a patent to land in the province of Ontario to make application at any time to the commissioner, under the *“ Act respecting claims to lands in Upper Canada for which no patents have issued.”*

35. If the Superintendent-General is satisfied that any purchaser or lessee of any Indian lands, or any assignee claiming under or through him, has been guilty of any fraud or imposition, or has violated any of the conditions of sale or lease, or if any such sale or lease has been or is made or issued in error or mistake, he may cancel such sale or lease, and resume the land therein mentioned, or dispose of it as if no sale or lease thereof had ever been made; and all such cancellations heretofore made by the Governor in Council or the Superintendent-General shall continue valid until altered.

36. When any purchaser, lessee or other person refuses or neglects to deliver up possession of any land after revocation or cancellation of the sale or lease as aforesaid, or when any person is wrongfully in possession of any Indian lands and refuses to vacate or abandon possession of the same, the Superintendent-General may apply to the county judge of the county, or to a judge of the superior court in the circuit,

in

in which the land lies in Ontario or Quebec, or to any judge of a superior court of law or any county judge of the county in which the land lies in any other province, or to any stipendiary magistrate in any territory in which the land lies, for an order in the nature of a writ of *habere facias possessionem*, or writ of possession, and the said judge or magistrate, upon proof to his satisfaction that the right or title of the party to hold such land has been revoked or cancelled as aforesaid, or that such person is wrongfully in possession of Indian lands, shall grant an order upon the purchaser, lessee or person in possession, to deliver up the same to the Superintendent-General, or person by him authorized to receive the same; and such order shall have the same force as a writ of *habere facias possessionem*, or writ of possession; and the sheriff, or any bailiff or person to whom it may have been trusted for execution by the Superintendent-General, shall execute the same in like manner as he would execute such writ in an action of ejectment or possessory action.

Order in the nature of writ of possession.

Execution.

37. Whenever any rent payable to the Crown on any lease of Indian lands is in arrear, the Superintendent-General, or any agent or officer appointed under this Act and authorized by the Superintendent-General to act in such cases, may issue a warrant, directed to any person or persons by him named therein, in the shape of a distress warrant as in ordinary cases of landlord and tenant, or as in the case of distress and warrant of a justice of the peace for non-payment of a pecuniary penalty; and the same proceedings may be had thereon for the collection of such arrears as in either of the said last mentioned cases; or an action of debt as in ordinary cases of rent in arrear may be brought therefor in the name of the Superintendent-General; but demand of rent shall not be necessary in any case.

Enforcing payment of rent.

Proceeding for.

38. When by law or by any deed, lease or agreement relating to any of the lands herein referred to, any notice is required to be given, or any act to be done, by or on behalf of the Crown, such notice may be given and act done by or by the authority of the Superintendent-General.

Notice required by law, how to be given.

39. Whenever letters patent have been issued to or in the name of the wrong party, through mistake, or contain any clerical error or misnomer, or wrong description of any material fact therein, of the land thereby intended to be granted, the Superintendent-General (there being no adverse claim,) may direct the defective letters patent to be cancelled and a minute of such cancellation to be entered in the margin of the registry of the original letters patent, and correct letters patent to be issued in their stead, which corrected letters patent shall relate back to the date of those so cancelled, and have the same effect as if issued at the date of such cancelled letters patent.

Cancelling patents issued by mistake.

New patents.

40.

Lands patent-
ed twice over.

Repayment of
price in cer-
tain cases.

Limitation of
time for
claim.

40. In all cases in which grants or letters patent have issued for the same land inconsistent with each other through error, and in all cases of sales or appropriations of the same land inconsistent with each other, the Superintendent-General may, in cases of sale, cause a repayment of the purchase money, with interest, or when the land has passed from the original purchaser or has been improved before a discovery of the error, he may in substitution assign land or grant a certificate entitling the party to purchase Indian lands, of such value and to such extent as to him, the Superintendent-General, may seem just and equitable under the circumstances; but no such claim shall be entertained unless it be preferred within five years from the discovery of the error.

Case of de-
ficiency of
land provid-
ed for.

Compensa-
tion.

Limitation
of time for
claim.

41. Whenever by reason of false survey or error in the books or plans in the Indian Branch of the Department of the Interior, any grant, sale or appropriation of land is found to be deficient, or any parcel of land contains less than the quantity of land mentioned in the patent therefor, the Superintendent-General may order the purchase money of so much land as is deficient, with the interest thereon from the time of the application therefor, or, if the land has passed from the original purchaser, then the purchase money which the claimant (provided he was ignorant of a deficiency at the time of his purchase) has paid for so much of the land as is deficient, with interest thereon from the time of the application therefor, to be paid to him in land or in money, as he, the Superintendent-General, may direct;—But no such claim shall be entertained unless application has been made within five years from the date of the patent, nor unless the deficiency is equal to one-tenth of the whole quantity described as being contained in the particular lot or parcel of land granted.

Certain
courts may
avoid patents
issued in
error, &c.

Practice in
such cases.

42. In all cases wherein patents for Indian lands have issued through fraud or in error or improvidence, the Exchequer Court of Canada, or a superior court of law or equity in any province may, upon action, bill or plaint, respecting such lands situate within their jurisdiction, and upon hearing of the parties interested, or upon default of the said parties after such notice of proceeding as the said courts shall respectively order, decree such patents to be void; and upon a registry of such decree in the office of the Registrar General of Canada, such patents shall be void to all intents. The practice in court, in such cases, shall be regulated by orders to be from time to time made by the said courts respectively; and any action or proceeding commenced under any former Act may be continued under this section, which, for the purpose of any such action or proceeding shall be construed as merely continuing the provisions of such former Act.

43.

43. If any agent appointed or continued in office under this Act knowingly and falsely informs, or causes to be informed, any person applying to him to purchase any land within his division and agency, that the same has already been purchased, or refuses to permit the person so applying to purchase the same according to existing regulations, such agent shall be liable therefor to the person so applying in the sum of five dollars for each acre of land which the person so applying offered to purchase, to be recovered by action of debt in any court, having jurisdiction in civil cases to the amount.

Punishment of agents giving false information as to lands.

Penalty.

Recovery.

44. If any person, before or at the time of the public sale of any Indian lands, by intimidation, combination, or unfair management, hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale, every such offender, his, her, or their aiders and abettors, shall, for every such offence, be guilty of a misdemeanor, and on conviction thereof shall be liable to a fine not exceeding four hundred dollars, or imprisonment for a term not exceeding two years, or both, in the discretion of the court.

Punishment for preventing sale.

Misdemeanor, fine and imprisonment.

MANAGEMENT AND SALE OF TIMBER.

45. The Superintendent-General, or any officer or agent authorized by him to that effect, may grant licenses to cut timber on reserves and ungranted Indian lands at such rates, and subject to such conditions, regulations and restrictions, as may from time to time be established by the Governor in Council, such conditions, regulations and restrictions to be adapted to the locality in which such reserves or lands are situated.

Licenses to cut timber, how granted.

46. No license shall be so granted for a longer period than twelve months from the date thereof; and if in consequence of any incorrectness of survey or other error, or cause whatsoever, a license is found to comprise land included in a license of a prior date, or land not being reserves or ungranted Indian lands, the license granted shall be void in so far as it comprises such land, and the holder or proprietor of the license so rendered void shall have no claim upon the Government for indemnity or compensation by reason of such avoidance.

For what time. As to error in description, &c.

47. Every license shall describe the lands upon which the timber may be cut, and shall confer for the time being on the nominee, the right to take and keep exclusive possession of the land so described, subject to such regulations and restrictions as may be established;—And every license shall vest in the holder thereof all rights of property whatsoever in all trees, timber and lumber cut within the limits of the license

License must describe the lands: its effect.

Further
rights of
holders as to
trespassers.

license during the term thereof, whether such trees, timber and lumber are cut by authority of the holder of such license or by any other person, with or without his consent ;—And every license shall entitle the holder thereof to seize in re- vendication or otherwise, such trees, timber or lumber where the same are found in the possession of any unauthorized person, and also to institute any action or suit at law or in equity against any wrongful possessor or trespasser, and to prosecute all trespassers and other offenders to punishment, and to recover damages, if any :—And all proceedings pend- ing at the expiration of any license may be continued to final termination as if the license had not expired.

Return to be
made by
licensee.

48. Every person obtaining a license shall, at the expira- tion thereof, make to the officer or agent granting the same, or to the Superintendent-General a return of the number and kinds of trees cut, and of the quantity and description of saw- logs, or of the number and description of sticks of square timber, manufactured and carried away under such license ; and such statement shall be sworn to by the holder of the license, or his agent, or by his foreman ; And any person refusing or neglecting to furnish such statement, or evading or attempting to evade any regulation made by Order in Council, shall be held to have cut without authority, and the timber made shall be dealt with accordingly.

Punishment
for evasion.

Timber to be
liable for
dues.

49. All timber cut under license shall be liable for the payment of the dues thereon, so long as and wheresoever the said timber or any part of it may be found, whether in the original logs or manufactured into deals, boards or other stuff,—and all officers or agents entrusted with the col- lection of such dues may follow all such timber and seize and detain the same wherever it is found, until the dues are paid or secured.

Notes, etc.,
taken, not to
affect lien.

50. Bonds or promissory notes taken for the dues, either before or after the cutting of the timber, as collateral security or to facilitate collection, shall not in any way affect the lien of the Crown on the timber, but the lien shall subsist until the said dues are actually discharged.

Sale of timber
seized after a
certain time.

51. If any timber so seized and detained for non-payment of dues remains more than twelve months in the custody of the agent or person appointed to guard the same, without the dues and expenses being paid,—then the Super- intendent-General, with the previous sanction of the Gover- nor in Council, may order a sale of the said timber to be made after sufficient notice,—and the balance of the pro- ceeds of such sale, after retaining the amount of dues and costs incurred, shall be handed over to the owner or claimant of such timber.

Balance of
proceeds.

52.

52. If any person without authority cuts or employs or induces any other person to cut, or assists in cutting any timber of any kind on Indian lands, or removes or carries away or employs or induces or assists any other person to remove or carry away any merchantable timber of any kind so cut from Indian lands aforesaid, he shall not acquire any right to the timber so cut, or any claim to any remuneration for cutting, preparing the same for market, or conveying the same to or towards market,—and when the timber or saw-logs made, has or have been removed out of the reach of the officers of the Indian Branch of the Department of the Interior, or it is otherwise found impossible to seize the same, he shall in addition to the loss of his labour and disbursements, forfeit a sum of three dollars for each tree (rafting stuff excepted), which he is proved to have cut or caused to be cut or carried away.—and such sum shall be recoverable with costs, at the suit and in the name of the Superintendent-General or resident agent, in any court having jurisdiction in civil matters to the amount of the penalty;—And in all such cases it shall be incumbent on the party charged to prove his authority to cut; and the averment of the party seizing or prosecuting, that he is duly employed under the authority of this Act, shall be sufficient proof thereof, unless the defendant proves the contrary.

Punishment for unlawfully cutting timber, forfeiture.

Penalty if timber is removed.

How recoverable.

Proof.

53. Whenever satisfactory information, supported by affidavit made before a justice of the peace or before any other competent authority, is received by the Superintendent-General, or any other officer or agent acting under him, that any timber or quantity of timber has been cut without authority on Indian lands, and describing where the said timber can be found, the said Superintendent-General, officer, or agent, or any one of them, may seize or cause to be seized, in Her Majesty's name, the timber so reported to have been cut without authority, wherever it is found, and place the same under proper custody, until a decision can be had in the matter from competent authority;

Seizure of timber cut without authority.

2. And where the timber so reported to have been cut without authority on Indian lands, has been made up with other timber into a crib, dram or raft, or in any other manner has been so mixed up at the mills or elsewhere, as to render it impossible or very difficult to distinguish the timber so cut on reserves or Indian lands without license, from other timber with which it is mixed up, the whole of the timber so mixed shall be held to have been cut without authority on Indian lands, and shall be liable to seizure and forfeiture accordingly, until satisfactorily separated by the holder.

When it has been indistinguishably mixed with other timber.

All to be deemed cut on Indian lands.

54. Any officer or person seizing timber, in the discharge of

Officer seizing of

may com-
mand assis-
tance.
Punishment
for resistance.

Felony.

of his duty under this Act, may in the name of the Crown call in any assistance necessary for securing and protecting the timber so seized; and whosoever under any pretence, either by assault, force or violence, or by threat of such assault, force or violence, in any way resists or obstructs any officer or person acting in his aid, in the discharge of his duty under this Act, is guilty of felony, and liable to punishment accordingly.

Conveying
away without
authority to
be stealing.

55. Whosoever, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away, or causes to be taken or carried away, without permission of the officer or person who seized the same, or of some competent authority, any timber seized and detained as subject to forfeiture under this Act, before the same has been declared by competent authority to have been seized without due cause, shall be deemed to have stolen such timber being the property of the Crown, and guilty of felony, and is liable to punishment accordingly;

Onus of proof
that dues
have been
paid.

2. And whenever any timber is seized for non-payment of Crown dues or for any other cause of forfeiture, or any prosecution is brought for any penalty or forfeiture under this Act, and any question arises whether the said dues have been paid on such timber, or whether the said timber was cut on other than any of the lands aforesaid, the burden of proving payment, or on what land the said timber was cut, shall lie on the owner or claimant of such timber, and not on the officer who seizes the same, or the party bringing such prosecution.

When to be
deemed con-
demned.

Sale.

56. All timber seized under this Act shall be deemed to be condemned, unless the person from whom it was seized, or the owner thereof, within one month from the day of the seizure, gives notice to the seizing officer, or nearest officer or agent of the Superintendent-General, that he claims or intends to claim the same; failing such notice, the officer or agent seizing shall report the circumstances to the Superintendent-General, who may order the sale of the said timber by the said officer or agent, after a notice on the spot, of at least thirty days:

How seizures
may be tried
and determin-
ed.

Security may
be ordered by
bond.

If timber be
condemned.

2. And any Judge having competent jurisdiction, may, whenever he deems it proper, try and determine such seizures, and may order the delivery of the timber to the alleged owner, on receiving security by bond with two good and sufficient sureties to be first approved by the said agent, to pay double the value in case of condemnation,—and such bond shall be taken in the name of the Superintendent-General, to Her Majesty's use, and shall be delivered up to and kept by the Superintendent-General,—and if such seized timber

timber is condemned, the value thereof shall be paid forthwith to the Superintendent-General, or agent, and the bond cancelled, otherwise the penalty of such bond shall be enforced and recovered.

57. Every person availing himself of any false statement or oath to evade the payment of dues under this Act, shall forfeit the timber on which dues are attempted to be evaded.

Evasion of dues to forfeit timber.

MONEYS.

58. All moneys or securities of any kind applicable to the support or benefit of Indians, or any band of Indians, and all moneys accrued or hereafter to accrue from the sale of any Indian lands or of any timber on any reserves or Indian lands shall, subject to the provisions of this Act, be applicable to the same purposes, and be dealt with in the same manner as they might have been applied to or dealt with before the passing of this Act.

To be dealt with as heretofore.

59. The Governor in Council may, subject to the provisions of this Act, direct how, and in what manner, and by whom the moneys arising from sales of Indian lands, and from the property held or to be held in trust for the Indians, or from any timber on Indian lands or reserves, or from any other source for the benefit of Indians (with the exception of any small sum not exceeding ten per cent. of the proceeds of any lands, timber or property, which may be agreed at the time of the surrender to be paid to the members of the band interested therein), shall be invested from time to time, and how the payments or assistance to which the Indians may be entitled shall be made or given, and may provide for the general management of such moneys, and direct what percentage or proportion thereof shall be set apart from time to time, to cover the cost of and attendant upon the management of reserves, lands, property and moneys under the provisions of this Act, and for the construction or repair of roads passing through such reserves or lands, and by way of contribution to schools frequented by such Indians.

Governor in Council may direct investment of Indian funds.

And the management thereof; expenses how payable.

60. The proceeds arising from the sale or lease of any Indian lands, or from the timber, hay, stone, minerals or other valuables thereon, or on a reserve, shall be paid to the Receiver General to the credit of the Indian fund.

Proceeds of sales to Receiver General.

COUNCILS AND CHIEFS.

61. At the election of a chief or chiefs, or the granting of any ordinary consent required of a band of Indians under this Act, those entitled to vote at the council or meeting thereof shall be the male members of the band of the full age

Votes at election of chiefs.

age of twenty-one years; and the vote of a majority of such members at a council or meeting of the band summoned according to their rules, and held in the presence of the Superintendent-General, or an agent acting under his instructions, shall be sufficient to determine such election, or grant such consent;

In ordinary cases.

Provided that in the case of any band having a council of chiefs or councillors, any ordinary consent required of the band may be granted by a vote of a majority of such chiefs or councillors at a council summoned according to their rules, and held in the presence of the Superintendent-General or his agent.

Periods of election how fixed: and term of office.

Number of chiefs.

Proviso: as to life chiefs.

62. The Governor in Council may order that the chiefs of any band of Indians shall be elected, as hereinbefore provided, at such time and place, as the Superintendent-General may direct, and they shall in such case be elected for a period of three years, unless deposed by the Governor for dishonesty, intemperance, immorality, or incompetency; and they may be in the proportion of one head chief and two second chiefs or councillors for every two hundred Indians; but any such band composed of thirty Indians may have one chief: Provided always, that all life chiefs now living shall continue as such until death or resignation, or until their removal by the Governor for dishonesty, intemperance, immorality, or incompetency.

Chiefs to make regulations for certain purposes.

63. The chief or chiefs of any band in council may frame, subject to confirmation by the Governor in Council, rules and regulations for the following subjects, viz.:

1. The care of the public health;
2. The observance of order and decorum at assemblies of the Indians in general council, or on other occasions;
3. The repression of intemperance and profligacy;
4. The prevention of trespass by cattle;
5. The maintenance of roads, bridges, ditches and fences;
6. The construction and repair of school houses, council houses and other Indian public buildings;
7. The establishment of pounds and the appointment of pound-keepers;
8. The locating of the land in their reserves, and the establishment of a register of such locations.

PRIVILEGES

PRIVILEGES OF INDIANS.

64. No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds real estate under lease or in fee simple, or personal property, outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate.

To be taxable in certain cases only.

65. All land vested in the Crown, or in any person or body corporate, in trust for or for the use of any Indian or non-treaty Indian, or any band or irregular band of Indians or non-treaty Indians shall be exempt from taxation.

Lands held in trust for Indians not taxable.

66. No person shall take any security or otherwise obtain any lien or charge, whether by mortgage, judgment or otherwise, upon real or personal property of any Indian or non-treaty Indian within Canada, except on real or personal property subject to taxation under section sixty-four of this Act: Provided always, that any person selling any article to an Indian or non-treaty Indian may, notwithstanding this section, take security on such article for any part of the price thereof which may be unpaid.

No mortgage to be taken from Indians.

67. Indians and non-treaty Indians shall have the right to sue for debts due to them or in respect of any tort or wrong inflicted upon them, or to compel the performance of obligations contracted with them.

May sue for wrongs.

68. No pawn taken of any Indian or non-treaty Indian for any intoxicant shall be retained by the person to whom such pawn is delivered, but the thing so pawned may be sued for and recovered, with costs of suit, by the Indian or non-treaty Indian who has deposited the same, before any court of competent jurisdiction.

Pawns for intoxicants not to be held.

69. No presents given to Indians or non-treaty Indians, nor any property purchased, or acquired with or by means of any annuities granted to Indians or any part thereof or otherwise howsoever, and in the possession of any band of such Indians or of any Indian of any band or irregular band, shall be liable to be taken, seized or distrained for any debt, matter or cause whatsoever. Nor in the province of British Columbia, the province of Manitoba, the North-West Territories or in the territory of Keewatin, shall the same be sold, bartered, exchanged or given by any band or irregular band of Indians or any Indian of any such band to any person or Indian other than an Indian of such band; and any such sale, barter, exchange or gift shall be absolutely null and void, unless such sale, barter, exchange or gift be made with the written assent of the Superintendent-

Presents not to be taken for debts.

Nor sold in certain provinces, &c.

Except with assent of Superintendent-General.

Superintendent-

Penalty for
contraven-
tion.

Superintendent-General or his agent ; and whosoever buys or otherwise acquires any presents or property purchased as aforesaid, without the written consent of the Superintendent-General, or his agent as aforesaid, is guilty of a misdemeanor, and is punishable by fine not exceeding two hundred dollars, or by imprisonment not exceeding six months, in any place of confinement other than a penitentiary.

DISABILITIES AND PENALTIES.

Indian may
not have
homestead in
Manitoba and
N. W. Terri-
tories except
as specified.

70. No Indian or non-treaty Indian, resident in the province of Manitoba, the North-West Territories or the territory of Keewatin, shall be held capable of having acquired or acquiring a homestead or pre-emption right to a quarter section, or any portion of land in any surveyed or unsurveyed lands in the said province of Manitoba, the North-West Territories or the territory of Keewatin, or the right to share in the distribution of any lands allotted to half-breeds, subject to the following exceptions :

(a) He shall not be disturbed in the occupation of any plot on which he has or may have permanent improvements prior to his becoming a party to any treaty with the Crown :

(b) Nothing in this section shall prevent the Government of Canada, if found desirable, from compensating any Indian for his improvements on such a plot of land without obtaining a formal surrender therefor from the band :

(c) Nothing in this section shall apply to any person who withdrew from any Indian treaty prior to the first day of October, in the year one thousand eight hundred and seventy-four.

Indians un-
dergoing
punishment
by imprison-
ment, not to
receive share
of annuity.

71. Any Indian convicted of any crime punishable by imprisonment in any penitentiary or other place of confinement, shall, during such imprisonment, be excluded from participating in the annuities, interest money, or rents payable to the band of which he or she is a member ; and whenever any Indian shall be convicted of any crime punishable by imprisonment in a penitentiary or other place of confinement, the legal costs incurred in procuring such conviction, and in carrying out the various sentences recorded, may be defrayed by the Superintendent-General, and paid out of any annuity or interest coming to such Indian, or to the band, as the case may be.

Payment of
annuity may
be refused to
Indian desert-
ing his family.

72. The Superintendent-General shall have power to stop the payment of the annuity and interest money of any Indian who may be proved, to the satisfaction of the Superintendent-General, to have been guilty of deserting his or her family, and the said Superintendent-General may apply the same towards

towards the support of any family, woman or child so deserted; also to stop the payment of the annuity and interest money of any woman having no children, who deserts her husband and lives immorally with another man.

And so as to women.

73. The Superintendent-General in cases where sick, or disabled, or aged and destitute persons are not provided for by the band of Indians of which they are members, may furnish sufficient aid from the funds of the band for the relief of such sick, disabled, aged or destitute persons.

Provision for sick, &c., not provided for by the Band.

EVIDENCE OF NON-CHRISTIAN INDIANS.

74. Upon any inquest, or upon any enquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever or by whomsoever committed, it shall be lawful for any court, judge, stipendiary magistrate, coroner or justice of the peace to receive the evidence of any Indian or non-treaty Indian, who is destitute of the knowledge of God and of any fixed and clear belief in religion or in a future state of rewards and punishments, without administering the usual form of oath to any such Indian, or non-treaty Indian, as aforesaid, upon his solemn affirmation or declaration to tell the truth, the whole truth and nothing but the truth, or in such form as may be approved by such court, judge, stipendiary magistrate, coroner or justice of the peace as most binding on the conscience of such Indian or non-treaty Indian

How Heathen Indians may be sworn.

75. Provided that in the case of any inquest, or upon any inquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever, the substance of the evidence or information of any such Indian, or non-treaty Indian, as aforesaid, shall be reduced to writing, and signed by the person (by mark if necessary) giving the same, and verified by the signature or mark of the person acting as interpreter (if any) and by the signature of the judge, stipendiary magistrate or coroner, or justice of the peace or person before whom such evidence or information has been given.

Substance of evidence to be reduced to writing and attested

76. The court, judge, stipendiary magistrate, or justice of the peace shall, before taking any such evidence, information or examination, caution every such Indian, or non-treaty Indian, as aforesaid, that he will be liable to incur punishment if he do not so as aforesaid tell the truth.

Indian to be cautioned to tell the truth!

77. The written declaration or examination, made, taken and verified in manner aforesaid, of any such Indian or non-treaty Indian as aforesaid, may be lawfully read and received as evidence upon the trial of any criminal suit or proceedings, when under the like circumstances the written

Written declaration, &c., of Indians may be used in like cases as those of other persons.

ten affidavit, examination, deposition or confession of any other person, might be lawfully read and received as evidence.

False testimony to be perjury.

78. Every solemn affirmation or declaration in whatever form made or taken by any Indian or non-treaty Indian as aforesaid shall be of the same force and effect as if such Indian or non-treaty Indian had taken an oath in the usual form, and he or she shall in like manner incur the penalty of perjury in case of falsehood.

INTOXICANTS.

Punishment of persons furnishing intoxicants to Indians.

Penalties and application.

Of Commanders of vessels furnishing the same.

Penalties and application.

Imprisonment in default of payment.

Punishment of Indian making, selling or having

79. Whoever sells, exchanges with, barter, supplies or gives to any Indian, or non-treaty Indian in Canada, any kind of intoxicant, or causes or procures the same to be done, or connives or attempts thereat or opens or keeps, or causes to be opened or kept, on any reserve or special reserve; a tavern, house or building where any intoxicant is sold, bartered, exchanged or given, or is found in possession of any intoxicant in the house, tent, wigwam or place of abode of any Indian or non-treaty Indian, shall, on conviction thereof before any judge, stipendiary magistrate or two justices of the peace, upon the evidence of one credible witness other than the informer or prosecutor, be liable to imprisonment for a period not less than one month nor exceeding six months, with or without hard labor, and be fined not less than fifty nor more than three hundred dollars, with costs of prosecution,—one moiety of the fine to go to the informer or prosecutor, and the other moiety to Her Majesty, to form part of the fund for the benefit of that body of Indians or non-treaty Indians, with respect to one or more members of which the offence was committed: and the commander or person in charge of any steamer or other vessel, or boat, from or on board of which any intoxicant has been sold, bartered, exchanged, supplied or given to any Indian or non-treaty Indian, shall be liable, on conviction thereof before any judge, stipendiary magistrate or two justices of the peace, upon the evidence of one credible witness other than the informer or prosecutor, to be fined not less than fifty nor exceeding three hundred dollars for each such offence, with costs of prosecution,—the moieties of the fine to be applicable as hereinbefore mentioned; and in default of immediate payment of such fine and costs any person so fined shall be committed to any common gaol, house of correction, lock-up, or other place of confinement by the judge, stipendiary magistrate or two justices of the peace before whom the conviction has taken place, for a period of not less than one nor more than six months, with or without hard labor, or until such fine and costs are paid: and any Indian or non-treaty Indian who makes or manufactures any intoxicant, or who has in his possession, or concealed, or who

who sells, exchanges with, barter, supplies or gives to any other Indian or non-treaty Indian in Canada any kind of intoxicant shall, on conviction thereof, before any judge, stipendiary magistrate or two justices of the peace, upon the evidence of one credible witness other than the informer or prosecutor, be liable to imprisonment for a period of not less than one month nor more than six months, with or without hard labor; and in all cases arising under this section, Indians or non-treaty Indians, shall be competent witnesses: but no penalty shall be incurred in case of sickness where the intoxicant is made use of under the sanction of a medical man or under the directions of a minister of religion.

in possession
of
any
intox-
icant.

Exception.

80. The keg, barrel, case, box, package or receptacle whence any intoxicant has been sold, exchanged, bartered, supplied or given, and as well that in which the original supply was contained as the vessel wherein any portion of such original supply was supplied as aforesaid, and the remainder of the contents thereof, if such barrel, keg, case, box, package, receptacle or vessel aforesaid respectively, can be identified, and any intoxicant imported or manufactured or brought into and upon any reserve or special reserve, or into the house, tent, wigwam or place of abode of any Indian or non-treaty Indian, may be seized by any constable wheresoever found on such land or in such place; and on complaint before any judge, stipendiary magistrate or justice of the peace, he may, on the evidence of any credible witness that this Act has been contravened in respect thereof, declare the same forfeited, and cause the same to be forthwith destroyed; and may condemn the Indian or other person in whose possession they were found to pay a penalty not exceeding one hundred dollars nor less than fifty dollars, and the costs of prosecution; and one-half of such penalty shall belong to the prosecutor and the other half to Her Majesty, for the purposes hereinbefore mentioned; and in default of immediate payment, the offender may be committed to any common gaol, house of correction, lock-up or other place of confinement with or without hard labor, for any time not exceeding six nor less than two months unless such fine and costs are sooner paid.

Keg or cask,
&c., in which
intoxicants
are carried to
be forfeited.

Intoxicants
and vessels
containing
them may be
seized.

And destroy-
ed by order
of J. P.

Person in
whose posses-
sion they
were found
subject to
penalty from
\$50 to \$100.

Imprison-
ment in de-
fault of pay-
ment.

81. When it is proved before any judge, stipendiary magistrate or two justices of the peace that any vessel, boat, canoe or conveyance of any description upon the sea or sea-coast, or upon any river, lake or stream in Canada, is employed in carrying any intoxicant, to be supplied to Indians or non-treaty Indians, such vessel, boat, canoe or conveyance so employed may be seized and declared forfeited, as in the next preceding section, and sold, and the

Vessels used
in conveying
intoxicants in
contraven-
tion of this
Act, subject
to seizure and
forfeiture.

proceeds thereof paid to Her Majesty for the purposes hereinbefore mentioned.

Articles exchanged for intoxicants may be seized and forfeited.

82. Every article, chattel, commodity or thing in the purchase, acquisition, exchange, trade or barter of which in contravention of this Act the consideration, either wholly or in part, may be any intoxicant, shall be forfeited to Her Majesty and shall be seized as in the eightieth section in respect to any receptacle of any intoxicant, and may be sold and the proceeds thereof paid to Her Majesty for the purposes hereinbefore mentioned.

Indians intoxicated may be arrested and imprisoned until sober.

And fined.

83. It shall be lawful for any constable, without process of law, to arrest any Indian or non-treaty Indian whom he may find in a state of intoxication, and to convey him to any common gaol, house of correction, lock-up or other place of confinement, there to be kept until he shall have become sober; and such Indian or non-treaty Indian shall, when sober, be brought before any judge, stipendiary magistrate, or justice of the peace, and if convicted of being so found in a state of intoxication shall be liable to imprisonment in any common gaol, house of correction, lock-up or other place of confinement, for any period not exceeding one month. And if any Indian or non-treaty Indian, having been so convicted as aforesaid, refuses upon examination to state or give information of the person, place and time from whom, where and when, he procured such intoxicant, and if from any other Indian or non-treaty Indian, then, if within his knowledge, from whom, where and when such intoxicant was originally procured or received, he shall be liable to imprisonment as aforesaid for a further period not exceeding fourteen days.

And further punished if they refuse to say from whom they got the intoxicants.

To what Judges only an appeal shall lie from conviction under five next preceding sections.

84. No appeal shall lie from any conviction under the five next preceding sections of this Act, except to a Judge of any superior court of law, county, or circuit, or district court, or to the Chairman or Judge of the Court of the Sessions of the Peace, having jurisdiction where the conviction was had, and such appeal shall be heard, tried, and adjudicated upon by such judge without the intervention of a jury; and no such appeal shall be brought after the expiration of thirty days from the conviction.

Want of form not to invalidate conviction.

85. No prosecution, conviction or commitment under this Act shall be invalid on account of want of form, so long as the same is according to the true meaning of this Act.

ENFRANCHISEMENT

Report of Agent when Indian obtains con-

86. Whenever any Indian man, or unmarried woman, of the full age of twenty-one years, obtains the consent of the band of which he or she is a member to become enfranchised,
and

and whenever such Indian has been assigned by the band a suitable allotment of land for that purpose, the local agent shall report such action of the band, and the name of the applicant to the Superintendent-General; whereupon the said Superintendent-General, if satisfied that the proposed allotment of land is equitable, shall authorize some competent person to report whether the applicant is an Indian who, from the degree of civilization to which he or she has attained, and the character for integrity, morality and sobriety which he or she bears, appears to be qualified to become a proprietor of land in fee simple; and upon the favorable report of such person, the Superintendent-General may grant such Indian a location ticket as a probationary Indian, for the land allotted to him or her by the band.

sent of Band to be enfranchised.

Inquiry thereupon.

Location ticket on favourable report.

(1.) Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law either as an Advocate or as a Barrister or Counsellor or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by any denomination of Christians as a Minister of the Gospel, shall *ipso facto* become and be enfranchised under this Act.

Indians admitted to degrees in Universities, &c.

87. After the expiration of three years (or such longer period as the Superintendent-General may deem necessary in the event of such Indian's conduct not being satisfactory), the Governor may, on the report of the Superintendent-General, order the issue of letters patent, granting to such Indian in fee simple the land which had, with this object in view, been allotted to him or her by location ticket.

Patent after certain period of probation.

88. Every such Indian shall, before the issue of the letters patent mentioned in the next preceding section, declare to the Superintendent-General the name and surname by which he or she wishes to be enfranchised and thereafter known, and on his or her receiving such letters patent, in such name and surname, he or she shall be held to be also enfranchised, and he or she shall thereafter be known by such name or surname, and if such Indian be a married man his wife and minor unmarried children also shall be held to be enfranchised; and from the date of such letters patent the provisions of this Act and of any Act or law making any distinction between the legal rights, privileges, disabilities and liabilities of Indians and those of Her Majesty's other subjects shall cease to apply to any Indian, or to the wife or minor unmarried children of any Indian as aforesaid, so declared to be enfranchised, who shall no longer be deemed Indians within the meaning of the laws relating to Indians, except in so far as their right to participate in the annuities and interest moneys, and rents and councils of the band of Indians

Indian to declare name chosen; and to be known by it.

Wife and minor children enfranchised. Effect of such enfranchisement.

Proviso as to children attaining majority before their father's probation expires.

Indians to which they belonged is concerned: Provided, always, that any children of a probationary Indian, who being minors and unmarried when the probationary ticket was granted to such Indian, arrive at the full age of twenty-one years before the letters patent are issued to such Indian, may, at the discretion of the Governor in Council, receive letters patent in their own names for their respective shares of the land allotted under the said ticket, at the same time that

Proviso as to children found unqualified, or being married.

letters patent are granted to their parent: and provided, that if any Indian child having arrived at the full age of twenty-one years, during his or her parents' probationary period, be unqualified for enfranchisement, or if any child of such parent, having been a minor at the commencement of such period, be married during such period, then a quantity of land equal to the share of such child shall be deducted in such manner as may be directed by the Superintendent-General, from the allotment made to such Indian parent on receiving his probationary ticket.

Case of Indian dying before expiration of probation or failing to qualify.

89. If any probationary Indian should fail in qualifying to become enfranchised, or should die before the expiration of the required probation, his or her claim, or the claim of his or her heirs to the land, for which a probationary ticket was granted, or the claim of any unqualified Indian, or of any Indian who may marry during his or her parents' probationary period, to the land deducted under the operation of the next preceding section from his or her parents' probationary allotment, shall in all respects be the same as that conferred by an ordinary location ticket, as provided in the sixth, seventh, eighth and ninth sections of this Act.

As to children of widows probationary or enfranchised.

90. The children of any widow who becomes either a probationary or enfranchised Indian shall be entitled to the same privileges as those of a male head of a family in like circumstances.

Rules for allotting lands to probationary Indians.

91. In allotting land to probationary Indians, the quantity to be located to the head of a family shall be in proportion to the number of such family compared with the total quantity of land in the reserve, and the whole number of the band, but any band may determine what quantity shall be allotted to each member for enfranchisement purposes, provided each female of any age, and each male member under fourteen years of age receive not less than one-half the quantity allotted to each male member of fourteen years of age and over.

Proviso: as to power of Band in this behalf.

As to Indians not members of the Band, but permitted to reside on their reserve.

92. Any Indian, not a member of the band, or any non-treaty Indian, who, with the consent of the band and the approval of the Superintendent-General, has been permitted to reside upon the reserve, or obtain a location thereon, may, on being assigned a suitable allotment of land by the band for

for enfranchisement, become enfranchised on the same terms and conditions as a member of the band; and such enfranchisement shall confer upon such Indian the same legal rights and privileges, and make such Indian subject to such disabilities and liabilities as affect Her Majesty's other subjects; but such enfranchisement shall not confer upon such Indian any right to participate in the annuities, interest moneys, rents and councils of the band. Proviso.

93. Whenever any band of Indians, at a council summoned for the purpose according to their rules, and held in the presence of the Superintendent-General or of an agent duly authorized by him to attend such council, decides to allow every member of the band who chooses, and who may be found qualified, to become enfranchised, and to receive his or her share of the principal moneys of the band, and sets apart for such member a suitable allotment of land for the purpose, any applicant of such band after such a decision may be dealt with as provided in the seven next preceding sections until his or her enfranchisement is attained; and whenever any member of the band, who for the three years immediately succeeding the date on which he or she was granted letters patent, or for any longer period that the Superintendent-General may deem necessary, by his or her exemplary good conduct and management of property, proves that he or she is qualified to receive his or her share of such moneys, the Governor may, on the report of the Superintendent-General to that effect, order that the said Indian be paid his or her share of the capital funds at the credit of the band, or his or her share of the principal of the annuities of the band, estimated as yielding five per cent. out of such moneys as may be provided for the purpose by Parliament; and if such Indian be a married man then he shall also be paid his wife and minor unmarried children's share of such funds and other principal moneys, and if such Indian be a widow, she shall also be paid her minor unmarried children's share: and the unmarried children of such married Indians, who become of age during either the probationary period for enfranchisement or for payment of such moneys, if qualified by the character for integrity, morality and sobriety which they bear, shall receive their own share of such moneys when their parents are paid, and if not so qualified, before they can become enfranchised or receive payment of such moneys they must themselves pass through the probationary periods; and all such Indians and their unmarried minor children who are paid their share of the principal moneys of their band as aforesaid, shall thenceforward cease in every respect to be Indians of any class within the meaning of this Act, or Indians within the meaning of any other Act or law. Provision when Band decides that all its members may become enfranchised.
Or when Indian becomes qualified by exemplary conduct.
If such Indian be a married man or widow.
And as to unmarried children of such enfranchised married Indians.

94. Sections eighty-six to ninety-three, both inclusive, of this Provision as to Indians in this

British Columbia, N.-W. Territories or Keewatin.

this Act, shall not apply to any band of Indians in the Province of British Columbia, the Province of Manitoba, the North-West Territories, or the Territory of Keewatin, save in so far as the said sections may, by proclamation of the Governor-General, be from time to time extended, as they may be, to any band of Indians in any of the said provinces or territories.

MISCELLANEOUS PROVISIONS.

Before whom affidavits to be used under this Act may be made.

95. All affidavits required under this Act, or intended to be used in reference to any claim, business or transaction in the Indian Branch of the Department of the Interior, may be taken before the judge or clerk of any county or circuit court, or any justice of the peace, or any commissioner for taking affidavits in any of the courts, or the Superintendent-General, or any Indian agent, or any surveyor duly licensed and sworn, appointed by the Superintendent-General to enquire into or take evidence or report in any matter submitted or pending before such Superintendent-General, or if made out of Canada, before the mayor or chief magistrate of, or the British consul in, any city, town or other municipality; and any wilful false swearing in any such affidavit shall be perjury.

Perjury.

Certified copies of official papers to be evidence.

96. Copies of any records, documents, books or papers belonging to or deposited in the Department of the Interior, attested under the signature of the Superintendent-General or of his deputy shall be competent evidence in all cases in which the original records, documents, books or papers, could be evidence.

Governor in Council may exempt Indians from operation of any sections of this Act:— and again remove such exemption.

97. The Governor in Council may, by proclamation from time to time, exempt from the operation of this Act, or from the operation of any one or more of the sections of this Act, Indians or non-treaty Indians, or any of them, or any band or irregular band of them, or the reserves or special reserves, or Indian lands or any portions of them, in any province, in the North-West Territories, or in the territory of Keewatin, or in either of them, and may again, by proclamation from time to time, remove such exemption.

Governor to appoint officers, &c., to be paid out of monies appropriated by Parliament.

98. The Governor may, from time to time, appoint officers and agents to carry out this Act, and any Orders in Council made under it, which officers and agents shall be paid in such manner and at such rates as the Governor in Council may direct out of any fund that may be appropriated by law for that purpose.

Acts and parts of Acts repealed, viz: S. 56 of c. 61,

99. Section fifty-six of chapter sixty-one and section fifty of chapter sixty-eight of the Consolidated Statutes of Canada, section twenty-nine of chapter forty-nine of the Consolidated Statutes

Statutes for Upper Canada, and so much of chapter eighty-one of the said Consolidated Statutes for Upper Canada as relates to Indians or Indian lands, sections five to thirty-three, inclusive, and sections thirty-seven and thirty-eight of the Act passed in the session held in the thirty-first year of Her Majesty's reign, chaptered forty-two, and the Act passed in the session held in the thirty-second and thirty-third years of Her Majesty's reign, chaptered six, and the Act passed in the thirty-seventh year of Her Majesty's reign, chaptered twenty-one, are hereby repealed, with so much of any Act or law as may be inconsistent with this Act, or as makes any provision in any matter provided for by this Act, except only as to things done, rights acquired, obligations contracted, or penalties incurred before the coming into force of this Act; and this Act shall be construed not as a new law but as a consolidation of those hereby repealed in so far as they make the same provision that is made by this Act in any matter hereby provided for.

and s. 50 of c. 68, Con. Stat. Can. S. 29 of c. 49 of Con. Stat. U. C., part of c. 81 of Con. Stat. U. C. ss. 5 to 33, and ss. 37, 38 of 31 V., c. 42, Acts 32, 33 V., c. 6, and 37 V., c. 21, &c., repealed.

Saving clause as to things done, &c.

100. No Act or enactment repealed by any Act hereby repealed shall revive by reason of such repeal.

Repealed Acts not to revive.

CHAP. 19.

An Act to amend the Dominion Lands Acts.

[Assented to 12th April, 1876.]

IN further amendment of "*The Dominion Lands Act*," and of the Act thirty-seventh Victoria, chapter nineteen, intituled: "*An Act to amend the Dominion Lands Act*," hereinafter called and referred to as "the Act of 1874;" Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Preamble. 35 V., c. 23 & 37 V., c. 19.

1. Sub-section two of section two of the Dominion Lands Act passed in the thirty-fifth year of Her Majesty's reign, chapter twenty-three, is hereby amended by inserting after the word "Surveyor-General" where it occurs in the said sub-section, the words "and of plans or documents in any Dominion Lands or Surveys Office in Manitoba or the North-West Territories, attested under the signature of the Agent or Inspector of Surveys, as the case may be, in charge of such office."

Sub-s. 2 of s. 2 of 35 V., c. 23, amended.

Copies of plans, &c.

2. Sub-section three of the said section two of the said Act is hereby amended by adding thereto the words "or shall locate military bounty land warrants, or land scrip, or act as the agent of any other person or persons in such behalf."

Sub-s. 3 of the same amended. Agents.

3.

EXHIBIT I-14
1927 *Indian Act*

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Revised Statutes of Canada, 1927; Proclaimed and Published under the Authority of the Act, Chap. 65 of the Statutes of Canada, 1924 (1927).

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CHAPTER 98.

An Act respecting Indians.

SHORT TITLE.

1. This Act may be cited as the Indian Act. R.S., Short title. c. 81, s. 1.

INTERPRETATION.

2. In this Act, unless the context otherwise requires, Definitions.

(a) "agent" or "Indian agent" means and includes a "Agent." commissioner, assistant commissioner, superintendent, "Indian agent." agent or other officer acting under the instructions of the Superintendent General;

(b) "band" means any tribe, band or body of Indians "Band." who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible; and, when action is being taken by the band as such, means the band in council;

(c) "Department" means the Department of Indian "Depart- Affairs; ment."

(d) "Indian" means "Indian."

(i) any male person of Indian blood reputed to belong to a particular band,

(ii) any child of such person,

(iii) any woman who is or was lawfully married to such person;

(e) "Indian lands" means any reserve or portion of a "Indian reserve which has been surrendered to the Crown; lands."

(f) "intoxicants" means and includes all spirits, strong "Intoxi- waters, spirituous liquors, wines, or fermented or com- cants." pounded liquors, or intoxicating drink of any kind whatsoever, and any intoxicating liquor or fluid, and opium, and any preparation thereof, whether liquid or solid, and any other intoxicating drug or substance, and tobacco or tea mixed or compounded or impreg- nated

- nated with opium or with other intoxicating drugs, spirits or substances, and whether the same or any of them are liquid or solid;
- “Irregular band.” (g) “irregular band” means any tribe, band or body of persons of Indian blood who own no interest in any reserve or lands of which the legal title is vested in the Crown, who possess no common fund managed by the Government of Canada, and who have not had any treaty relations with the Crown;
- “Non-treaty Indian.” (h) “non-treaty Indian” means any person of Indian blood who is reputed to belong to an irregular band, or who follows the Indian mode of life, even if such person is only a temporary resident in Canada;
- “Person.” (i) “person” means an individual other than an Indian;
- “Reserve.” (j) “reserve” means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, and which remains so set apart and has not been surrendered to the Crown, and includes all the trees, wood, timber, soil, stone, minerals, metals and other valuables thereon or therein;
- “Special reserve.” (k) “special reserve” means any tract or tracts of land, and everything belonging thereto, set apart for the use or benefit of and held in trust for any band or irregular band of Indians, the title of which is vested in a society, corporation or community legally established, and capable of suing and being sued, or in a person or persons of European descent;
- “Superintendent General,” and “Deputy.” (l) “Superintendent General” means the Superintendent General of Indian Affairs, and “Deputy Superintendent General” means the Deputy Superintendent General of Indian Affairs;
- “Territories.” (m) “Territories” means the Northwest Territories and the Yukon Territory. R.S., c. 81, s. 2; 1920, c. 50, s. 3.

PART I.

INDIANS.

Application.

Governor in Council may exempt from operation of this Part, and remove such exemption.

3. The Governor in Council may, by proclamation, from time to time, exempt from the operation of this Part, or from the operation of any one or more of the sections of this Part, Indians or non-treaty Indians, or any of them, or any band or irregular band of them, or the reserves or special reserves, or Indian lands, or any portions of them, in any province or in the territories, or in any of them; and may again, by proclamation, from time to time, remove such exemption. R.S., c. 81, s. 3.

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Department

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Department of Indian Affairs.

4. The Minister of the Interior, or the head of any other department appointed for that purpose by the Governor in Council, shall be the Superintendent General of Indian Affairs, and shall, as such, have the control and management of the lands and property of the Indians in Canada.

Any minister may be appointed Superintendent of Indian Affairs.

2. The Superintendent General of Indian Affairs shall have charge of Eskimo affairs. R.S., c. 81, s. 4; 1924, c. 47, s. 1.

5. There shall be a department of the government of Canada which shall be called the Department of Indian Affairs, over which the Superintendent General shall preside. R.S., c. 81, s. 5.

Department of Indian Affairs.

6. The Department of Indian Affairs shall have the management, charge and direction of Indian affairs. R.S., c. 81, s. 6.

Duties.

7. The Governor in Council may appoint
(a) an officer who shall be called the Deputy of the Superintendent General of Indian Affairs;
(b) a deputy governor.

Appointment of officers.

2. Such other officers, clerks and servants as are requisite for the proper conduct of the business of the Department may be appointed in the manner authorized by law. R.S., c. 81, s. 7; 1918, c. 12.

8. The Deputy Governor shall have the power, in the absence of or under instructions of the Governor General, to sign letters patent for Indian lands.

Deputy Governor.

2. The signature of the Deputy Governor to such patents shall have the same force and virtue as if such patents were signed by the Governor General. R.S., c. 81, s. 8.

May sign letters patent.

Schools.

9. The Governor in Council may establish
(a) day schools in any Indian reserve for the children of such reserve;
(b) industrial or boarding schools for the Indian children of any reserve or reserves or any district or territory designated by the Superintendent General.

Power to establish day schools and industrial or boarding schools.

2. Any school or institution the managing authorities of which have entered into a written agreement with the Superintendent General to admit Indian children and provide them with board, lodging and instruction may be declared by the Governor in Council to be an industrial school or a boarding school for the purposes of this Act.

Or to declare any school to be industrial or boarding school.

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3.
R.S., 1927.

Transport
of children
to schools.

3. The Superintendent General may provide for the transport of Indian children to and from the boarding or industrial schools to which they are assigned, including transportation to and from such schools for the annual vacations.

Regulations
to prescribe
standards.

4. The Superintendent General shall have power to make regulations prescribing a standard for the buildings, equipment, teaching and discipline of and in all schools, and for the inspection of such schools.

Inspection
of schools by
chief and
council.

5. The chief and council of any band that has children in a school shall have the right to inspect such school at such reasonable times as may be agreed upon by the Indian agent and the principal of the school.

Annuities
and interest
applied to
mainten-
ance.

6. The Superintendent General may apply the whole or any part of the annuities and interest moneys of Indian children attending an industrial or boarding school to the maintenance of such school or to the maintenance of the children themselves. 1920, c. 50, s. 1.

Children
from 7 to
15 to attend
school.

10. Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school as may be designated by the Superintendent General for the full periods during which such school is open each year.

As to
religions.

2. Such school shall be the nearest available school of the kind required, and no Protestant child shall be assigned to a Roman Catholic school or a school conducted under Roman Catholic auspices, and no Roman Catholic child shall be assigned to a Protestant school or a school conducted under Protestant auspices.

Truant
officers and
compulsory
attendance.
Power to
investigate
cases of
truancy.

3. The Superintendent General may appoint any officer or person to be a truant officer to enforce the attendance of Indian children at school, and for such purpose a truant officer shall be vested with the powers of a peace officer, and shall have authority to enter any place where he has reason to believe there are Indian children between the ages of seven and fifteen years, and when requested by the Indian agent, a school teacher or the chief of a band shall examine into any case of truancy, shall warn the truants, their parents or guardians or the person with whom any Indian child resides, of the consequences of truancy, and notify the parent, guardian or such person in writing to cause the child to attend school.

Notice to
parents,
guardians,
etc.

4. Any parent, guardian or person with whom an Indian child is residing who fails to cause such child, being between the ages aforesaid, to attend school as required by this section after having received three days' notice so to do by a truant officer shall, on the complaint of the truant officer, be liable on summary conviction before a justice

Penalty for
guardian,
parent or
others
failing to
cause child
to attend
school, after
notice.

of the peace or Indian agent to a fine of not more than two dollars and costs, or imprisonment for a period not exceeding ten days or both, and such child may be arrested without a warrant and conveyed to school by the truant officer.

5. No parent or other person shall be liable to such penalties if such child

Exemptions
from
penalties.

(a) is unable to attend school by reason of sickness or other unavoidable cause;

(b) has passed the entrance examination for high schools; or

(c) has been excused in writing by the Indian agent or teacher for temporary absence to assist in husbandry or urgent and necessary household duties. 1920, c. 50, s. 1.

11. The Governor in Council may take the land of an Indian held under location ticket or otherwise, for school purposes, upon payment to such Indian of the compensation agreed upon, or in case of disagreement such compensation as may be determined in such manner as the Superintendent General may direct. 1914, c. 35, s. 2.

Taking
land for
schools.

Membership of Band.

12. Any illegitimate child may, unless he has, with the consent of the band whereof the father or mother of such child is a member, shared in the distribution moneys of such band for a period exceeding two years, be, at any time, excluded from the membership thereof by the Superintendent General. R.S., c. 81, s. 12.

Exclusion
of natural
children
from band.

13. Any Indian who has for five years continuously resided in a foreign country without the consent, in writing, of the Superintendent General or his agent, shall cease to be a member of the band of which he was formerly a member and he shall not again become a member of that band, or of any other band, unless the consent of such band, with the approval of the Superintendent General or his agent, is first obtained. R.S., c. 81, s. 13.

Loss of
member-
ship,
through
residence
in a
foreign
country
without
leave.

14. Any Indian woman who marries any person other than an Indian, or a non-treaty Indian, shall cease to be an Indian in every respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents; but such income may be commuted to her at any time at ten years' purchase, with the approval of the Superintendent General. 1920, c. 50, s. 2.

Effect of
marriage
of Indian
woman.

Superin-
tendent
may
commute
income.

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Marriage of Indian woman with Indian of another band or non-treaty Indian. If she marries non-treaty Indian.

15. Any Indian woman who marries an Indian of any other band, or a non-treaty Indian, shall cease to be a member of the band to which she formerly belonged, and shall become a member of the band or irregular band of which her husband is a member.

2. If she marries a non-treaty Indian, while becoming a member of the irregular band of which her husband is a member, she shall be entitled to share equally with the members of the band of which she was formerly a member, in the distribution of their moneys; but such income may be commuted to her at any time at ten years' purchase, with the consent of the band. R.S., c. 81, s. 15.

As to half-breeds in Manitoba.

16. No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian.

Half-breed heads of families.

2. No half-breed head of a family, except the widow of an Indian or a half-breed who has already been admitted into a treaty, shall, unless under very special circumstances, which shall be determined by the Superintendent General or his agent, be accounted an Indian or entitled to be admitted into any Indian treaty.

Withdrawal from treaty.

3. Any half-breed who has been admitted into a treaty shall, on obtaining the consent in writing of the Superintendent General, be allowed to withdraw therefrom on signifying his desire so to do in writing, signed by him in the presence of two witnesses, who shall attest his signature on oath before some person authorized by law to administer such oath.

Wife and minor children.

4. Such withdrawal shall include the wife and minor unmarried children of such half-breed. R.S., c. 81, s. 16; 1914, c. 35, ss. 3 and 4.

Transfer of Indian from one band to another.

17. When, by a majority vote of a band, or the council of a band, an Indian of one band is admitted into membership in another band, and his admission thereinto is assented to by the Superintendent General, such Indian shall cease to have any interest in the lands or moneys of the band of which he was formerly a member, and shall be entitled to share in the lands and moneys of the band to which he is so admitted.

Share of capital.

2. The Superintendent General may cause to be deducted from the capital of the band of which such Indian was formerly a member his *per capita* share of such capital and place the same to the credit of the capital of the band into membership in which he has been admitted in the manner aforesaid. R.S., c. 81, s. 17.

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18. The Superintendent General may, from time to time, upon the report of an officer, or other person specially appointed by him to make an inquiry, determine who is or who is not a member of any band of Indians entitled to share in the property and annuities of the band.

Determina-
tion of
member-
ship of
band.

2. The decision of the Superintendent General in any such matter shall be final and conclusive, subject to an appeal to the Governor in Council. R.S., c. 81, s. 18.

Decision of
Supt. Gen.

Reserves.

19. All reserves for Indians, or for any band of Indians, or held in trust for their benefit, shall be deemed to be reserved and held for the same purposes as they were held heretofore, but shall be subject to the provisions of this Part. R.S., c. 81, s. 19.

Reserves to
be subject
to this Part.

20. The Superintendent General may authorize surveys, plans and reports to be made of any reserve for Indians, showing and distinguishing the improved lands, the forests and lands fit for settlement, and such other information as is required; and may authorize the whole or any portion of a reserve to be subdivided into lots. R.S., c. 81, s. 20.

Surveys,
plans,
reports and
subdivision
into lots of
reserves
may be
authorized.

21. No Indian shall be deemed to be lawfully in possession of any land in a reserve, unless he has been or is located for the same by the band, or council of the band, with the approval of the Superintendent General; but no Indian shall be dispossessed of any land on which he has improvements, without receiving compensation for such improvements, at a valuation approved by the Superintendent General, from the Indian who obtains the land, or from the funds of the band, as is determined by the Superintendent General.

Possession
of land in
reserve.

Improve-
ments.

2. Prior to the location of an Indian under this section, in the province of Manitoba, Saskatchewan or Alberta, or the Territories, the Indian commissioner may issue a certificate of occupancy to any Indian belonging to a band residing upon a reserve in the aforesaid provinces or territories, of so much land, not exceeding in any case one hundred and sixty acres, as the Indian, with the approval of the commissioner, selects.

Certificate
of Indian
Com-
missioner.

3. Such certificate may be cancelled at any time by the Indian commissioner, but shall, while it remains in force, entitle the holder thereof, as against all others, to lawful possession of the lands described therein. R.S., c. 81, s. 21.

Cancellat-
ion of
certificate
by the
Indian
Com-
missioner.

22. When the Superintendent General approves of any location as aforesaid, he shall issue, in triplicate, a ticket granting a location title to such Indian, one triplicate of

Location
ticket in
triplicate.

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which

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which he shall retain in a book to be kept for the purpose; and the other two of which he shall forward to the local agent.

Delivery of ticket to Indian.

2. The local agent shall deliver to the Indian in whose favour it is issued one of such duplicates so forwarded, and shall cause the other to be copied into a register of the band, provided for the purpose, and shall file the same. R.S., c. 81, s. 22.

Effect of such ticket limited.

23. The conferring of any such location title shall not have the effect of rendering the land covered thereby subject to seizure under legal process, and such title shall be transferable only to an Indian of the same band, and then only with the consent and approval of the Superintendent General, whose consent and approval shall be given only by the issue of a ticket, in the manner prescribed in the last preceding section. R.S., c. 81, s. 23.

Privileges of Indians having improved lands included in reserves in certain provinces.

24. Every Indian and every non-treaty Indian, in the province of Manitoba, British Columbia, Saskatchewan or Alberta, or the Territories, who had, previously to the selection of a reserve, possession of and who has made permanent improvements on a plot of land which upon such selection becomes included in, or surrounded by, a reserve, shall have the same privileges, in respect of such plot, as an Indian enjoys who holds under a location title. R.S., c. 81, s. 24.

Descent of Property.

Indians may devise property by will.

25. Indians may devise or bequeath property of any kind in the same manner as other persons.

2. No will purporting to dispose of land in a reserve or any interest therein shall be of any force or effect unless or until the will has been approved by the Superintendent General, and if a will be disapproved by the Superintendent General the Indian making the will shall be deemed to have died intestate; and the Superintendent General may approve of a will generally and disallow any disposition thereby made of land in a reserve or of any interest in such land, in which case the will so approved shall have force and effect except so far as such disallowed disposition is concerned, and the Indian making the will shall be deemed to have died intestate as to the land or interest the disposition of which is so disallowed.

Land devised or bequeathed to non-resident, to be sold.

3. No one who is not entitled to reside on the reserve shall by reason of any devise or bequest or by reason of any intestacy be entitled to hold land in a reserve, but any land in a reserve devised by will or devolving on an

intestacy, to some one not entitled to reside on the reserve, shall be sold by the Superintendent General to some member of the band and the proceeds thereof shall be paid to such devisee or heir. R.S., c. 81, s. 25; 1918, c. 26, s. 1.

26. Upon the death of an Indian intestate his property of all kinds, real and personal, movable and immovable, including any recognized interest he may have in land in a reserve, shall descend as follows: Distribution of estate in case of intestacy.

(a) One-third of the inheritance shall devolve upon his widow, if she is a woman of good moral character, and the remainder upon his children, if all are living, or, if any who are dead have died without issue; One-third to widow.

(b) If there is no widow, or if the widow is not of good moral character, the whole inheritance shall devolve upon his children in equal shares, if all are living, or, if any who are dead have died without issue; Otherwise children inherit the whole.

(c) If one or more of the children are living, and one or more are dead, having had lawful issue, the inheritance so far as the same does not descend to the widow, shall devolve upon the children who are living, and the descendants of such children as have died, so that each child who is living shall receive such share as would have descended to him if all the children of the intestate who have died leaving issue had been living, and so that the descendants of each child who is dead shall inherit in equal shares the share which their parent would have received if living; Representation of defunct heir.

(d) If the descendants of the intestate entitled to share in the inheritance are of unequal degrees of consanguinity to the intestate, the inheritance shall devolve so that those who are in the nearest degree of consanguinity shall take the shares which would have descended to them, had all the descendants in the same degree of consanguinity who have died leaving issue, been living, and so that the issue of the descendants who have died shall respectively take the shares which their parents, if living, would have received; but the Superintendent General may, in his discretion direct that the widow, if she is of good moral character, shall have the right, during her widowhood, to occupy any land in the reserve of the band to which the deceased belonged of which he was the recognized owner, and to have the use of any property of the deceased for which, under the provisions of this Part, he was not liable to taxation. Provision for widow.

2. The Superintendent General shall be the sole and final judge as to the moral character of the widow of any intestate Indian. R.S., c. 81, s. 26. Superintendent General, sole judge of character of widow.

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Administra-
tion
of property
of minors.

27. During the minority of the children of an Indian who dies intestate, the administration and charge of the property to which they are entitled as aforesaid shall devolve upon the widow, if any, of the intestate, if she is of good moral character; and, in such case, as each male child attains the age of twenty-one years, and as each female child attains that age, or with the consent of the widow, marries before that age, the share of such child shall, subject to the approval of the Superintendent General, be conveyed or delivered to him or her.

Removal of
widow from
administra-
tion.

2. The Superintendent General may, at any time, remove the widow from such administration and charge and confer the same upon some other person, and, in like manner, may remove such other person and appoint another, and so, from time to time, as occasion requires.

Appoint-
ment of
guardians
to minors.

3. The Superintendent General may, whenever there are minor children, appoint a fit and proper person to take charge of such children and their property, and may remove such person and appoint another, and so, from time to time, as occasion requires. R.S., c. 81, s. 27.

Administra-
tion of
Indian
estates.

28. The Superintendent General may appoint a person or persons to administer the estate of any deceased or insane Indian, and may make such general regulations and such orders in particular cases as he deems necessary to secure the satisfactory administration of such estates. 1924, c. 47, s. 2.

Inheritance
of Indian
dying
without
issue.

29. In case any Indian dies intestate without issue, leaving a widow, all his property of whatever kind shall devolve upon her, and if he leaves no widow the same shall devolve upon the nearest of kin to the deceased: Provided that any interest which he may have had in land in a reserve shall be vested in His Majesty for the benefit of the band owning such reserve if his nearest of kin is more remote than a brother or sister. 1924, c. 47, s. 3.

Property of
a married
Indian
woman.

30. The property of a married Indian woman who dies intestate shall descend in the same manner and be distributed in the same proportions as that of a male Indian who dies intestate, her widower, if any, taking the share which the widow of such male Indian would take.

Idem.

2. The other provisions of this Part respecting the descent of property shall in like manner apply to the case of an intestate married woman, the word widower being substituted for the word widow in each case.

Idem.

3. The property of an unmarried Indian woman who dies intestate shall descend in the same manner as if she had been a male. R.S., c. 81, s. 29.

31. A claimant of land in a reserve or of any interest therein as devisee or legatee or heir of a deceased Indian shall not be held to be lawfully in possession thereof or to be the recognized owner thereof until he shall have obtained a location ticket therefor from the Superintendent General. R.S., c. 81, s. 30.

In any case location ticket requisite for possession by heir.

32. The Superintendent General may decide all questions which arise under this Part, respecting the distribution among those entitled thereto of the property of a deceased Indian, and he shall be the sole and final judge as to who the persons so entitled are.

Superintendent general to decide disputes.

2. The Superintendent General may do whatsoever in his judgment will best give to each claimant his share according to the true intent and meaning of this Part, and to that end, if he thinks fit, may direct the sale, lease or other disposition of such property or any part thereof, and the distribution or application of the proceeds or income thereof, regard being always had in any such disposition to the restriction upon the disposition of property in a reserve. R.S., c. 81, s. 31.

His powers.

33. Notwithstanding anything in this Part, the courts having jurisdiction in the case of persons other than Indians, with but not without the consent of the Superintendent General, may grant probate of the wills of Indians and letters of administration of the estate and effects of intestate Indians, in which case such courts and the executors and administrators obtaining such probate, or thereby appointed, shall have the like jurisdiction and powers as in other cases, except that no disposition shall, without the consent of the Superintendent General, be made of or dealing had with regard to any right or interest in land in a reserve or any property for which, under the provisions of this Part, an Indian is not liable to taxation. R.S., c. 81, s. 32.

Probate and letters of administration.

Trespassing on Reserves.

34. No person, or Indian other than an Indian of the band, shall without the authority of the Superintendent General, reside or hunt upon, occupy or use any land or marsh, or reside upon or occupy any road, or allowance for road, running through any reserve belonging to or occupied by such band.

Only Indians of the band to reside on or use the reserve.

2. All deeds, leases, contracts, agreements or instruments of whatsoever kind made, entered into, or consented to by any Indian, purporting to permit persons or Indians other than Indians of the band to reside or hunt upon such reserve, or to occupy or use any portion thereof, shall be void. R.S., c. 81, s. 33.

Certain contracts, etc., to be void.

Removal of
trespassers
and their
cattle, etc.

35. If any Indian is illegally in possession of any land on a reserve, or if any person, or Indian other than an Indian of the band, without the license of the Superintendent General,

(a) settles, resides or hunts upon, occupies, uses, or causes or permits any cattle or other animals owned by him, or in his charge, to trespass on any such land or marsh;

(b) fishes in any marsh, river, stream or creek on or running through a reserve; or

(c) settles, resides upon or occupies any road, or allowance for road, on such reserve;

the Superintendent General or such other officer or person as he thereunto deposes and authorizes, shall, on complaint made to him, and on proof of the fact to his satisfaction, issue his warrant, signed and sealed, directed to any literate person willing to act in the premises, commanding him forthwith as the case may be,

Warrant.

(a) to remove from the said land, marsh or road, or allowance for road, every such person or Indian and his family, so settled, or who is residing or hunting upon, or occupying, or is illegally in possession of the same;

(b) to remove such cattle or other animals from such land or marsh;

(c) to cause such person or Indian to cease fishing in any marsh, river, stream or creek, as aforesaid; or

(d) to notify such person or Indian to cease using, as aforesaid, the said land, river, stream, creek or marsh, road or allowances for road.

Execution.

2. The person to whom such warrant is directed, shall execute the same, and, for that purpose, shall have the same powers as in the execution of criminal process.

Costs.

3. The expenses incurred in any such removal or notification, or causing to cease fishing, shall be borne, as the case may be, by the person removed or notified, or caused to cease fishing, or who owns the cattle or other animals removed, or who has them in charge, and may be recovered from him as the costs in any ordinary action or suit, or if the trespasser is an Indian, such expenses may be deducted from his share of annuity and interest money, if any such are due to him.

Removal.

4. Any such person or Indian other than an Indian of the band may be required orally or in writing by an Indian agent, a chief of the band occupying the reserve, or a constable, as the case may be,

(a) to remove with his family, if any, from the land, marsh or road, or allowance for road, upon which he is or has so settled, or is residing or hunting, or which he so occupies;

- (b) to remove his cattle from such land or marsh;
 - (c) to cease fishing in any such marsh, river, stream or creek as aforesaid; or
 - (d) to cease using as aforesaid any such land, river, stream, creek, marsh, road or allowance for road.
- R.S., c. 81, s. 34.

36. If any person or Indian, after he has been removed or notified as aforesaid, or after any cattle or other animals owned by him or in his charge have been removed as aforesaid,

Removal and punishment of persons returning after having been removed.

- (a) returns to, settles, resides or hunts upon or occupies or uses as aforesaid any of the said land or marsh;
 - (b) causes or permits any cattle or other animals owned by him or in his charge to return to any of the said land or marsh;
 - (c) returns to any marsh, river, stream or creek on or running through a reserve, for the purpose of fishing therein; or
 - (d) returns to, settles or resides upon or occupies any of the said roads or allowances for roads;
- the Superintendent General, or any officer or person deputed or authorized, as aforesaid, upon view, or upon proof on oath before him, to his satisfaction, that the person or Indian has,

- (a) returned to, settled, resided or hunted upon or occupied or used as aforesaid any of the said lands or marshes;
- (b) caused or permitted any cattle or other animals owned by him, or in his charge, to return to any of the said land or marsh;
- (c) returned to any marsh, river, stream or creek on or running through a reserve for the purpose of fishing therein; or
- (d) returned to, settled or resided upon or occupied any of the said roads or allowances for roads;

shall direct and send his warrant, signed and sealed, to the sheriff of the proper county or district, or to any literate person therein, commanding him forthwith to arrest such person or Indian, and bring him before any stipendiary magistrate, police magistrate, justice of the peace or Indian agent, who may, on summary conviction, commit him to the common gaol of the said county or district, or if there is no gaol in the said county or district, or if the reserve is not situated within any county or district, then the gaol nearest to the said reserve in the province, there to remain for the time ordered in the warrant of commitment.

Warrant to sheriff to arrest and commit to gaol.

Limit of imprisonment.

2. The length of imprisonment aforesaid shall not exceed thirty days for the first offence, and thirty days additional for each subsequent offence.

Direction of warrant.

3. If the said reserve is not situated within any county or district, such warrant shall be directed and sent to some literate person within such reserve. R.S., c. 81, s. 35.

Arrest and imprisonment.

37. Such sheriff or other person shall accordingly arrest the said person or Indian, and deliver him to the keeper of the proper gaol, who shall receive such person or Indian, and imprison him in the said gaol for the term aforesaid. R.S., c. 81, s. 36.

Judgment to be drawn up and filed.

38. The Superintendent General, or such officer or person aforesaid, shall cause the judgment or order against the offender to be drawn up and filed in his office.

Final.

2. Such judgment shall not be appealed from, or removed by *certiorari* or otherwise, but shall be final. R.S., c. 81, s. 37.

Recovery of Possession of Reserves.

Recovery of possession of reserves withheld or adversely occupied.

39. If the possession of any lands reserved or claimed to be reserved for the Indians, or of any lands of which the Indians or any Indian or any band or tribe of Indians claim the possession or any right of possession, is withheld, or if any such lands are adversely occupied or claimed by any person, or if any trespass is committed thereon, the possession may be recovered for the Indians or Indian or band or tribe of Indians, or the conflicting claims may be adjudged and determined or damages may be recovered in an action at the suit of His Majesty on behalf of the Indians or Indian or of the band or tribe of Indians entitled to or claiming the possession or right of possession or entitled to or claiming the declaration, relief or damages.

Damages.

2. The Exchequer Court of Canada shall have jurisdiction to hear and determine any such action.

Exchequer Court jurisdiction.

3. Any such action may be instituted by information of the Attorney General of Canada upon the instructions of the Superintendent General of Indian Affairs.

Attorney General may institute action.

4. Nothing in this section shall impair, abridge or in anywise affect any existing remedy or mode of procedure provided for cases, or any of them, to which this section applies. 1910, c. 28, s. 1; 1911, c. 14, s. 4.

Existing remedies preserved.

Sale or Barter.

Governor in Council may make regulations as to sale or barter of produce by Indians.

40. The Governor in Council may make regulations for prohibiting or regulating the sale, barter, exchange or gift by any band or irregular band of Indians, or by any Indian of any band or irregular band, in the province of Manitoba, Saskatchewan or Alberta, or the Territories, of any grain

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or

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or root crops, or other produce grown upon any reserve, and may further provide that such sale, barter, exchange or gift shall be null and void, unless the same are made in accordance with such regulations. R.S., c. 81, s. 38.

41. No person shall buy or otherwise acquire from any band or irregular band of Indians, or from any Indian, any grain, root crops, or other produce from upon any reserve in the province of Manitoba, Saskatchewan or Alberta, or the Territories. R.S., c. 81, s. 39.

Buying of
produce
prohibited.

42. If any such grain or root crops, or other produce as aforesaid, are unlawfully in the possession of any person within the intent and meaning of this Part, or of any regulations made by the Governor in Council under this Part, any person acting under the authority, either general or special, of the Superintendent General, may, with such assistance in that behalf as he thinks necessary, seize and take possession of the same; and he shall deal therewith as the Superintendent General, or any officer or person thereunto by him authorized, directs. R.S., c. 81, s. 40.

Superin-
tendent
General may
order
seizure of
produce
unlawfully
possessed
by any
person.

43. The Governor in Council may make regulations for prohibiting the cutting, carrying away or removing from any reserve or special reserve, of any hard or sugar-maple tree or sapling. R.S., c. 81, s. 41.

Governor
in Council
may
prohibit
cutting of
trees on
reserve.

44. No official or employee connected with the inside or outside service of the Department, and no missionary in the employ of any religious denomination, or otherwise employed in mission work among Indians, and no school teacher on an Indian reserve, shall, without the special license in writing of the Superintendent General, trade with any Indian, or sell to him directly or indirectly, any goods or supplies, cattle or other animals.

Trading
with
Indians
prohibited
without
license
of Superin-
tendent
General.

2. The Superintendent General may at any time revoke the license so given by him. R.S., c. 81, s. 42.

Revocation
of license.

45. No person shall barter directly or indirectly with any Indian on a reserve in the province of Manitoba, Saskatchewan or Alberta, or the Territories, or sell to any such Indian any goods or supplies, cattle or other animals without the special license in writing of the Superintendent General.

Bartering
with
Indians
without a
license
prohibited.

2. The Superintendent General may, at any time, revoke the license by him given.

Revocation
of license.

3. Upon prosecution of any offender against the provisions of this and the last preceding section, the evidence of the Indian to whom the sale was made, and the production to, or view by, the magistrate or Indian agent of the article or animal sold, shall be sufficient evidence on which to convict. R.S., c. 81, s. 43.

Evidence.

Roads and Bridges.

Indians liable to work on public roads on reserves, and to what extent.

46. Indians residing upon any reserve shall be liable, if so directed by the Superintendent General, or any officer or person by him thereunto authorized, to perform labour upon the public roads laid out or used in or through, or abutting upon such reserve, which labour shall be performed under the sole control of the Superintendent General, or officer or person aforesaid, who may direct when, where and how and in what manner such labour shall be applied, and to what extent the same shall be imposed upon any Indian who is a resident upon the reserve.

Powers of Superintendent General.

2. The Superintendent General, or person or officer aforesaid shall have the like power to enforce the performance of such labour by imprisonment or otherwise, as may be done by any power or authority under any law, rule or regulation in force in the province or territory in which such reserve is situate, for the non-performance of statute labour; but the labour to be so required of any such Indian shall not exceed in amount or extent what may be required of other inhabitants of the same province, territory, county or other local division, under the laws requiring and regulating such labour and the performance thereof. R.S., c. 81, s. 44.

Band to cause roads to be kept in order.

47. Every band of Indians shall cause the roads, bridges, ditches and fences within its reserve to be put and maintained in proper order, in accordance with the instructions received, from time to time, from the Superintendent General, or from the agent of the Superintendent General.

Work may be done at cost of band.

2. Whenever in the opinion of the Superintendent General, such roads, bridges, ditches and fences are not so put or maintained in order, he may cause the work to be performed at the cost of the band, or of the particular Indian in default, as the case may be, either out of its or his annual allowances or otherwise. R.S., c. 81, s. 45.

Lands taken for Public Purposes.

Lands taken for public purposes.

48. No portion of any reserve shall be taken for the purpose of any railway, road, public work, or work designed for any public utility without the consent of the Governor in Council, but any company or municipal or local authority having statutory power, either Dominion or provincial, for taking or using lands or any interest in lands without the consent of the owner may, with the consent of the Governor in Council as aforesaid, and subject to the terms and conditions imposed by such consent, exercise such statutory power with respect to any reserve or portion of a reserve.

2. In any such case compensation shall be made there-
 for to the Indians of the band, and the exercise of such
 power, and the taking of the lands or interest therein and
 the determination and payment of the compensation shall,
 unless otherwise provided by the order in council evi-
 dencing the consent of the Governor in Council, be gov-
 erned by the requirements applicable to the like proceed-
 ings by such company, municipal or local authority in
 ordinary cases.

Compensa-
 tion.

3. The Superintendent General shall, in any case in
 which an arbitration is had, name the arbitrator on behalf
 of the Indians, and shall act for them in any matter re-
 lating to the settlement of such compensation.

Arbitra-
 tion.

4. The amount awarded in any case shall be paid to the
 Minister of Finance for the use of the band of Indians for
 whose benefit the reserve is held, and for the benefit of
 any Indian who has improvements taken or injured. R.S.,
 c. 81, s. 46; 1911, c. 14, s. 1.

Payment.

Surrender and Forfeiture of Lands in Reserve.

49. If, by the violation of the conditions of any trust
 respecting any special reserve, or by the breaking up of
 any society, corporation or community, or, if by the death
 of any person or persons without a legal succession or
 trusteeship, in whom the title to a special reserve is held
 in trust, the said title lapses or becomes void in law, the
 legal title shall become vested in His Majesty in trust, and
 the property shall be managed for the band or irregular
 band previously interested therein as an ordinary reserve.

Title to
 vest in His
 Majesty, if
 title of
 reserves
 held in
 trust lapses.

2. The trustees of any special reserve may, at any time,
 surrender the same to His Majesty in trust, whereupon
 the property shall be managed for the band or irregular
 band previously interested therein as an ordinary reserve.
 R.S., c. 81, s. 47.

Surrender
 of certain
 reserves to
 His
 Majesty
 in trust.

50. Except as in this Part otherwise provided, no reserve
 or portion of a reserve shall be sold, alienated or leased
 until it has been released or surrendered to the Crown for
 the purposes of this Part; but the Superintendent General
 may lease, for the benefit of any Indian, upon his applica-
 tion for that purpose, the land to which he is entitled
 without such land being released or surrendered, and may,
 without surrender, dispose to the best advantage, in the
 interests of the Indians, of wild grass and dead or fallen
 timber.

Sale or
 release of
 reserves.

Proviso.

2. The Governor in Council may make regulations
 enabling the Superintendent General without surrender to
 issue leases for surface rights on Indian reserve, upon such
 terms and conditions as may be considered proper in the
 interest of the Indians covering such area only as may be
 necessary

Leases of
 surface
 rights may
 be granted
 in connection
 with mining
 for precious
 metals.

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necessary

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necessary for the mining of the precious metals by any one otherwise authorized to mine such metals, said terms to include provision of compensating any occupant of land for any damage that may be caused thereon as determined by the Superintendent General. R.S., c. 81, s. 48; 1919, c. 56, s. 1.

Release or
surrender
of a
reserve,
when valid.

Assent of
band.

Who may
vote.

Proof of
assent.

Approval of
Governor in
Council.

Inquiry
and report
by
Exchequer
Court as to
removal of
Indians.

Order in
Council.

51. Except as in this Part otherwise provided, no release or surrender of a reserve, or a portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, unless the release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose, according to the rules of the band, and held in the presence of the Superintendent General, or of any officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General.

2. No Indian shall be entitled to vote or be present at such council, unless he habitually resides on or near, and is interested in the reserve in question.

3. The fact that such release or surrender has been assented to by the band at such council or meeting shall be certified on oath by the Superintendent General, or by the officer authorized by him to attend such council or meeting, and by some of the chiefs or principal men present thereat and entitled to vote, before any person having authority to take affidavits and having jurisdiction within the place where the oath is administered.

4. When such assent has been so certified, as aforesaid, such release or surrender shall be submitted to the Governor in Council for acceptance or refusal. R.S., c. 81, s. 49; 1918, c. 26, s. 2.

52. In the case of an Indian reserve which adjoins or is situated wholly or partly within an incorporated town or city having a population of not less than eight thousand, and which reserve has not been released or surrendered by the Indians, the Governor in Council may, upon the recommendation of the Superintendent General, refer to the judge of the Exchequer Court of Canada for inquiry and report the question as to whether it is expedient, having regard to the interest of the public and of the Indians of the band for whose use the reserve is held, that the Indians should be removed from the reserve or any part of it.

2. The order in council made in the case shall be certified by the Clerk of the Privy Council to the Registrar of the Exchequer Court of Canada, and the judge of the

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court shall thereupon proceed as soon as convenient to fix a time and place, of which due notice shall be given by publication in the *Canada Gazette*, and otherwise as may be directed by the judge, for taking the evidence and hearing and investigating the matter.

Notice of inquiry.

3. The judge shall have the like powers to issue subpoenas, compel the attendance and examination of witnesses, take evidence, give directions, and generally to hear and determine the matter and regulate the procedure as in proceedings upon information by the Attorney General within the ordinary jurisdiction of the court, and shall assign counsel to represent and act for the Indians who may be opposed to the proposed removal.

Powers of Court.

Counsel.

4. If the judge finds that it is expedient that the band of Indians should be removed from the reserve or any part of it, he shall proceed, before making his report, to ascertain the amounts of compensation, if any, which should be paid respectively to individual Indians of the band for the special loss or damages which they will sustain in respect of the buildings or improvements to which they are entitled upon the lands of the reserve for which they are located, and the judge shall, moreover, consider and report upon any of the other facts or circumstances of the case which he may deem proper or material to be considered by the Governor in Council.

Compensation for special loss and damages to be ascertained.

5. The judge shall transmit his findings, with the evidence and a report of the proceedings, to the Governor in Council, who shall lay a full report of the proceedings, the evidence and the findings before Parliament at the then current or next ensuing session thereof, and upon such findings being approved by resolution of Parliament the Governor in Council may thereupon give effect to the said findings and cause the reserve, or any part thereof from which it is found expedient to remove the Indians, to be sold or leased by public auction after three months advertisement in the public press, upon the best terms which, in the opinion of the Governor in Council, may be obtained therefor.

Transmission of proceedings.

Sale or lease of lands.

6. The proceeds of the sale or lease, after deducting the usual percentage for management fund, shall be applied in compensating individual Indians for their buildings or improvements as found by the judge, in purchasing a new reserve for the Indians removed, in transferring the said Indians with their effects thereto, in erecting buildings upon the new reserve, and in providing the Indians with such other assistance as the Superintendent General may consider advisable; and the balance of the proceeds, if any, shall be placed to the credit of the Indians; but the Governor in Council shall not cause the Indians to be removed, or disturb their possession, until a suitable reserve has

Disposition of proceeds.

Exception.

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been

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New reserve. been obtained and set apart for them in lieu of the reserve from which the expediency of removing the Indians is so established as aforesaid.

Expropriation of lands for new reserve. 7. For the purpose of selecting, appropriating and acquiring the lands necessary to be taken, or which it may be deemed expedient to take, for any new reserve to be acquired for the Indians as authorized by the last preceding subsection, whether they are Crown lands or not, the Superintendent General shall have all the powers conferred upon the Minister by the Expropriation Act, and such new reserve shall, for the purposes aforesaid, be deemed to be a public work within the definition of that expression in the Expropriation Act; and all the provisions of the Expropriation Act, in so far as applicable and not inconsistent with this Act, shall apply in respect of the proceedings for the selection, survey, ascertainment and acquisition of the lands required and the determination and payment of the compensation therefor.

Condition. 8. The Superintendent General shall not exercise the power of expropriation unless authorized by the Governor in Council. 1911, c. 14, s. 2.

Act not to confirm invalid releases or surrenders. **53.** Nothing in this Part shall confirm any release or surrender which, but for this Part, would have been invalid; and no release or surrender of any reserve, or portion of a reserve, to any person other than His Majesty, shall be valid. R.S., c. 81, s. 50.

Indian lands to be held for the same purpose as heretofore. **54.** All Indian lands which are reserves or portions of reserves surrendered, or to be surrendered, to His Majesty, shall be deemed to be held for the same purpose as heretofore; and shall be managed, leased and sold as the Governor in Council directs, subject to the conditions of surrender and the provisions of this Part. R.S., c. 81, s. 51.

Sale and Transfer of Indian Lands.

Effect of former certificate of sale or receipt. **55.** Every certificate of sale or receipt for money received on the sale of Indian lands granted or made by the Superintendent General or any agent of his, so long as the sale to which such certificate or receipt relates is in force and not rescinded, shall entitle the person to whom the same is granted, or his assignee, by instrument registered under this or any former Act providing for registration in such cases, to take possession of and occupy the land therein comprised, subject to the conditions of such sale, and unless the same has been revoked or cancelled, to maintain thereunder actions and suits against any wrongdoer or trespasser, as effectually as he could do under

a patent from the Crown; but the same shall have no force against a license to cut timber existing at the time of the granting or making thereof.

2. Such certificate or receipt shall be *prima facie* evidence of possession by such person, or the assignee, under an instrument registered as aforesaid in any such action or suit. R.S., c. 81, s. 52. Evidence of possession.

56. The Superintendent General shall keep a book for registering, at the option of the persons interested, the particulars of any assignment made, as well by the original purchaser or lessee of Indian lands, or his heirs or legal representatives, as by any subsequent assignee of any such lands, or the heirs or legal representatives of such assignee. R.S., c. 81, s. 53. Register of assignments to be kept.

57. Upon any such assignment being produced to the Superintendent General, and, except in cases where such assignment is made under a corporate seal, with an affidavit of due execution thereof, and of the place of such execution, and the names, residences and occupations of the witnesses, or, as to lands in the province of Quebec, upon the production of any such assignment executed in notarial form, or of a notarial copy thereof, the Superintendent General shall cause the material parts of the assignment to be registered in the said book, and shall cause to be endorsed on the assignment a certificate of such registration signed by himself or by the Deputy Superintendent General, or any other officer of the Department by him authorized to sign such certificates. R.S., c. 81, s. 54. Registration of assignments

58. Every such assignment so registered shall be valid against any assignment previously executed, which is subsequently registered or is unregistered. Effect of assignment and registration.

2. No such registration shall be made until all the conditions of the sale, grant or location are complied with or dispensed with by the Superintendent General. Requirements.

3. Every assignment registered as aforesaid shall be unconditional in its terms. R.S., c. 81, s. 55. Unconditional.

59. If any subscribing witness to any such assignment is dead, or is absent from Canada, the Superintendent General may register such assignment upon the production of an affidavit proving the death or absence of such witness, and his handwriting, or the handwriting of the person making such assignment. R.S., c. 81, s. 56. Proof of registration.

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Agents not to be interested in or owners of Indian lands.

60. No agent for the sale of Indian lands shall, within his division, directly or indirectly, except under an order of the Governor in Council, purchase any land which he is appointed to sell, or become proprietor of or interested in any such land, during the time of his agency; and every such purchase or interest shall be void. R.S., c. 81, s. 57.

Tax Sales.

Conveyance of lands sold for taxes.

61. Whenever the proper municipal officer having, by the law of the province in which the land affected is situate, authority to make or execute deeds or conveyances of lands sold for taxes, makes or executes any deed or conveyance purporting to grant or convey Indian lands which have been sold or located, but not patented, or the interest therein of the locatee or purchaser from the Crown, and such deed or conveyance recites or purports to be based upon a sale of such lands or such interest for taxes, the Superintendent General may approve of such deed or conveyance, and act upon and treat it as a valid transfer of all the right and interest of the original locatee or purchaser from the Crown, and of every person claiming under him in or to such land to the grantee named in such deed or conveyance.

Superintendent General may approve.

Effect of such approval.

2. When the Superintendent General has signified his approval of such deed or conveyance by endorsement thereon, the grantee shall be substituted in all respects, in relation to the land so conveyed, for the original locatee or purchaser from the Crown, but no such deed or conveyance shall be deemed to confer upon the grantee any greater right or interest in the land than that possessed by the original locatee or purchaser from the Crown. R.S., c. 81, s. 58.

Issue of patent.

62. The Superintendent General may cause a patent to be issued to the grantee named in such deed or conveyance on the completion of the original conditions of the location or sale, unless such deed or conveyance is declared invalid by a court of competent jurisdiction in a suit or action instituted by some person interested in such land within two years after the date of the sale for taxes, and unless within such delay notice of such contestation has been given to the Superintendent General. R.S., c. 81, s. 59.

Time for registration.

63. Every such deed or conveyance shall be registered in the office of the Superintendent General within two years from the date of the sale for taxes; and unless the same is so registered, it shall not be deemed to have preserved its priority, as against a purchaser in good faith from the

original locatee or purchaser from the Crown, in virtue of an assignment registered prior to the date of the registration of the deed or conveyance based upon a sale for taxes as aforesaid. R.S., c. 81, s. 60.

Cancellation.

64. If the Superintendent General is satisfied that any purchaser or lessee of any Indian lands, or any person claiming under or through him, has been guilty of any fraud or imposition, or has violated any of the conditions of the sale or lease, or if any such sale or lease has been made or issued in error or mistake, he may cancel such sale or lease and resume the land therein mentioned, or dispose of it as if no sale or lease thereof had ever been made.

In cases of fraud, mistake or non-observance of conditions.

2. In any case where the Superintendent or the Deputy Superintendent General gives or has given notice to a purchaser or lessee of Indian lands or to his assignee, agent, executor, administrator or representative, of his intention to cancel a sale or lease under the provisions of this section, and in pursuance of such notice enters or has entered in the records of the Department the formal cancellation of such sale or lease, such entry of cancellation shall be and be deemed to have been effective from the date thereof to cancel and annul the said sale or lease, and any payments made on account of such sale or lease shall be and be deemed to have been forfeited.

Cancellation effective from date of entry.

3. In any such case as described in the preceding subsection the notice of cancellation shall be deemed to be and to have been sufficient if signed by the Superintendent General, the Deputy Superintendent General, or by any officer of the Department by the direction and with the authority of the Superintendent General or the Deputy Superintendent General; and moreover the notice shall be deemed to be and to have been duly given and served upon or delivered to the purchaser or lessee, or to his assignee, agent, executor, administrator or representative as aforesaid if posted prepaid or franked to his last known address.

Signatures to notices.

Service.

4. No action, suit or other proceeding, either at law or in equity, shall lie or be instituted, prosecuted or maintained against His Majesty or against the Superintendent General, or the Attorney General, or any officer of the Government of Canada, claiming any relief or declaration against or in respect of the cancellation or forfeiture of any such sale or lease, or payments on account thereof by means of any such notice as aforesaid, unless the same was or shall have been instituted within one year from the date of the giving of the said notice.

Proceedings to be instituted within one year.

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List of cancellations laid before Parliament.

5. Within the first fifteen days of each session of Parliament, the Superintendent General shall cause to be laid before both Houses of Parliament a list of all such sales or leases, cancelled during the twelve months next preceding that session, or since the date of the beginning of the then last session. R.S., c. 81, s. 61; 1924, c. 47, s. 4.

Ejectment.

Obtaining possession after such cancellation, in case of resistance.

65. Whenever any purchaser, lessee or other person refuses or neglects to deliver up possession of any land after revocation or cancellation of the sale or lease thereof, as aforesaid, or whenever any person is wrongfully in possession of any Indian lands and refuses to vacate or abandon possession of the same, the Superintendent General may apply to the judge of the county court of the county or district in which the land lies, or to any judge of a superior court, or in the Northwest Territories to any stipendiary magistrate, for an order in the nature of a writ of *habere facias possessionem*, or writ of possession.

Order as to writ of possession.

2. The said judge or magistrate, upon proof to his satisfaction that the right or title of the person to hold such land has been revoked or cancelled, as aforesaid, or that such person is wrongfully in possession of Indian lands, shall grant an order requiring the purchaser, lessee or person in possession to deliver up the same to the Superintendent General, or person by him authorized to receive such possession.

Effect.

3. The order shall have the same force as a writ of *habere facias possessionem*, or writ of possession.

Execution of order.

4. The sheriff, or any bailiff or person to whom it has been entrusted for execution by the Superintendent General, shall execute the same in like manner as he would execute such writ in an action of ejectment or a possessory action.

Costs.

5. The costs of and incident to any proceedings under this section or any part thereof shall be paid by any party to such proceedings or by the Superintendent General, as the judge or magistrate orders. R.S., c. 81, s. 62.

Rent.

Enforcing payment of rent due to the Crown.

66. Whenever any rent payable to the Crown on any lease of Indian lands is in arrear, the same may be recovered

(a) by warrant of distress issued by the Superintendent General or any agent or officer appointed under this Part and authorized by the Superintendent General to act in such cases, and with like proceedings thereon as in ordinary cases of landlord and tenant directed to any person or persons by him named therein;

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(b)

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(b) by warrant of distress, and with like proceedings thereon as in case of a distress warrant by a justice of the peace for non-payment of a pecuniary penalty issued by him and directed as aforesaid; or

(c) by action of debt, as in ordinary cases of rent in arrear, brought therefor in the name of the Superintendent General.

2. Demand of rent shall not be necessary in any case. No demand required.
R.S., c. 81, s. 63.

Powers of Superintendent General.

67. When by law or by any deed, lease or agreement relating to Indian lands, any notice is required to be given, or any act to be done by or on behalf of the Crown, such notice may be given and act done by or by the authority of the Superintendent General. To act and give notice for the Crown. R.S., c. 81, s. 64.

68. Whenever it is found that, by reason of false survey or error in the books or plans in the Department or in the late Indian branch of the Department of the Interior, any grant, sale or appropriation of land is deficient, or whenever any parcel of land contains less than the quantity of land mentioned in the patent therefor, the Superintendent General may order the purchase money of so much land as is deficient with the interest thereon from the time of the application therefor to be paid to the original purchaser in land or money as the Superintendent General directs. Cases of deficiency of land.

2. If the land has passed from the original purchaser, and the claimant was ignorant of a deficiency at the time of his purchase, the Superintendent General may order payment as aforesaid of the purchase money for so much of the land as is deficient which the claimant has paid. Compensation.

3. No such claim shall be entertained unless application is made within five years from the date of the patent, and unless the deficiency is equal to one-tenth of the whole quantity described as contained in the particular lot or parcel of land granted. Limitation of time for claim. R.S., c. 81, s. 65.

69. The Superintendent General may, from time to time, by public notice, declare that, on and after a day therein named, the laws respecting game in force in the province of Manitoba, Saskatchewan or Alberta, or the Territories, or respecting such game as is specified in such notice, shall apply to Indians within the said province or Territories, as the case may be, or to Indians in such parts thereof as to him seems expedient. Game laws. R.S., c. 81, s. 66.

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Witnesses
may be
summoned
and
examined
under oath.

70. The Superintendent General, his deputy, or other person specially authorized by the Governor in Council, may, by subpœna issued by him, require any person or Indian to appear before him, and to bring with him any papers or writings relating to any matter affecting Indians, and examine such person under oath in respect to any such matter.

Failure of
witness
to appear.

2. If any person or Indian duly summoned by subpœna as aforesaid neglects or refuses to appear at the time and place specified in the subpœna, or refuses to give evidence or to produce the papers or writings demanded of him, the Superintendent General, his deputy or such other person may, by warrant under his hand and seal, cause such person or Indian so refusing or neglecting to be taken into custody and to be imprisoned in the nearest common gaol as for contempt of court, for a period not exceeding fourteen days. R.S., c. 81, s. 67; 1918, c. 26, s. 3.

Patents.

Patents,
how to be
prepared,
signed and
registered.

71. Every patent for Indian lands shall be prepared in the Department, and shall be signed by the Superintendent General or his deputy or by some other person thereunto specially authorized by order of the Governor in Council, and, when so signed, shall be registered by an officer specially appointed for that purpose by the Registrar General, and then transmitted to the Secretary of State of Canada, by whom, or by the Under Secretary of State, the same shall be countersigned and the Great Seal thereto caused to be affixed.

2. Every such patent for land shall be signed by the Governor or by the Deputy Governor appointed under this Part for that purpose. R.S., c. 81, s. 68.

Patent to
issue to
heir,
assignee
or devisee
after proof
of right
thereto.

72. On any application for a patent by the heir, assignée or devisee of the original purchaser from the Crown, the Superintendent General may receive proof, in such manner as he directs and requires, in support of any claim for a patent, when the original purchaser is dead; and upon being satisfied that the claim has been equitably and justly established, may allow the same, and cause a patent to issue accordingly.

Exception.

2. Nothing in this section shall limit the right of a person claiming a patent to land in the province of Ontario to make application at any time to the Commissioner, under the Act respecting claims to lands in Upper Canada for which no patents have been issued, being chapter eighty of the Consolidated Statutes of Upper Canada. R.S., c. 81, s. 69.

73. Whenever letters patent have been issued to or in the name of the wrong person, through mistake, or contain any clerical error or misnomer, or wrong description of any material fact therein, or of the land thereby intended to be granted, the Superintendent General, if there is no adverse claim, may direct the defective letters patent to be cancelled, and a minute of such cancellation to be entered in the margin of the registry of the original letters patent, and correct letters patent to be issued in their stead.

Cancellation of erroneous letters patent.

2. Such correct letters patent shall relate back to the date of those so cancelled, and have the same effect as if issued at the date of such cancelled letters patent. R.S., c. 81, s. 70.

Issue of correct ones in their stead.

74. In all cases, in which grants or letters patent have been issued for the same land, inconsistent with each other, through error, and in all cases of sales or appropriations of the same land, inconsistent with each other, the Superintendent General may, in cases of sale, cause a repayment of the purchase money, with interest.

Inconsistent patents of the same land.

2. When the land has passed from the original purchaser, or has been improved before a discovery of the error, the Superintendent General may, in substitution, assign land or grant a certificate entitling the person to purchase Indian lands of such value, and to such extent as he deems just and equitable under the circumstances; but no such claim shall be entertained unless it is preferred within five years from the discovery of the error. R.S., c. 81, s. 71.

Compensation in certain cases.

Exception.

75. Whenever patents for Indian lands have been issued through fraud or in error or improvidence, the Exchequer Court of Canada or a superior court in any province may, in respect of lands situate within its jurisdiction, upon information, action, bill or plaint, respecting such lands, and upon hearing the parties interested, or upon default of the said parties after such notice of proceeding as the said courts shall respectively order, decree such patents to be void; and, upon a registry of such decree in the Department, such patents shall be void to all intents.

Certain courts may void patents issued in error, etc.

Effect of registry of decree.

2. The practice in such cases shall be regulated by orders, from time to time, made by the said courts respectively. R.S., c. 81, s. 72.

Practice in such cases.

Timber Lands.

76. The Superintendent General, or any officer or agent authorized by him to that effect, may grant licenses to cut trees on ungranted Indian lands, or on reserves at such rates and subject to such conditions, regulations and restrictions, as are, from time to time, established by the Governor

Licenses to cut trees, by whom and how to be granted.

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in Council, and such conditions, regulations and restrictions shall be adapted to the locality in which such reserves or lands are situated. R.S., c. 81, s. 73.

For what time.

As to error in description, etc.

77. No license shall be so granted for a longer period than twelve months from the date thereof; and if, in consequence of any incorrectness of survey or other error or cause whatsoever, a license is found to comprise land included in a license of a prior date, or land not being reserve, or ungranted Indian lands, the license granted shall be void in so far as it comprises such land, and the holder or proprietor of the license so rendered void shall have no claim upon the Crown for indemnity or compensation by reason of such avoidance. R.S., c. 81, s. 74.

License must describe lands and kind of trees to be cut.

To vest property in trees cut.

Rights of licensee as to trespassers.

Continuing proceedings.

Return to be made by licensee.

Effect of neglect to make such return.

78. Every license shall describe the lands upon which the trees may be cut, and the kind of trees which may be cut, and shall confer, for the time being, on the licensee the right to take and keep possession of the land so described, subject to such regulations as are made.

2. Every license shall vest in the holder thereof all rights of property in all trees of the kind specified, cut within the limits of the license during the term thereof, whether such trees are cut by the authority of the holder of such license or by any other person, with or without his consent.

3. Every license shall entitle the holder thereof to seize, in revendication or otherwise, such trees and the logs, timber or other product thereof, if found in the possession of any unauthorized person, and also to institute any action or suit against any wrongful possessor or trespasser, and to prosecute all trespassers and other offenders to punishment, and to recover damages, if any.

4. All proceedings pending at the expiration of any license may be continued to final termination, as if the license had not expired. R.S., c. 81, s. 75.

79. Every person who obtains a license shall, at the expiration thereof, make to the officer or agent granting the same, or to the Superintendent General, a return of the number and kinds of trees cut, and of the quantity and description of saw-logs, or of the number and description of sticks of square or other timber, manufactured and carried away under such license, which return shall be sworn to by the holder of the license or his agent, or by his foreman.

2. Every person who refuses or neglects to make such return, or who evades, or attempts to evade, any regulation made by the Governor in Council in that behalf, shall be held to have cut without authority, and the timber or other product made shall be dealt with accordingly. R.S., c. 81, s. 76.

80. All trees cut, and the logs, timber or other product thereof, shall be liable for the payment of the dues thereon, so long as and wheresoever the same, or any part thereof, are found, whether in the original logs or manufactured into deals, boards or other stuff.

Trees cut and their product liable for payment of dues.

2. All officers or agents entrusted with the collection of such dues may follow and seize and detain the same wherever they are found until the dues are paid or secured. R.S., c. 81, s. 77.

May be seized and detained.

81. No instrument or security taken for dues, either before or after the cutting of the trees, as collateral security, or to facilitate collection, shall in any way affect the lien for such dues, but the lien shall subsist until the said dues are actually discharged. R.S., c. 81, s. 78.

Security taken for dues not to affect lien.

82. If any timber so seized and detained for non-payment of dues remains more than twelve months in the custody of the agent or person appointed to guard the same, without the dues and expenses being paid, the Superintendent General may order a sale of the said timber to be made after sufficient notice.

Sale of seized timber after certain delay.

2. The net proceeds of such sale, after deducting the amount of dues, expenses, and costs incurred, shall be handed over to the owner or claimant of such timber, upon his applying therefor and proving his right thereto. R.S., c. 81, s. 79.

Proceeds.

83. Any officer or agent acting under the Superintendent General may seize or cause to be seized in His Majesty's name any logs, timber, wood or other products of trees, or any trees themselves, cut without authority on Indian lands or on a reserve, wherever they are found, and place the same under proper custody until a decision can be had in the matter from competent authority. R.S., c. 81, s. 80.

Seizure of trees cut without authority.

84. When the logs, timber, wood, or other products of trees, or the trees themselves cut without authority on Indian lands or on a reserve, have been made up or intermingled with other trees, wood, timber, logs, or other products of trees into a crib, dram or raft, or in any other manner, so that it is difficult to distinguish the timber cut on Indian lands or on a reserve without license, from the other timber with which it is made up or intermingled, the whole of the timber so made up or intermingled shall be held to have been cut without authority on Indian lands or on a reserve, and shall be seized and forfeited and sold by the Superintendent General or any officer or agent acting under him, unless evidence satisfactory to him is adduced showing the probable quantity not cut on Indian lands or on a reserve. R.S., c. 81, s. 81.

Presumption of law in case of mixture of timber cut on Indian lands or reserves, with timber cut elsewhere.

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Seizing officer may command assistance in name of Crown.

85. Every officer or person seizing trees, logs, timber or other products of trees in the discharge of his duty under this Part may, in the name of the Crown, call in any assistance necessary for securing and protecting the same. R.S., c. 81, s. 82.

Burden of proof, in certain cases, to be on claimant.

86. Whenever any trees, logs, timber or other product of trees are seized for non-payment of Crown dues, or for any other cause of forfeiture, or whenever any prosecution is brought in respect of any penalty or forfeiture under this Part, and any question arises whether said dues have been paid or whether the trees, logs, timber or other product were cut on lands other than any of the lands aforesaid, the burden of proving payment, or on what land the same were cut, as the case may be, shall lie on the owner or claimant and not on the officer who seizes the same, or the person who brings such prosecution. R.S., c. 81, s. 83.

Condemnation in default of notice of claim.

87. All trees, logs, timber or other product of trees seized under this Part shall be deemed to be condemned unless the person from whom they are seized, or the owner thereof within one month from the day of the seizure, gives notice to the seizing officer, or nearest officer or agent of the Superintendent General that he claims, or intends to claim them, and unless within one month from the day of giving such notice he initiates, in some court of competent jurisdiction, proceedings for the purpose of establishing his claim.

Sale.

2. In default of such notice and initiation of proceedings, the officer or agent seizing shall report the circumstances to the Superintendent General, who may order the sale by the said officer or agent of such trees, logs, timber or other products. R.S., c. 81, s. 84.

Proceedings for trial of validity of seizure.

88. Any judge of any superior, county or district court, or any stipendiary magistrate, police magistrate or Indian agent, may, in a summary way, under the provisions of the Criminal Code relating to summary convictions, try and determine such seizures; and may, pending the trial, order the delivery of the trees, or the logs, timber or other product to the alleged owner, on receiving security by bond, with two good and sufficient sureties, first approved by the said agent, to pay double the value of such trees, logs, timber or other product, in case of their condemnation.

Delivery on security given.

Bond to be given.

2. Such bond shall be taken in the name of the Superintendent General, for His Majesty, and shall be delivered up to and kept by the Superintendent General.

3. If such seized trees, logs, timber or other product are condemned, the value thereof shall be paid forthwith to the Superintendent General or agent, and the bond cancelled, otherwise the penalty of such bond shall be enforced and recovered. R.S., c. 81, s. 85.

Value of condemned trees to be paid to the Superintendent General.

89. Every one who avails himself of any false statement or false oath to evade the payment of dues under this Part, shall forfeit the timber in respect of which the dues are attempted to be evaded. R.S., c. 81, s. 86.

Forfeiture of timber for attempt to evade payment.

Management of Indian Moneys.

90. All moneys or securities of any kind applicable to the support or benefit of Indians, or any band of Indians, and all moneys accrued or hereafter to accrue from the sale of any Indian lands or the proceeds of any timber on any Indian lands or a reserve shall, subject to the provisions of this Part, be applicable to the same purposes, and be dealt with in the same manner as they might have been applied to or dealt with but for the passing of this Part.

Indian moneys to be dealt with as heretofore.

2. No contract or agreement binding or purporting to bind, or in any way dealing with the moneys or securities referred to in this section, or with any moneys appropriated by Parliament for the benefit of Indians, made either by the chiefs or councillors of any band of Indians or by the members of the said band, other than and except as authorized by and for the purposes of this part shall be valid or of any force or effect unless and until it has been approved in writing by the Superintendent General. R.S., c. 81, s. 87; 1910, c. 28, s. 2.

Contracts affecting Indian moneys and securities to be approved by Superintendent General.

91. The Governor in Council may reduce the purchase money due or to become due on sales of Indian lands, or reduce or remit the interest on such purchase money, or reduce the rent at which Indian lands have been leased, when he considers the same excessive.

Reduction of purchase money due on sales of Indian lands.

2. A return setting forth all the reductions and remissions made under this section during the fiscal year shall be submitted to both Houses of Parliament within twenty days after the expiration of such year, if Parliament is then sitting, and if Parliament is not then sitting, within twenty days after the opening of the next ensuing session of Parliament. R.S., c. 81, s. 88.

Returns of reductions to Parliament.

92. With the exception of such sum not exceeding fifty per centum of the proceeds of any land, timber or other property, as is agreed at the time of the surrender to be paid to the members of the band interested therein, the Governor in Council may, subject to the provisions of this

Investment and management of Indian funds may be

regulated
by
Governor in
Council.

Part, direct how and in what manner, and by whom, the moneys arising from the disposal of Indian lands, or of property held or to be held in trust for Indians, or timber on Indian lands or reserves, or from any other source for the benefit of Indians, shall be invested from time to time, and how the payments or assistance to which the Indians are entitled shall be made or given.

In what
particulars.

2. The Governor in Council may provide for the general management of such moneys, and direct what percentage or proportion thereof shall be set apart, from time to time, to cover the cost of and incidental to the management of reserves, lands, property and moneys under the provisions of this Part, and may authorize and direct the expenditure of such moneys for surveys, for compensation to Indians for improvements or any interest they had in lands taken from them, for the construction or repair of roads, bridges, ditches and watercourses on such reserves or lands, for the construction and repair of school buildings and charitable institutions, and by way of contribution to schools attended by such Indians: Provided that where the capital standing to the credit of a band does not exceed the sum of two thousand dollars the Governor in Council may direct and authorize the expenditure of such capital for any purpose which may be deemed to be for the general welfare of the band. R.S., c. 81, s. 89; 1919, c. 56, s. 2; 1927, c. 32, s. 1.

If capital
does not
exceed
\$2,000.

Power of
Governor in
Council over
expenditure
of capital.

93. The Governor in Council may, with the consent of a band, authorize and direct the expenditure of any capital moneys standing at the credit of such band, in the purchase of land as a reserve for the band or as an addition to its reserve, or in the purchase of cattle, implements or machinery for the band, or in the construction of permanent improvements upon the reserve of the band, or such works thereon or in connection therewith as, in his opinion, will be of permanent value to the band, or will, when completed, properly represent capital or in the making of loans to members of the band to promote progress, no such loan, however, to exceed in amount one-half of the appraised value of the interest of the borrower in the lands held by him.

Direction of
expenditure
of capital
of band,
without
consent.

2. In the event of a band refusing to consent to the expenditure of such capital moneys as the Superintendent General may consider advisable for any of the purposes mentioned in subsection one of this section, and it appearing to the Superintendent General that such refusal is detrimental to the progress or welfare of the band, the Governor in Council may, without the consent of the band, authorize and direct the expenditure of such capital for such of the said purposes as may be considered reasonable and proper.

3. Whenever any land in a reserve whether held in com-
 mon or by an individual Indian is uncultivated and the
 band or individual is unable or neglects to cultivate the
 same, the Superintendent General, notwithstanding any-
 thing in this Act to the contrary, may, without a surrender,
 grant a lease of such lands for agricultural or grazing
 purposes for the benefit of the band or individual, or may
 employ such persons as may be considered necessary to
 improve or cultivate such lands during the pleasure of the
 Superintendent General, and may authorize and direct the
 expenditure of so much of the capital funds of the band as
 may be considered necessary for the improvements of
 such land, or for the purchase of such stock, machinery,
 material or labour as may be considered necessary for the
 cultivation or grazing of the same, and in such case all the
 proceeds derived from such lands, except a reasonable rent
 to be paid for any individual holding, shall be placed to the
 credit of the band.

Lease of
 lands in a
 reserve if
 band or
 individual
 neglects
 cultivation.

4. In the event of improvements being made on the
 lands of an individual the Superintendent General may
 deduct the value of such improvements from the rental
 payable for such lands. 1918, c. 26, s. 4; 1924, c. 47, s. 5.

Improve-
 ments.

94. The proceeds arising from the sale or lease of any
 Indian lands, or from the timber, hay, stone, minerals or
 other valuables thereon, or on a reserve, shall be paid to
 the Minister of Finance to the credit of the Indian fund.
 R.S., c. 81, s. 91.

Proceeds of
 sales to be
 paid to
 Minister of
 Finance.

95. The Superintendent General may

- (a) stop the payment of the annuity and interest money
 of, as well as deprive of any participation in the real
 property of the band, any Indian who is proved, to
 the satisfaction of the Superintendent General, guilty
 of deserting his family, or of conduct justifying his
 wife or family in separating from him, or who is sepa-
 rated from his family by imprisonment, and apply
 the same towards the support of the wife or family
 of such Indian;
- (b) stop the payment of the annuity and interest money
 of any Indian parent of an illegitimate child, and ap-
 ply the same to the support of such child;
- (c) stop the payment of the annuity and interest money
 of, as well as deprive of any participation in the real
 property of the band, any woman who deserts her
 husband or family and lives immorally with another
 man, and apply the same to the support of the family
 so deserted;

Powers of
 Superin-
 tendent
 General.

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(d)
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- (d) whenever sick or disabled, or aged or destitute Indians are not provided for by the band of which they are members, furnish sufficient aid from the funds of the band for the relief of such sick, disabled, aged or destitute Indians;
- Sanitary regulations. (e) make such regulations as he deems necessary for the prevention or mitigation of disease the frequent and effectual cleansing of streets, yards and premises; the removal of nuisances and unsanitary conditions; the cleansing, purifying, ventilating and disinfecting of premises by the owners and occupiers or other persons having the care or ordering thereof; the supplying of such medical aid, medicine and other articles and accommodation as the Superintendent General may deem necessary for preventing or mitigating an outbreak of any communicable disease; entering and inspecting any premises used for human habitation in any locality in which conditions exist which in the opinion of the Superintendent General are unsanitary, or such as to render the inhabitants specially liable to disease, and for directing the alteration or destruction of any such building which is, in the opinion of the Superintendent General, unfit for human habitation; preventing the overcrowding of premises used for human habitation by limiting the number of dwellers in such premises; preventing and regulating the departure of persons from, and the access of persons to, infected localities; preventing persons or conveyances from passing from one locality to another; detaining persons or conveyances who or which have been exposed to infection for inspection or disinfection until the danger of infection is past; the removal or keeping under surveillance of persons living in infected localities; and any other matter which, in the opinion of the Superintendent General, the general health of the Indians of any locality may require;
- Taxation of dogs, and protection of sheep. (f) make by-laws for the taxation, control and destruction of dogs and for the protection of sheep, and such by-laws may be applied to such reserves or parts thereof from time to time as the Superintendent General may direct;
- Operation of pool rooms, etc. (g) make regulations governing the operation of pool rooms, dance halls and other places of amusement on Indian Reserves.
- In conflict of authority, rule to prevail. 2. In the event of any conflict between any regulation made by the Superintendent General and any rule or regulation made by any band, the regulations made by the Superintendent General shall prevail.

3. In any regulations or by-laws made under the provisions of this section, the Superintendent General may provide for the imposition of a fine not exceeding thirty dollars or imprisonment not exceeding thirty days, for the violation of any of the provisions thereof. R.S., c. 81, s. 92; 1914, c. 35, s. 6; 1918, c. 26, s. 5; 1927, c. 32, s. 2.

Election of Chiefs.

96. Whenever the Governor in Council deems it advisable for the good government of a band, to introduce the elective system of chiefs and councillors or headmen, he may provide that the chief and councillors or headmen of any band shall be elected, as hereinafter provided, at such time and place as the Superintendent General directs; and they shall in such case be elected for a term of three years.

Governor in Council may provide for election of chiefs.

2. The councillors or headmen may be in the proportion of two for every two hundred Indians.

Councillors or headmen.

3. No band shall have more than one chief and fifteen councillors or headmen.

Numbers.

4. Any band composed of at least thirty members may have a chief. R.S., c. 81, s. 93.

Band of 30.

97. Life chiefs and councillors or headmen now living may continue to hold rank until death or resignation, or until their removal by the Governor in Council for dishonesty, intemperance, immorality or incompetency.

As to present life chiefs.

2. In the event of the Governor in Council providing that the chief and councillors or headmen of a band shall be elected, the life chiefs and councillors or headmen shall not exercise powers as such unless elected under the provision aforesaid. R.S., c. 81, s. 94.

Election required for exercise of powers.

98. An election may be set aside by the Governor in Council, on a report of the Superintendent General, if it is proved by two witnesses before the Indian agent for the locality, or such other person as is deputed by the Superintendent General to take evidence in the matter, that fraud or gross irregularity was practised at the said election.

Reason for which an election may be set aside.

2. Every Indian who is proved guilty of such fraud or irregularity, or connivance thereat, may be declared ineligible for re-election for a period not exceeding six years, if the Governor in Council, on the report of the Superintendent General, so directs. R.S., c. 81, s. 95.

Punishment of fraud at election.

99. Any elected or life chief and any councillor or headman, or any chief or councillor or headman chosen according to the custom of any band, may, on the ground of dishonesty, intemperance, immorality or incompetency, be de-

Grounds on which chief, etc., may be deposed.

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deposed

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posed by the Governor in Council and declared ineligible to hold the office of chief or councillor or headman for a period not exceeding three years. R.S., c. 81, s. 96.

Regulations to be made by Chiefs.

- 100.** The chief or chiefs of any band in council may, subject to confirmation by the Governor in Council, make rules and regulations as to the religious denomination to which the teacher of the school established on the reserve shall belong.
- 2.** If the majority of the band belongs to any one religious denomination, the teacher of the school established on the reserve shall belong to the same denomination.
- 3.** The Protestant or Catholic minority of any band may, with the approval of and under regulations made by the Governor in Council, have a separate school established on the reserve. R.S., c. 81, s. 97.
- 101.** The chief or chiefs of any band in council may likewise and subject to such confirmation, make rules and regulations as to
- (a) the care of the public health;
- (b) the observance of order and decorum at assemblies of the Indians in general council, or on other occasions;
- (c) the prevention of disorderly conduct and nuisances;
- (d) the prevention of trespass by cattle, and the protection of sheep, horses, mules and cattle;
- (e) the construction and maintenance of watercourses, roads, bridges, ditches and fences;
- (f) the construction and repair of school houses, council houses and other Indian public buildings, and the attendance at school of children between the ages of six and fifteen years;
- (g) the establishment of pounds and the appointment of pound-keepers;
- (h) the locating of the band in their reserves, and the establishment of a register of such locations;
- (i) the repression of noxious weeds.
- 2.** The Governor in Council may by the rules and regulations aforesaid provide for the imposition of punishment by fine, penalty or imprisonment, or both for violation of any of such rules or regulations.
- 3.** The fine or penalty shall in no case exceed thirty dollars, and the imprisonment shall in no case exceed thirty days.
- 4.** The proceedings for the imposition of such punishment shall be taken under the provisions of the Criminal Code relating to summary convictions. R.S., c. 81, s. 98; 1927, c. 32, s. 3.

Chiefs to make regulations as to schools.

Denominations.

Minority.

Other cases

Health.

Order.

Disorderly conduct.
Trespass.

Roads, etc.

School houses.

Pounds.

Locating of band.

Weeds.

Governor in Council may provide for punishment for violation.

Limit of penalty.

Criminal Code to apply.

Taxation.

102. No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds, in his individual right, real estate under a lease or in fee simple, or personal property outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate. R.S., c. 81, s. 99.

Liability of
Indians to
taxation.

103. No taxes shall be levied on the real property of any Indian, acquired under the enfranchisement clauses of this Part, until the same has been declared liable to taxation by proclamation of the Governor in Council, published in the *Canada Gazette*. R.S., c. 81, s. 100.

As to taxes
on property
of an
enfran-
chised
Indian.

104. All land vested in the Crown or in any person in trust or for the use of any Indian or non-treaty Indian or any band or irregular band of Indians or non-treaty Indians shall be exempt from taxation, except those lands which, having been surrendered by the bands owning them, though unpatented, have been located by or sold or agreed to be sold to any person; and, except as against the Crown and any Indian located on the land, the same shall be liable to taxation in like manner as other lands in the same locality.

Exemption
from
taxation.

2. Nothing herein contained shall interfere with the right of the Superintendent General to cancel the original sale or location of any land, or shall render such land liable to taxation until it is again sold or located. R.S., c. 81, s. 101.

Exception.

Legal Rights of Indians.

105. No person shall take any security or otherwise obtain any lien or charge, whether by mortgage, judgment or otherwise, upon real or personal property of any Indian or non-treaty Indian, except on real or personal property subject to taxation under the last three preceding sections: Provided that any person selling any article to an Indian or non-treaty Indian may take security on such article for any part of the price thereof which is unpaid. R.S., c. 81, s. 102.

No lien or
charge to be
taken on
property of
Indians.

Proviso.

106. Indians and non-treaty Indians shall have the right to sue for debts due to them, or in respect of any tort or wrong inflicted upon them, or to compel the performance of obligations contracted with them.

As to rights
of action by
Indians.

2. In any suit or action between Indians, or in any case of assault in which the offender is an Indian, no appeal shall lie from any judgment, order or conviction by any

No appeal.

police magistrate, stipendiary magistrate, or two justices of the peace or an Indian agent, when the sum adjudged or the penalty imposed does not exceed ten dollars. R.S., c. 81, s. 103.

Things pawned by Indians for intoxicants not to be retained.

107. No pawn taken from any Indian or non-treaty Indian for any intoxicant shall be retained by the person to whom such pawn is delivered; but the thing so pawned may be sued for and shall be recoverable, with costs of suit, in any court of competent jurisdiction by the Indian or non-treaty Indian who pawned the same. R.S., c. 81, s. 104.

Presents, annuities, money and property exempt from seizure.

108. No presents given to Indians or non-treaty Indians, and no annuities or interest on funds, and no moneys appropriated by Parliament, held for any band of Indians, and no property purchased or acquired with or by means of any such annuities or income or moneys, and whether in the possession of any band of such Indians or of any Indian of any band or irregular band or not, shall be liable to be taken, seized, distrained, attached or in any way made the subject of judicial process for any debt, matter or cause whatsoever.

Traffic in presents and property restricted.

2. No such presents or property shall, in the province of Manitoba, British Columbia, Saskatchewan or Alberta, or in the Territories be sold, bartered, exchanged, or given by any band or irregular band of Indians, or any Indian of any such band to any person or Indian other than an Indian of such band.

Animals, farming implements, etc., deemed presents.

3. Animals given to Indians under treaty stipulations, and the progeny thereof, and farming implements, tools and any other articles given to Indians under treaty stipulations shall be held to be presents within the meaning of this section.

Sale, etc., null and void.

4. Every such sale, barter, exchange or gift shall be null and void unless such sale, barter, exchange or gift is made with the written assent of the Superintendent General or his agent.

Selling, etc., live stock.

5. No Indian or non-treaty Indian in the province of Manitoba, British Columbia, Saskatchewan or Alberta, or in the Territories, shall without the written consent of the Indian Agent sell, barter, exchange or give to any person or Indian other than an Indian of such band, or kill or destroy any animal or the progeny thereof given to him or to the band under treaty stipulations, or loaned or conditionally given to him or to the band by the Government.

Penalty.

6. Any Indian who violates any of the provisions of the last preceding subsection shall be liable on summary conviction to a penalty, not exceeding twenty-five dollars with costs of prosecution or to imprisonment not exceeding two months, or to both fine and imprisonment. R.S., c. 81, s. 105; 1910, c. 28, s. 3; 1914, c. 35, s. 7.

109. If any presents given to Indians or non-treaty Indians, or any property purchased or acquired with or by means of any annuities granted to Indians, are or is unlawfully in the possession of any person, within the true intent and meaning of the last preceding section, any person acting under the authority of the Superintendent General may, with such assistance in that behalf as he thinks necessary, seize and take possession of the same, and shall deal therewith as the Superintendent General directs.

Presents, unlawfully in possession of any person, may be seized.

2. No title to any Indian grave-house, carved grave-pole, totem-pole, carved house-post or large rock embellished with paintings or carvings on an Indian reserve, shall be acquired by any means whatsoever by any person without the written consent of the Superintendent General, and no Indian grave-house, carved grave-pole, totem-pole, carved house-post or large rock embellished with paintings or carvings, on an Indian reserve shall be removed, taken away, mutilated, disfigured, defaced or destroyed without such written consent.

Acquisition of totem poles, etc., forbidden.

3. Any person violating any of the provisions of subsection two hereof shall be liable on summary conviction to a penalty not exceeding two hundred dollars, with costs of prosecution, and in default of payment to imprisonment for a term not exceeding three months, and any article removed or taken away contrary to the provisions of the said subsection may be seized on the instructions of the Superintendent General and dealt with as he may direct. R.S., c. 81, s. 106; 1927, c. 32, s. 4.

Penalty.

110. Upon the application of an Indian of any band, or upon the application of a band on a vote of a majority of the male members of such band of the full age of twenty-one years at a meeting or council thereof summoned for that purpose, according to the rules of the band and held in the presence of the Superintendent General or of an officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General, a Board may be appointed by the Superintendent General to consist of two officers of the Department and a member of the band to which the Indian or Indians under investigation belongs, to make enquiry and report as to the fitness of any Indian or Indians to be enfranchised.

Enquiry as to fitness of Indian for enfranchisement.

2. The Indian member of the Board shall be nominated by the council of the band, within thirty days after the date of notice having been given to the council, and in default of such nomination, the appointment shall be made by the Superintendent General.

Indian member of Board.

3. In the course of such enquiry it shall be the duty of the Board to take into consideration and report upon the attitude of any such Indian towards his enfranchisement, which

Attitude of Indian towards his enfranchisement.

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which

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which attitude shall be a factor in determining the question of fitness.

What report shall contain.

4. Such report shall contain a description of the land occupied by each Indian, the amount thereof and the improvements thereon, the names, ages and sex of every Indian whose interests it is anticipated will be affected, and such other information as the Superintendent General may direct such Board to obtain.

Governor in Council may enfranchise Indians on approval of report of Superintendent.

5. On the report of the Superintendent General that any Indian, male or female, over the age of twenty-one years is fit for enfranchisement, the Governor in Council may by order direct that such Indian shall be and become enfranchised at the expiration of two years from the date of such order or earlier if requested by such Indian, and from the date of such enfranchisement the provisions of this and of any other Act or law making any distinction between the legal rights, privileges, disabilities and liabilities of Indians and those of His Majesty's other subjects, shall cease to apply to such Indian or to his or her minor unmarried children, or, in the case of a married male Indian, to the wife of such Indian, and every such Indian and child and wife shall thereafter have, possess and enjoy all the legal powers, rights and privileges of His Majesty's other subjects, and shall no longer be deemed to be Indians within the meaning of any laws relating to Indians.

Effect of enfranchisement.

Procedure where wife living apart.

6. Where a wife is living apart from her husband, the enfranchisement of the husband shall not carry with it the enfranchisement of his wife except on her own written request to be so enfranchised.

Right of Indian to choose name, and to be known by same.

7. An Indian over the age of twenty-one years shall have the right to choose the christian name and surname by which he or she wishes to be enfranchised and thereafter known, and from the date of the order of enfranchisement such Indian shall thereafter be known by such names, and if no such choice is made such Indian shall be enfranchised by and bear the name or names by which he or she has been theretofore commonly known.

Letters patent for his land to be issued to Indian upon enfranchisement.

8. Upon the issue of an order of enfranchisement the Superintendent General shall, if any Indian enfranchised holds any land on a reserve, cause letters patent to be issued to such Indian for such land; and such Indian shall pay to the funds of the band such amount per acre for the land he holds as the Superintendent General considers to be the value of the common interest of the band in such land, and such payment shall be a charge against the share of such Indian in the funds of the band.

Receives his share of funds.

9. The Superintendent General shall also pay to each Indian upon enfranchisement his or her share of the funds to the credit of the band, including such amount as the Superintendent General determines to be his or her share

of the value of the common interest of the band in the lands of the reserve or reserves, or share of the principal of the annuities of the band capitalized at five per centum, out of such moneys as are provided by Parliament for the purpose or which may be otherwise available for such purpose.

10. The land and money of any minor, unmarried children may be held for the benefit of such minor or may be granted or paid in whole or in part to the father, or, if the father is dead, to the mother, or in either case to such person as the Superintendent General may select for such purpose for the maintenance of such minor, and the land and money of the wife shall be granted and paid to the husband, unless in any case the Superintendent General shall direct that the whole or any part thereof be granted or paid to the wife herself, in which case the same shall be granted or paid to the wife.

Land and money of children and wife.

11. If such Indian holds no land in a reserve he or she shall be paid from the funds of the band such amount as the Superintendent General determines to be his or her share of the value of the common interest of the band in the lands of the reserve or reserves, and shall also be paid his or her share of the funds or annuities of the band capitalized as aforesaid.

Payments from funds of band, if no land.

12. Every Indian who is not a member of the band and every non-treaty Indian who, with the acquiescence of the band and approval of the Superintendent General, has been permitted to reside on the reserve or to obtain a holding or location thereon, may be enfranchised and given letters patent for such land as a member of the band, provided that such Indian or non-treaty Indian shall pay to the credit of the band the value of the common interest of the band in the land for which he receives a patent.

Indians not members of band and non-treaty Indians, enfranchised, and granted letters patent.

13. On the issue of the letters patent to any enfranchised Indian for any land he may be entitled to, or the payment from the capital funds or annuities of the band, as above provided, such Indian and his or her minor unmarried children and, in the case of a male married Indian, the wife of such Indian shall cease to have any further claims whatsoever against any common property or funds of the band. 1920, c. 50, s. 3; 1922, c. 26, s. 1; 1924, c. 47, s. 6.

Claims on funds of band cease on issue of letters patent.

111. When a majority of the members of a band is enfranchised, the common land or other public property of the band shall be equitably allotted to members of the band, and thereafter the residue, if any, of such land or public property may be sold by the Superintendent General and the proceeds of such sale placed to the credit of the funds of the band to be divided as provided in the

Disposal of common lands or public property.

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last

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Care of
Indian
cemeteries,
and common
property
which
should be
preserved.

Sales at
public
auction.

last preceding section, but the Governor in Council may reserve and set apart from the funds of the band such sum as the Superintendent General may consider necessary for the perpetual care and protection of any Indian cemetery or burial plot belonging to such Indians, and any other common property which in the opinion of the Superintendent General should be preserved as such.

2. No part of such land or other property shall be sold to any person other than a member of the band except by public auction after three months' advertisement in the public press. 1920, c. 50, s. 3.

Regulations
to enforce
these
provisions.

Final
decision of
Governor
in Council.

Report to
Parliament.

Enfranchisement
of Indians.

112. The Governor in Council may make regulations for the carrying out of the provisions of the two sections immediately preceding this section, and subject to the provisions of this Act for determining how the land, capital moneys and other property of a band, or any part thereof, shall be divided, granted and paid, upon the enfranchisement of any Indian or Indians belonging to such band or having any interest in any of the property of such band, and decide any questions arising under the said sections, and the decision of the Governor in Council thereon shall be final and conclusive. 1920, c. 50, s. 3.

113. The Superintendent General shall, within fifteen days after the opening of each session of Parliament, submit to both Houses of Parliament a list of the Indians enfranchised under this Act during the previous fiscal year, and the amount of land and money granted and paid to each Indian so enfranchised. 1920, c. 50, s. 3.

114. If an Indian who holds no land in a reserve, does not reside on a reserve and does not follow the Indian mode of life, makes application to be enfranchised, and satisfies the Superintendent General that he is self-supporting and fit to be enfranchised, and surrenders all claims whatsoever to any interest in the lands of the band to which he belongs, and accepts his share of the funds at the credit of the band including the principal of the annuities of the band, to which share he would have been entitled had he been enfranchised under the foregoing sections of the Act, in full of all claims to the property of the band, or in case the band to which he belongs has no funds or principal of annuities, surrenders all claims whatsoever to any property of the band, the Governor in Council may order that such Indian be enfranchised and paid his said share if any, and from the date of such order such Indian, together with his wife and unmarried minor children, shall be held to be enfranchised.

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2. Any unmarried Indian woman of the age of twenty-one years, and any Indian widow and her minor unmarried children, may be enfranchised in the like manner in every respect as a male Indian and his said children. Indian women.

3. This section shall apply to the Indians in any part of Canada. 1918, c. 26, s. 6. Application.

Offences and Penalties.

115. Every person, or Indian other than an Indian of the band, who, without the authority of the Superintendent General, resides or hunts upon, occupies or uses any land or marsh, or who resides upon or occupies any road, or allowance for road, running through any reserve belonging to or occupied by such band shall be liable, upon summary conviction, to imprisonment for a term not exceeding one month or to a penalty not exceeding ten dollars and not less than five dollars, with costs of prosecution, half of which penalty shall belong to the informer. R.S., c. 81, s. 124. Residing, etc., upon any reserve without authority. Penalty.

116. Any person or Indian who, being lawfully required by an Indian agent, a chief of the band occupying a reserve, or a constable, Refusing to remove from reserve on demand of chief.

(a) to remove with his family, if any, from the land, marsh, road, or allowance for road upon which he is or has settled or is residing or hunting, or which he occupies;

(b) to remove his cattle from such land or marsh;

(c) to cease fishing in any marsh, river, stream or creek on or running through a reserve; or

(d) to cease using, occupying, settling or residing upon any land, river, stream, creek, marsh, road or allowance for a road in a reserve;

fails to comply with such requirement, shall, upon summary conviction, be liable to a penalty of not less than five dollars and not more than ten dollars for every day during which such failure continues, and, in default of payment, to be imprisoned for a term not exceeding three months. R.S., c. 81, s. 125. Penalty.

117. Every Indian, not being an Indian of the band, who, in the case where shooting privileges over a reserve or part of a reserve, or fishing privileges in any marsh, pond, river, stream or creek upon or running through a reserve, have with the consent of the Indians of the band, been leased or granted to any person, and, in such case, every person not, under such lease or grant, entitled so to do, who hunts, shoots, kills or destroys any game animals or birds, or who fishes for, takes, catches or kills any fish Shooting or fishing on reserved territory.

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to which such exclusive privilege extends, upon the reserve or part of a reserve, or in any marsh, pond, river, stream or creek covered by such lease or grant, shall, in addition to any other penalty or liability thereby incurred, be liable, on summary conviction, for every such offence to a penalty not exceeding ten dollars and not less than five dollars, and, in default of payment, to imprisonment for any term not exceeding one month. R.S., c. 81, s. 126.

Trespassing
on reserves
and cutting
or
removing.

118. Every person, or Indian, other than an Indian of the band to which the reserve belongs, who, without the license in writing of the Superintendent General, or of some officer or person deputed by him for that purpose, cuts, carries away or removes from any of the lands, roads or allowances for roads in a reserve, any of the trees, saplings, shrubs, underwood, timber, cordwood or part of a tree, or hay, or removes any of the stone, soil, minerals, metals or other valuables from the said lands, roads or allowances for roads, shall, on summary conviction thereof before any stipendiary magistrate, police magistrate or any two justices of the peace or an Indian agent, incur in each case the costs of prosecution and

Trees. (a) for every tree he cuts, carries away or removes, a penalty of twenty dollars;

Timber. (b) for cutting, carrying away or removing any of the saplings, shrubs, underwood, timber, cordwood or part of a tree or hay, if under the value of one dollar, a penalty of four dollars; and, if over the value of one dollar, a penalty of twenty dollars;

Stone, soil,
minerals. (c) for removing any of the stone, soil, minerals, metals, or other valuables aforesaid, a penalty of twenty dollars.

Punish-
ment in
case of
default of
payment.

2. In default of immediate payment of the said penalties and costs, such magistrate, justices of the peace, or Indian agent may issue a warrant directed to any person or persons by him or them named therein, to levy the amount of the said penalties and costs by distress and sale of the goods and chattels of the person or Indian liable to pay the same, or may, without proceeding by distress and sale, upon non-payment of such penalties and costs, order the person or Indian liable therefor to be imprisoned in the common gaol of the county or district in which the said reserve or any part thereof lies for a term not exceeding thirty days, if the penalty does not exceed twenty dollars, or for a term not exceeding three months, if the penalty exceeds twenty dollars.

Issue of
warrant,
etc.

3. The Superintendent General, or such other officer or person as he shall authorize in that behalf may issue the warrant on any such conviction; or may, without proceed-

ing by distress and sale, make such order upon such conviction as such magistrate, justices of the peace or Indian agent could make; and similar proceedings may be had upon the warrant so issued as if it had been issued by the magistrate, justices of the peace or Indian agent before whom the person was convicted.

4. If upon the return of any warrant for distress and sale, the amount thereof has not been made, or if any part of it remains unpaid, such magistrate, or justices of the peace, or Indian agent, or the Superintendent General, or such other officer or person as aforesaid, may commit the person in default to the common gaol, as aforesaid, for a term not exceeding thirty days, if the sum claimed upon the said warrant does not exceed twenty dollars, or for a term not exceeding three months if the sum exceeds twenty dollars.

Committal
in default
of distress.

5. All such penalties shall be paid to the Minister of Finance, and shall be disposed of for the use and benefit of the band of Indians for whose benefit the reserve is held, in such manner as the Governor in Council directs. R.S., c. 81, s. 127.

Application
of penalties.

119. Every Indian of the band who, without the license in writing of the Superintendent General, or of some officer or person deputed by him for that purpose,

Indians
without a
license,
tres-
passing on
reserves.

(a) cuts, carries away or removes from land in a reserve held by another Indian under a location title or by an Indian otherwise recognized by the Department as the occupant thereof any of the trees, cordwood, or part of a tree, saplings, shrubs, underwood, timber or hay thereon, or removes from such land any of the stone, soil, minerals, metals or other valuables;

(b) cuts, carries away or removes from any portion of the reserve of his band, for sale and not for the immediate use of himself and his family any trees, timber, cordwood or part of a tree, saplings, shrubs, underwood or hay thereon, or removes any of the stone, soil, minerals, metals or other valuables therefrom, for sale, as aforesaid; or

(c) unless with the consent of the band and the approval of the Superintendent General, cuts or uses any pine or large timber for any purpose other than for building on his own location or farm;

shall incur the penalties providing in the last preceding section in respect to Indians of other bands and other persons.

Penalty.

2. The same proceedings may be had for the recovery thereof as are provided for in the said section. R.S., c. 81, s. 128.

Proceedings
for
recovery.

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Buying from Indians contrary to regulations of Governor in Council.

120. Every person who buys or otherwise acquires from any Indian or band or irregular band of Indians in the province of Manitoba, Saskatchewan or Alberta, or the Territories, any grain, root crops or other produce contrary to regulations made by the Governor in Council in that behalf, shall, on summary conviction before a stipendiary magistrate, police magistrate or two justices of the peace or an Indian agent, be liable to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months, or to both. R.S., c. 81, s. 129.

Penalty.

Cutting and removing trees from reserve contrary to regulations of Governor in Council.

121. Every person who cuts, carries away or removes from any reserve or special reserve, any hard or sugar-maple tree or sapling, or buys or otherwise acquires from any Indian or non-treaty Indian, or other person, any hard or sugar-maple tree or sapling so cut, carried away or removed from any reserve or special reserve in the province of Manitoba, Saskatchewan or Alberta, or the Territories, contrary to regulations made in that behalf by the Governor in Council, shall, on summary conviction before a stipendiary magistrate, police magistrate, or two justices of the peace or an Indian agent, be liable to a penalty not exceeding one hundred dollars or to imprisonment for a term not exceeding three months, or to both. R.S., c. 81, s. 130.

Penalty.

Trading without license.

122. Every person being

- (a) an official or employee connected with the Department;
- (b) a missionary in the employ of any religious denomination, or otherwise employed in mission work among Indians; or
- (c) a school teacher on an Indian reserve; and
- (d) in the province of Manitoba, Saskatchewan or Alberta, or the Territories;

who, on a reserve, without the special license in writing of the Superintendent General, trades with any Indian or directly or indirectly sells to him any goods or supplies, cattle or other animals, shall be liable to a fine equal in amount to double the sum received for the goods, supplies, cattle or other animals sold, and, in addition, to the costs of prosecution before a police magistrate, a stipendiary magistrate, a justice of the peace or the Indian agent for the locality where the offence occurs. R.S., c. 81, s. 131.

Penalty.

Cutting trees or assisting in cutting trees on Indian lands.

123. If any person without authority, cuts or employs, or induces any other person to cut, or assists in cutting any trees of any kind on Indian lands or on any reserve, or removes or carries away, or employs, or induces or assists any other person to remove or carry away any trees of any kind

so cut from any Indian lands or reserve, he shall not acquire any right to the trees so cut, or any claim to any remuneration for cutting or preparing the same for market, or conveying the same to or towards market.

Confers no property or right to remuneration.

2. When the trees or logs or timber or any products thereof have been removed, so that the same cannot, in the opinion of the Superintendent General, conveniently be seized, he shall, in addition to the loss of his labour and disbursements, incur a penalty of three dollars for each tree, rafting stuff excepted, which he is proved to have cut or caused to be cut or carried away.

If trees cannot be seized.

Penalty.

3. Such penalty shall be recoverable with costs at the suit and in the name of the Superintendent General or resident agent in any court having jurisdiction in civil matters to the amount of the penalty.

Recovery of penalty.

4. In all such cases, it shall be incumbent on the person charged to prove his authority to cut.

Proof of authority.

5. The averment of the person seizing or prosecuting that he is duly employed under the authority of this Part shall be sufficient proof thereof, unless the defendant proves the contrary. R.S., c. 81, s. 132.

What shall be sufficient evidence.

124. Every person or Indian other than an Indian of the band who, without the written consent of the Superintendent General or his agent, the burden of proof concerning which shall be on the accused, buys or otherwise acquires any presents given to Indians or non-treaty Indians, or any property purchased or acquired with or by means of any annuities granted to Indians or any part thereof, is guilty of an offence, and liable on summary conviction, to a fine not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months. R.S., c. 81, s. 133.

Buying or acquiring presents given to Indians.

Penalty.

125. Every agent for the sale of Indian lands who, within his division, directly or indirectly, except under an order of the Governor in Council, purchases any land which he is appointed to sell, or becomes proprietor of or interested in any such land, during the time of his agency shall forfeit his office and incur a penalty of four hundred dollars for every such offence, recoverable in an action of debt by any person who sues for the same. R.S., c. 81, s. 134.

Land sale agent purchasing Indian land.

Penalty.

126. Every one who by himself, his clerk, servant or agent, and every one who in the employment or on the premises of another directly or indirectly on any pretence or by any device,

Every person.

(a) sells, barter, supplies or gives to any Indian or non-treaty Indian, or to any person, male or female, who is reputed to belong to a particular band, or who

Selling intoxicants to Indians.

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follows

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Opening and keeping a tavern on a reserve.	(b) opens or keeps or causes to be opened or kept on any reserve or special reserve a tavern, house or building in which any intoxicant is sold, supplied or given;
Having intoxicants in his possession in house of Indian.	(c) is found in possession of any intoxicant in the house, tent, wigwam, or place of abode of any Indian or non-treaty Indian or of any person on any reserve or special reserve, or on any other part of any reserve or special reserve; or
Selling intoxicants on reserve.	(d) sells, barter, supplies or gives to any person on any reserve or special reserve any intoxicant;
Penalty.	shall, on summary conviction before any judge, police magistrate, stipendiary magistrate, or two justices of the peace or Indian agent, be liable to imprisonment for a term not exceeding six months and not less than one month, with or without hard labour, or to a penalty not exceeding three hundred dollars and not less than fifty dollars with costs of prosecution, or to both penalty and imprisonment in the discretion of the convicting judge, magistrate, justices of the peace or Indian agent.
Application of penalty.	2. A moiety of every such penalty shall belong to the informer or prosecutor, and the other moiety thereof to His Majesty to form part of the fund for the benefit of that body of Indians or non-treaty Indians with respect to one or more members of which the offence was committed. R.S., c. 81, s. 135.

Commander of vessel whereon intoxicants are sold guilty of offence.	127. The commander or person in charge of any steamer or other vessel, or boat, from or on board of which any intoxicant has been sold, bartered, exchanged, supplied or given to any Indian or non-treaty Indian, shall, on summary conviction before any judge, police magistrate, stipendiary magistrate or two justices of the peace, or Indian agent, be liable to a penalty not exceeding three hundred dollars and not less than fifty dollars for each such offence, with costs of prosecution, and in default of immediate payment of such penalty and costs, any person so convicted shall be committed to any common gaol, house of correction, lock-up or other place of confinement by the judge, magistrate or two justices of the peace, or Indian agent, before whom the conviction has taken place, for a term not exceeding six months and not less than one month, with or without hard labour, or until such penalty and costs are paid.
Penalty.	
Application of penalties.	2. The penalty shall be applied as provided in the last preceding section. R.S., c. 81, s. 136.

128. Every Indian or non-treaty Indian who makes or manufactures any intoxicant, or who has in his possession, or concealed, or who sells, exchanges with, barter, supplies or gives to any other Indian or non-treaty Indian, any intoxicant, shall, on summary conviction before any judge, police magistrate, stipendiary magistrate or two justices of the peace, or Indian agent, be liable to imprisonment for a term not exceeding six months and not less than one month, with or without hard labour, or to a penalty not exceeding one hundred dollars and not less than twenty-five dollars, or to both penalty and imprisonment, in the discretion of the convicting judge, magistrate, or justices of the peace or Indian agent. R.S., c. 81, s. 137.

Indians having intoxicants and selling the same to Indians.

Penalty.

129. No penalty shall be incurred when the intoxicant is made use of in case of sickness under the sanction of a medical man or under the directions of a minister of religion.

Exception in case of illness.

2. The burden of proof that the intoxicant has been so made use of shall be on the accused. R.S., c. 81, s. 138.

Proof.

130. Any constable or peace officer may arrest without warrant any person or Indian found gambling, or drunk, or with intoxicants in his possession, on any part of a reserve, and may detain him until he can be brought before a justice of the peace, and such person or Indian shall be liable upon summary conviction to imprisonment for a term not exceeding three months or to a penalty not exceeding fifty dollars and not less than ten dollars, with costs of prosecution, half of which pecuniary penalty shall belong to the informer.

Arrest without warrant of any person or Indian with intoxicants.

Penalty.

2. Any person or Indian who has been gambling or has been drunk on an Indian reserve, or has had liquor in his possession on an Indian reserve, shall be liable on summary conviction to imprisonment for any term not exceeding three months, or to a penalty not exceeding fifty dollars and not less than ten dollars, with costs of prosecution, half of which pecuniary penalty shall belong to the informer. R.S., c. 81, s. 139; 1920, c. 50, s. 4.

Gambling, drinking or possession of liquor on Indian reserve.

Penalty.

131. The keg, barrel, case, box, package or receptacle from which any intoxicant has been sold, exchanged, bartered, supplied or given, as well that in which the original supply was contained as the vessel wherein any portion of such original supply was supplied as aforesaid, and the remainder of the contents thereof, if such barrel, keg, case, box, package, receptacle or vessel aforesaid, respectively, can be identified; and any intoxicant imported, manufactured or brought into and upon any reserve or special reserve, or into the house, tent, wigwam or place

Kegs, etc., in which intoxicants are carried to be forfeited.

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- of abode, or on the person of any Indian or non-treaty Indian, or suspected to be upon any reserve or special reserve, may be searched for under a search warrant in that behalf granted by any judge, police magistrate, stipendiary magistrate or justice of the peace, and, if found, seized by any Indian superintendent, agent or bailiff, or other officer connected with the Department, or by any constable, wheresoever found on such land or in such place or on the person of such Indian or non-treaty Indian.
- Search.**
- Seizure.**
- Destruction of kegs, etc.**
2. On complaint before any judge, police magistrate, stipendiary magistrate, justice of the peace or Indian agent, he may, on evidence that this Act has been violated in respect of any such intoxicant or of any such keg, barrel, case, box, package, receptacle or vessel, or contents thereof, declare the same forfeited, and cause the same to be forthwith destroyed.
- Indian or person found in possession to be punished.**
3. Such judge, magistrate, justice of the peace or Indian agent may condemn the Indian or person in whose possession the same is found to pay a penalty not exceeding one hundred dollars and not less than fifty dollars, and the costs of prosecution; and, in default of immediate payment, the offender may be committed to any common gaol, house of correction, lock-up or other place of confinement, with or without hard labour, for any term not exceeding six months, and not less than two months, unless such penalty and costs are sooner paid.
- Penalty.**
4. A moiety of such penalty shall belong to the prosecutor, and the other moiety to His Majesty for the purpose hereinbefore mentioned. R.S., c. 81, s. 140.
- Application of penalty.**
- Vessels used in carrying intoxicants for Indians, to be forfeited and sold.**
- 132.** If it is proved before any judge, police magistrate, stipendiary magistrate or two justices of the peace, or Indian agent, that any vessel, boat, canoe or conveyance of any description, upon the sea or sea-coast, or upon any river, lake or stream, is employed in carrying any intoxicant, to be supplied to Indians or non-treaty Indians, such vessel, boat, canoe or conveyance so employed may be seized and declared forfeited, as in the last preceding section mentioned, and sold, and the proceeds thereof paid to His Majesty for the purpose hereinbefore mentioned. R.S., c. 81, s. 141.
- Proceeds.**
- Articles exchanged for intoxicants to be forfeited and sold.**
- 133.** Every article, chattel, commodity or thing in the purchase, acquisition, exchange, trade or barter of which, in violation of this Act, the consideration, either wholly or in part, is an intoxicant, shall be forfeited to His Majesty and may be seized, as is hereinbefore provided in respect to any receptacle of any intoxicant, and may be sold, and the proceeds thereof paid to His Majesty, for the purpose hereinbefore mentioned. R.S., c. 81, s. 142.

134. Every person who introduces any intoxicant at any council or meeting of Indians held for the purpose of discussing or assenting to a release or surrender of a reserve or portion thereof or for the purpose of assenting to the issuing of a license, and every agent or officer employed by the Superintendent General, or by the Governor in Council, who introduces, allows or countenances by his presence the use of such intoxicant among such Indians during the week before or at or the week after such council or meeting, shall incur a penalty of two hundred dollars recoverable by action in any court of competent jurisdiction.

Introducing
intoxicants
at Indian
council or
meeting.

Penalty.

2. A moiety of such penalty shall belong to the former. R.S., c. 81, s. 143.

Application
of penalty.

135. Every Indian who is found in a state of intoxication shall be liable on summary conviction thereof to imprisonment for any term not exceeding one month, or to a penalty not exceeding thirty dollars and not less than five dollars, or to both penalty and imprisonment, in the discretion of the convicting judge, magistrate, justice of the peace or Indian agent. R.S., c. 81, s. 144.

Indian
intoxicated.

Penalty.

136. Any constable or other peace officer may, without warrant, arrest any Indian or non-treaty Indian found in a state of intoxication, and convey him to any common gaol, house of correction, lock-up, or other place of confinement, there to be kept until he is sober; and such Indian or non-treaty Indian shall, when sober, be brought for trial before any judge, police magistrate, stipendiary magistrate, or justice of the peace or Indian agent. R.S., c. 81, s. 145.

Arrest
without
warrant
of
intoxicated
Indian.

137. If any Indian or non-treaty Indian who has been so convicted, refuses, upon examination, to state or give information of the person from whom, the place where, and the time when, he procured such intoxicant, and if from any other Indian or non-treaty Indian, then, if within his knowledge, from whom, where and when such intoxicant was originally procured or received, he shall be liable to imprisonment as aforesaid for a further period not exceeding fourteen days, or to an additional penalty not exceeding fifteen dollars and not less than three dollars, or to both penalty and imprisonment, in the discretion of the convicting judge, magistrate, justice of the peace or Indian agent.

Refusal to
state where
intoxicant
was
procured.

Penalty.

2. In any prosecution under this Act the certificate of analysis of a provincial or dominion analyst shall be accepted as *prima facie* evidence of the fact stated therein as to the alcoholic or narcotic content of the sample analyzed. R.S., c. 81, s. 146; 1927, c. 32, s. 5.

Certificate
of analyst
to be
accepted
as *prima
facie*
evidence.

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Agent giving false information as to lands.

138. Every agent who knowingly and falsely informs, or causes to be informed, any person applying to him to purchase any land within his division and agency, that the same has already been purchased, or who refuses to permit the person so applying to purchase the same according to existing regulations, shall be liable therefor to the person so applying, in the sum of five dollars for each acre of land which the person so applying offered to purchase, recoverable by action of debt in any court of competent jurisdiction. R.S., c. 81, s. 147.

Penalty.

Sale, etc., of ammunition when prohibited.

139. Every person who, after public notice by the Superintendent General prohibiting the sale, gift, or other disposal to Indians in any part of the province of Manitoba, Saskatchewan or Alberta, or the Territories, of any fixed ammunition or ball cartridge, without the permission in writing of the Superintendent General, sells or gives, or in any other manner conveys to any Indian, in the portion of the said provinces or Territories to which such notice applies, any fixed ammunition or ball cartridge, shall, on summary conviction before any stipendiary or police magistrate or by any two justices of the peace, or by an Indian agent, be liable to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both penalty and imprisonment, within the limits aforesaid, at the discretion of the court before which the conviction is had. R.S., c. 81, s. 148.

Penalty.

Celebrating festivities, dances or ceremonies at which presents are made, or bodies mutilated.

140. Every Indian or other person who engages in, or assists in celebrating or encourages either directly or indirectly another to celebrate any Indian festival, dance or other ceremony of which the giving away or paying or giving back of money, goods or articles of any sort forms a part, or is a feature, whether such gift of money, goods or articles takes place before, at, or after the celebration of the same, or who engages or assists in any celebration or dance of which the wounding or mutilation of the dead or living body of any human being or animal forms a part or is a feature, is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding six months and not less than two months.

Penalty

Exception.

2. Nothing in this section shall be construed to prevent the holding of any agricultural show or exhibition or the giving of prizes for exhibits thereat.

Restriction. Indian dances, etc.

3. Any Indian in the province of Manitoba, Saskatchewan, Alberta, or British Columbia, or in the Territories who participates in any Indian dance outside the bounds of his own reserve, or who participates in any show, exhibition, performance, stampede or pageant in aboriginal costume without the consent of the Superintendent General or his

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authorized agent, and any person who induces or employs any Indian to take part in such dance, show, exhibition, performance, stampede or pageant, or induces any Indian to leave his reserve or employs any Indian for such a purpose, whether the dance, show, exhibition, stampede or pageant has taken place or not, shall on summary conviction be liable to a penalty not exceeding twenty-five dollars, or to imprisonment for one month, or to both penalty and imprisonment. R.S., c. 81, s. 149; 1914, c. 35, s. 8; 1918, c. 26, s. 7. Penalty.

141. Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from any Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the tribe or band of Indians to which such Indian belongs, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of the said tribe or band, shall be guilty of an offence and liable upon summary conviction for each such offence to a penalty not exceeding two hundred dollars and not less than fifty dollars or to imprisonment for any term not exceeding two months. 1927, c. 32, s. 6. Receiving money for the prosecution of a claim.

142. Every fine, penalty or forfeiture under this Act, except so much thereof as is payable to an informer or person suing therefor, shall belong to His Majesty for the benefit of the band of Indians with respect to which or to one or more members of which the offence was committed, or to which the offender, if an Indian, belongs: Provided that the Governor in Council may from time to time direct that the same be paid to any provincial, municipal or local authority which wholly or in part bears the expense of administering the law under which such fine, penalty or forfeiture is imposed, or that the same be applied in any other manner deemed best adapted to attain the objects of such law or to secure its due administration, and may in case of doubt decide what band is entitled to the benefit of any such fine, penalty or forfeiture. R.S., c. 81, s. 150. Application of penalties.
Governor in Council may apply the same otherwise.

Evidence and Procedure.

143. Upon any inquest, or upon any inquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever or by whomsoever committed, any court, judge, police or stipendiary magistrate, recorder, coroner, justice of the peace or Indian agent, may receive the evidence of any Indian or non-treaty Indian, who is Evidence of unbelieving Indian may be received on his solemn affirmation.

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destitute of the knowledge of God or of any fixed and clear belief in religion, or in a future state of rewards and punishments, without administering the usual form of oath to any such Indian or non-treaty Indian, as aforesaid, upon his solemn affirmation or declaration to tell the truth, the whole truth, and nothing but the truth, or in such form as is approved by such court, judge, magistrate, recorder, coroner, justice of the peace or Indian agent, as most binding on the conscience of such Indian or non-treaty Indian. R.S., c. 81, s. 151.

Substance of evidence of Indian to be reduced to writing and signed.

144. In the case of any inquest, or upon any inquiry into any matter involving a criminal charge, or upon the trial of any crime or offence whatsoever, the substance of the evidence or information of any such Indian or non-treaty Indian, as aforesaid, shall be reduced to writing and signed by the Indian, by mark if necessary, giving the same, and verified by the signature or mark of the person acting as interpreter, if any, and by the signature of the judge, magistrate, recorder, coroner, justice of the peace, Indian agent or person before whom such evidence or information is given. R.S., c. 81, s. 152.

Indian to be cautioned to tell the truth.

145. The court, judge, magistrate, recorder, coroner, justice of the peace or Indian agent shall, before taking any such evidence, information or examination, caution every such Indian or non-treaty Indian, as aforesaid, that he will be liable to incur punishment if he does not tell the truth, the whole truth and nothing but the truth.

Effect of solemn affirmation of Indian.

2. Every solemn affirmation or declaration, in whatsoever form made or taken, by any Indian or non-treaty Indian, as aforesaid, shall be of the same force and effect as if such Indian or non-treaty Indian had taken an oath in the usual form. R.S., c. 81, ss. 153 and 154.

Written declaration, etc., of Indian may be used in evidence.

146. The written declaration or examination so made, taken and verified, of any such Indian or non-treaty Indian, as aforesaid, may be lawfully read and received as evidence upon the trial of any criminal proceeding when under the like circumstances the written affidavit, examination, deposition or confession of any person might be lawfully read and received as evidence.

Certified copies of records, official papers, etc. to be evidence.

2. Copies of any records, documents, books or papers belonging to or deposited in the Department, attested under the signature of the Superintendent General or of the Deputy of the Superintendent General, shall be evidence in all cases in which the original records, documents, books or papers would be evidence. R.S., c. 81, s. 155.

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147. In any order, writ, warrant, summons and proceeding whatsoever made, issued or taken by the Superintendent General, or any officer or person by him deputed as aforesaid, or by any stipendiary magistrate, police magistrate, justice of the peace or Indian agent, it shall not be necessary to insert or express the name of the person or Indian summoned, arrested, distrained upon, imprisoned or otherwise proceeded against therein, except when the name of such person or Indian is truly given to or known by the Superintendent General, or such officer or person, or such stipendiary magistrate, police magistrate, justice of the peace or Indian agent.

Name of offender need not be entered in the warrant in certain cases.

2. If the name is not truly given to or known by him, he may name or describe the person or Indian by any part of the name of such person or Indian given to or known by him.

What description shall suffice.

3. If no part of the name is given to or known by him, he may describe the person or Indian proceeded against in any manner by which he may be identified.

Where name unknown.

4. All such proceedings containing or purporting to give the name or description of any such person or Indian, as aforesaid, shall *prima facie* be sufficient. R.S., c. 81, s. 156.

Prima facie sufficient.

148. All sheriffs, gaolers or peace officers, to whom any such process is directed by the Superintendent General, or by any officer or person by him deputed as aforesaid, or by any stipendiary magistrate, police magistrate, justice of the peace or Indian agent, and all other persons to whom such process is directed with their consent, shall obey the same; and all other officers shall, upon reasonable requisition so to do, assist in the execution thereof. R.S., c. 81, s. 157.

Execution of order of Superintendent General by sheriffs, gaolers, etc.

149. In all cases of encroachment upon, or of violation of trust respecting any special reserve, proceedings may be taken in the name of His Majesty, in any superior court, notwithstanding the legal title is not vested in His Majesty. R.S., c. 81, s. 158.

His Majesty's name to be used in certain cases.

150. Any judge of a court, judge of sessions of the peace, recorder, police magistrate or stipendiary magistrate, shall have full power to do alone whatever is authorized by this Part to be done by a justice of the peace or by two justices of the peace. R.S., c. 81, s. 159.

Who may act as justice or two justices of the peace.

151. Any recorder, police magistrate or stipendiary magistrate, appointed for or having jurisdiction to act in any city or town shall, with respect to offences and matters under this Part, have and exercise jurisdiction over the whole county or union of counties or judicial district in which the city or town for which he has been appointed or in which he has jurisdiction is situate. R.S., c. 81, s. 160.

Jurisdiction in city or town to give jurisdiction in surrounding county or district.

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Indian agent
ex officio
justice of
the peace.

152. Every Indian agent shall for all the purposes of this Act or of any other Act respecting Indians, and with respect to

- (a) any offence against the provisions of this Act or any other Act respecting Indians;
- (b) any offence against the provisions of the Criminal Code respecting the inciting of Indians to commit riotous acts; or
- (c) any offence by any Indian or non-treaty Indian against any of the provisions of those parts of the Criminal Code relating to vagrancy and offences against morality;

Jurisdiction. be *ex officio* a justice of the peace and have the power and authority of two justices of the peace, anywhere within the territorial limits of his jurisdiction as a justice, as defined in his appointment or otherwise defined by the Governor in Council, whether the Indian or non-treaty Indian charged with or in any way concerned in or affected by the offence, matter or thing to be tried, investigated or dealt with, is or is not within his ordinary jurisdiction, charge or supervision as an Indian agent. R.S., c. 81, s. 161.

Special jurisdiction.

153. In the provinces of Manitoba, British Columbia, Saskatchewan and Alberta, and in the Territories, every Indian agent shall, for all such purposes and with respect to any such offence, be *ex officio* a justice of the peace and have the power and authority of two justices of the peace, whether or not the territorial limits of his jurisdiction as a justice, as defined in his appointment or otherwise defined as aforesaid, extend to the place where he may have occasion to act as such justice or to exercise such power or authority, and whether the Indians charged with or in any way concerned in or affected by the offence, matter or thing, to be tried, investigated or otherwise dealt with, are or are not within his ordinary jurisdiction, charge or supervision as Indian agent. R.S., c. 81, s. 162.

Indian imprisoned not to receive annuity while imprisoned.

154. If any Indian is convicted of any crime punishable by imprisonment in a penitentiary or other place of confinement, the costs incurred in procuring such conviction, and in carrying out the various sentences recorded, may be defrayed by the Superintendent General, and paid out of any annuity or interest coming to such Indian, or to the band, as the case may be. R.S., c. 81, s. 163.

General.

Indians not capable of acquiring homestead.

155. No Indian or non-treaty Indian resident in the province of Manitoba, Saskatchewan or Alberta, or the Territories, shall be held capable of having acquired or of acquiring

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acquiring a homestead or pre-emption right under any Act respecting Dominion lands, to a quarter-section, or any parcel of land in any surveyed or unsurveyed lands in the said provinces or territories, or the right to share in the distribution of any lands allotted to half-breeds: Pro-Viso. provided that

- (a) he shall not be disturbed in the occupation of any plot on which he had permanent improvements prior to his becoming a party to any treaty with the Crown; Occupation not to be disturbed.
- (b) nothing in this section shall prevent the Superintendent General, if found desirable, from compensating any Indian for his improvements on such a plot of land, without obtaining a formal surrender thereof from the band; and May be compensated for improvements.
- (c) nothing in this section shall apply to any person who withdrew from any Indian treaty prior to the first day of October, in the year one thousand eight hundred and seventy-four. Section not to apply to certain Indians. R.S., c. 81, s. 164.

156. Where shooting privileges over a reserve or part of a reserve, or fishing privileges thereon have, with the consent of the Indians of the band, been leased or granted to any person, it shall not be lawful for any person, not under such lease or grant entitled so to do, or for any Indian other than an Indian of the band, to hunt, shoot, kill or destroy any game animals or birds, or to fish for, take, catch or kill any fish to which such exclusive privilege extends, upon the reserve or part of a reserve. Shooting and fishing privileges. R.S., c. 81, s. 165.

157. At the election of a chief or chiefs, or at the granting of any ordinary consent required of a band under this Part, those entitled to vote at the council or meeting thereof shall be the male members of the band, of the full age of twenty-one years; and the vote of a majority of such members, at a council or meeting of the band summoned according to its rules, and held in the presence of the Superintendent General, or of an agent acting under his instructions, shall be sufficient to determine such election or grant such consent. How and by whom chiefs are to be elected. R.S., c. 81, s. 166.

158. If any band has a council of chiefs or councillors, any ordinary consent required of the band may be granted by a vote of a majority of such chiefs or councillors, at a council summoned according to its rules, and held in the presence of the Superintendent General or his agent. How consent may be granted, if band has council. R.S., c. 81, s. 167.

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No intoxicants to be introduced at any Indian council meeting.

159. No one shall introduce any intoxicant at any council or meeting of Indians held for the purpose of discussing or of assenting to a release or surrender of a reserve or portion thereof, or for the purpose of assenting to the issuing of a timber or other license. R.S., c. 81, s. 168.

Before whom affidavits are to be made under this Act.

160. All affidavits required under this Act or intended to be used in reference to any claim, business or transaction in connection with Indian affairs, may be taken before the judge or clerk of any county or circuit court, or any justice of the peace, or any commissioner for taking affidavits in any court, or the Superintendent General, or the Deputy of the Superintendent General, or any inspector of Indian agencies, or any Indian agent, or any surveyor duly licensed and sworn, appointed by the Superintendent General to inquire into, or to take evidence, or report in any matter submitted to or pending before the Superintendent General, or if made out of Canada, before the mayor or chief magistrate of, or the British consul in, any city, town or municipality, or before any notary public. R.S., c. 81, s. 169.

Publication of regulations and laying before Parliament.

161. All regulations made by the Governor in Council under this Part shall be published in the *Canada Gazette*, and shall be laid before both Houses of Parliament within the first fifteen days of the session next after the date thereof. R.S., c. 81, s. 170.

Payment of Indian annuities.

162. The annuities payable to Indians in pursuance of the conditions of any treaty expressed to have been entered into on behalf of His Majesty or His predecessors, and for the payment of which the Government of Canada is responsible, shall be a charge upon the Consolidated Revenue Fund of Canada, and be payable out of any unappropriated moneys forming part thereof. 1911, c. 14, s. 3.

PART II.

INDIAN ADVANCEMENT.

Interpretation.

Definitions.
"Electors."

163. In this Part, unless the context otherwise requires
(a) "electors" means the male Indians of the full age of twenty-one years resident on any reserve to which this Part applies;

"Reserve" and "band."

(b) "reserve" includes two or more reserves, and "band" includes two or more bands united for the purposes of this Part by the Order in Council applying it. R.S., c. 81, s. 172.

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Application

Application of this Part.

164. This Part may be made applicable, as hereinafter provided, to any band of Indians in any of the provinces, or in the Territories, except in so far as it is herein otherwise provided. R.S., c. 81, s. 173. Application of Part.

165. Whenever any band of Indians is declared by the Governor in Council to be considered fit to have this Part applied to it, this Part shall so apply from the time appointed in such Order in Council. R.S., c. 81, s. 174. When this Part shall apply.

Application of Part I.

166. The provisions of Part I of this Act shall continue to apply to every band to which this Part is, from time to time, declared to apply, in so far only as they are not inconsistent with this Part. Application of Part I.

2. If it thereafter appears to the Governor in Council that this Part cannot be worked satisfactorily by any band to which it has been declared to apply, the Governor in Council may by Order in Council, declare that after a day named in the Order in Council, this Part shall no longer apply to such band, and such band shall thereafter be subject only to Part I, except that by-laws, rules and regulations theretofore made under this Part, and not *ultra vires* of the chiefs in council under Part I, shall continue in force until they are repealed by the Governor in Council. R.S., c. 81, s. 175. As to by-laws.

Division of Reserves.

167. Every reserve to which this Part is to apply may, by the Order in Council applying it, be divided into sections, the number of which shall not exceed six, and each section shall have therein, as nearly as is found convenient, an equal number of male Indians of the full age of twenty-one years, or, should the majority of the Indians of the reserve so desire, the whole reserve may form one section, the wishes of the Indians in respect thereto being first ascertained in the manner prescribed in Part I in like matters, and certified to the Superintendent General by the Indian agent. Division of reserves into sections.

2. The sections shall be distinguished by numbers from one upwards, and the reserve shall be designated in the Order in Council as *The Indian Reserve*, inserting such name as is thought proper, and the sections shall be designated by the numbers assigned to them respectively. R.S., c. 81, s. 176. Designation of each.

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Nominations

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Nominations for Election of Councillors.

Meeting
for election
of
councillors.

168. A meeting of the electors for the purpose of nominating candidates for election as councillors shall be held between the hours of ten o'clock in the forenoon and twelve o'clock at noon, at a place to be appointed by the Indian agent, on a day being one week previous to the day on which the election of councillors is to be held on any reserve as hereinafter provided.

Notice of
meeting.

2. Due notice of such meeting shall be given in the manner customary in the band for calling meetings for public purposes. R.S., c. 81, s. 177.

Chairman
to preside.

169. The Indian agent, or in his absence such person as is appointed by the Superintendent General, or failing such appointment, a chairman to be chosen by the meeting, shall preside over such meeting and shall take and keep the minutes thereof. R.S., c. 81, s. 178.

Candidates
and their
nomination.

170. Only Indians nominated at such meeting shall be recognized as, or permitted to become candidates for election as aforesaid; and each nomination to be valid must be made on the motion of an elector of the section of the reserve for the representation whereof the nominee is proposed as a candidate, and the motion must be seconded by another elector of that section. R.S., c. 81, s. 179.

Time of
nomination.

171. The nominations of the candidates shall, so far as practicable, be made consecutively and previously to any speeches being made by the movers and seconders or by any other persons, but nominations may be made up to the hour of twelve o'clock noon. R.S., c. 81, s. 180.

Proceedings
after
nomination.

172. If only one candidate for any councillorship is proposed, the Indian agent or chairman shall, at twelve o'clock noon, declare such candidate duly elected; and if two or more candidates are proposed for any councillorship, an election shall be held under the provisions of this Part. R.S., c. 81, s. 181.

Elections.

First
election
of members
of the
council.

173. On a day and at a place, and between the hours prescribed in the Order in Council, the electors shall meet for the purpose of electing the members of the council of the reserve. R.S., c. 81, s. 182.

Who shall
be deemed
elected.

174. One or more members to represent each section of the reserve, as provided in such Order in Council, shall be elected by the electors resident in each section, and the Indian or Indians, as the case may be, having the votes of the greatest number of electors for each section, shall be the councillor or councillors, as the case may be therefor, provided he or they are respectively possessed of, and living in, a house in the reserve. R.S., c. 81, s. 183.

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175.

175. The agent for the reserve shall preside at the election, or in his absence some person appointed by him as his deputy, with the consent of the Superintendent General, or some person appointed by the Superintendent General may preside at the said election, and shall take and record the votes of the electors, and may, subject to appeal to the Superintendent General by or on behalf of any Indian or Indians who deems himself or themselves aggrieved by the action of such agent or deputy, or of such agent or person appointed as aforesaid, admit or reject the claim of any Indian to be an elector, and may determine who are the councillors for the several sections, and shall report the same to the Superintendent General.

Who shall preside at the election and his powers.

2. In any case of an equality of votes at any such election the agent or person residing thereat shall have the casting vote. R.S., c. 81, s. 184.

Chairman to have casting vote.

Meetings of Council.

176. On a day and at a place, and between the hours prescribed by the Superintendent General, if the day fixed for the same is within eight days from the date at which the councillors were elected, the said councillors shall meet and elect one of their number to act as chief councillor, and the councillor so elected shall be the chief councillor. R.S., c. 81, s. 185.

First meeting of councillors.

177. The council shall meet for the despatch of business, at such place on the reserve and at such times as the agent for the reserve appoints, but which shall not exceed twelve times or be less than four times in the year for which it is elected, and due notice of the time and place of each meeting shall be given to each councillor by the agent. R.S., c. 81, s. 86.

Meetings of the council.

178. At such meeting of the council the agent for the reserve, or his deputy appointed for the purpose with the consent of the Superintendent General, shall

Agent at such meeting, his duties.

- (a) preside, and record the proceedings;
- (b) control and regulate all matters of procedure and form and adjourn the meeting to a time named or *sine die*;
- (c) report and certify all by-laws and other acts and proceedings of the council to the Superintendent General;
- (d) address the council and explain and advise the members thereof upon their powers and duties.

2. No such agent or deputy shall vote on any question to be decided by the council. R.S., c. 81, s. 187.

Not to vote.

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Faith and credence given to his certificate.

179. Full faith and credence shall be given in all courts and places whatsoever to any certificate given by such agent or deputy under the provisions of paragraph (c) of the last preceding section. R.S., c. 81, s. 188.

Votes.

180. Each councillor present shall have a vote on every question to be decided by the council, and such question shall be decided by the majority of votes, the chief councillor voting as a councillor and having also a casting vote, in case the votes would otherwise be equal.

Quorum.

2. Four councillors shall be a quorum for the despatch of any business. R.S., c. 81, s. 189.

Term of Office, Vacancies, Etc.

Term of office.

181. The councillors shall remain in office until others are elected in their stead, and an election for that purpose shall be held in like manner, at the same place and between the like hours on the like day, in each succeeding year, if it is not a Sunday or holiday, in which case it shall be held on the next day thereafter which is not a Sunday or a holiday.

2. If there is a failure to elect on the day appointed for the election, the Superintendent General shall appoint another day on which it shall be held. R.S., c. 81, s. 190.

Vacancies; how filled.

182. In the event of a vacancy in the council, by the death or inability to act of any councillor, more than three months before the time for the next election, an election to fill such vacancy shall be held by the agent or his deputy, after such notice to the electors concerned as the Superintendent General directs, at which only the electors of the section represented by the councillor to be replaced shall vote, and to such election the provisions respecting other elections shall apply, so far as they are applicable.

In office of chief councillor.

2. If the councillor to be replaced is the chief councillor, then an election of a chief councillor shall be held in the manner already provided, but the day fixed for such election shall be at least one week after the date when the new councillor is elected. R.S., c. 81, s. 191.

Remaining councillors to constitute council.

183. During the time of any vacancy in the council the remaining councillors shall constitute the council, and they may, in the event of a vacancy in the office, appoint a chief from among themselves for the time being. R.S., c. 81, s. 192.

Disqualifications in certain cases.

184. Every member of a council elected under the provisions of this Part, who is proved to be a habitual drunkard or to be living in immorality, or to have accepted a bribe, or to have been guilty of dishonesty or of malfeasance

ance of office of any kind, shall, on proof of the fact to the satisfaction of the Superintendent General, be disqualified from acting as a member of the council, and shall, on being notified, cease forthwith so to act; and the vacancy occasioned thereby shall be filled in the manner hereinbefore provided. R.S., c. 81, s. 193.

Powers of Council.

185. The council may, by by-law, rule or regulation, approved and confirmed by the Superintendent General, provide that the religious denomination to which the teacher or teachers of the school or schools established on the reserve shall belong, shall be that of the majority of the Indians resident on the reserve; but the Protestant or Roman Catholic minority on the reserve may also have a separate school or schools, with the approval of and under regulations made by the Governor in Council.

2. The council may also make by-laws, rules and regulations, approved and confirmed by the Superintendent General, regulating all or any of the following subjects and purposes, that is to say:—

- (a) The care of the public health; Health.
- (b) The observance of order and decorum at elections of councillors, meetings of the council, and assemblies of Indians on other occasions, or generally, on the reserve, by the appointment of constables and erection of lock-up houses, or by the adoption of other legitimate means; Order.
- (c) The prevention of disorderly conduct and nuisances; Disorderly conduct.
- (d) The subdivision of the land in the reserve, and the distribution of the same amongst the members of the band; also, the setting apart, for common use, of woodland and land for other purposes; Subdivision of reserve.
- (e) The protection of and the prevention of trespass by cattle, sheep, horses, mules and other domesticated animals; and the establishment of pounds, the appointment of poundkeepers and the regulation of their duties, fees and charges; Trespass.
- (f) The construction and repairs of school houses, council houses and other buildings for the use of the Indians on the reserve, and the attendance at school of children between the ages of six and fifteen years; School houses, etc.
- (g) The construction, maintenance and improvement of roads and bridges, and the contributions, in money or labour, and other duties of residents on the reserve, in respect thereof; the size and kind of sleighs to be used on the roads in the winter season, and the manner in which the horse or horses or other beasts of burden shall

- shall be harnessed to such sleighs; and the appointment of roadmasters and fence-viewers, and their powers and duties;
- Public works. (h) The construction, maintenance and improvement of water, sewerage and lighting works and systems;
- Water-courses, etc. (i) The construction and maintenance of watercourses, ditches and fences, and the obligations of vicinage, the destruction and repression of noxious weeds and the preservation of the wood on the various holdings, or elsewhere, in the reserve;
- Removal of trespassers. (j) The removal and punishment of persons trespassing upon the reserve, or frequenting it for improper purposes;
- Revenue. (k) The raising of money for any or all of the purposes for which the council may make by-laws as aforesaid, by assessment and taxation of the lands of Indians enfranchised, or in possession of lands by location ticket in the reserve: Provided that the valuation for assessment shall be made yearly, in such manner and at such times as are appointed by the by-law in that behalf, and be subject to revision and correction by the agent for the reserve, and shall come into force only after it has been submitted to him and corrected, if and as he thinks justice requires, and approved by him, and that the tax shall be imposed for the year in which the by-law is made, and shall not exceed one-half of one per centum on the assessed value of the land on which it is to be paid; and provided also that any Indian deeming himself aggrieved by the decision of the agent, made as hereinbefore provided, may appeal to the Superintendent General, whose decision in the matter shall be final;
- Assessments.
- Rates.
- Payment of Indian's share on his default.
- Appeal.
- Appropriation of certain funds. (l) The appropriation and payment to the local agent, as treasurer, by the Superintendent General, of so much of the moneys of the band as are required for defraying expenses necessary for carrying out the by-laws made by the council, including those incurred for assistance absolutely necessary for enabling the council or the agent to perform the duties assigned to them;
- Penalties and enforcement thereof. (m) The imposition of punishment by penalty or by imprisonment, or by both, for any violation of or disobedience to any law, rule or regulation made under this Part, committed by any Indian of the reserve; but such penalty shall, in no case, except for non-payment of taxes, exceed thirty dollars, and the imprisonment shall not exceed thirty days.
- Taxes, how recovered. 3. If any tax authorized by any by-law, or any part thereof, is not paid at the time prescribed by the by-law, the amount unpaid, with the addition of one-half of one per centum thereof, may be paid by the Superintendent

General to the treasurer out of the share in any money of the band of the Indian in default; and, if such share is insufficient to pay the tax, or any portion thereof so remaining unpaid, the defaulter shall be deemed to have violated the by-law imposing the tax, and shall incur a penalty therefor equal to the amount of the tax or the balance thereof remaining unpaid, as the case may be. Penalty.

4. The proceedings for the imposition of any punishment authorized by this section, or the by-laws, rules or regulations approved and confirmed thereunder, may be taken before one justice of the peace, under the provisions of the Criminal Code relating to summary convictions; and the amount of any such penalty shall be paid over to the treasurer of the band to which the Indian incurring it belongs for the use of such band. Provisions for the imposition of punishment.

5. The by-laws, rules and regulations by this section authorized to be made shall, when approved and confirmed by the Superintendent General, have the force of law within and with respect to the reserve, and the Indians residing thereon. R.S., c. 81, s. 194; 1920, c. 50, s. 5; 1927, c. 32, s. 7. Approval.

Evidence.

186. A copy of any by-law, rule or regulation under this Part, approved by the Superintendent General, and purporting to be certified by the agent for the band to which it relates to be a true copy thereof, shall be evidence of such by-law, rule or regulation, and of such approval, without proof of the signature of such agent; and no such by-law, rule or regulation shall be invalidated by any defect of form, if it is substantially consistent with the intent and meaning of this Part. R.S., c. 81, s. 195. Proof of by-laws, etc.

PART III.

SOLDIER SETTLEMENT.

187. The Soldier Settlement Act, excepting sections three, four, eight, nine, ten, eleven, fourteen, twenty-nine, subsection two of fifty-one, and sixty-one thereof, and excepting the whole of Part III thereof, with such amendments as may from time to time be made to said Act shall, with respect to any "settler" as defined by said Act who is an "Indian" as defined by this Act, be administered by the Superintendent General. Application of Soldier Settlement Act.

2. For the purpose of such administration, the Deputy Superintendent General of Indian Affairs shall have the same powers as the Soldier Settlement Board has under the Soldier Settlement Act, the words "Deputy Superintendent General of Indian Affairs" being, for such purpose,

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read

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read in the said Act as substituted for the words "The Soldier Settlement Board" and for the words "The Board".

3. Said Act, with such exceptions as aforesaid, shall for such purpose, be read as one with this Part of this Act. 1919, c. 56, s. 3.

Title for common lands of band may be granted on land acquired for Indian settler. Lands may be security for advances as under Soldier Settlement Act.

Only individual Indian interest is acquired.

Soldier Settlement Board to assist Deputy Supt. General.

Power of Governor in Council to settle doubts and define powers.

188. The Deputy Superintendent General may acquire for a settler who is an Indian, land as well without as within an Indian reserve, and shall have authority to set apart for such settler a portion of the common lands of the band without the consent of the council of the band.

2. In the event of land being so acquired or set apart on an Indian reserve, the Deputy Superintendent General shall have power to take the said land as security for any advances made to such settler, and the provisions of the Soldier Settlement Act, shall, as far as applicable, apply to such transactions.

3. It shall, however, be only the individual Indian interest in such lands that is being acquired or given as security, and the interest of the band in such lands shall not be in any way affected by such transactions. 1922, c. 26, s. 2.

189. The Soldier Settlement Board and its officers and employees shall, upon request of the Deputy Superintendent General, aid and assist him, to the extent requested, in the execution of the purposes of this Act, and the said Board may sell, convey and transfer to the said Deputy, for the execution of any such purposes, at such prices as may be agreed, any property held for disposition by such Board. 1919, c. 56, s. 3.

190. In the event of any doubt or difficulty arising with respect to the administration by the Superintendent General of the provisions of the Soldier Settlement Act, or as to the powers of the Deputy Superintendent General as by this Act authorized or granted, the Governor in Council may, by order, resolve such doubt or difficulty and may define powers and procedure.

2. Such order shall not extend the powers which are by the Soldier Settlement Act, provided. 1919, c. 56, s. 3.

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15 GEORGE VI.

CHAP. 29.

An Act respecting Indians.

[Assented to 20th June, 1951.]

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

SHORT TITLE.

1. This Act may be cited as *The Indian Act*. Short title.

INTERPRETATION.

2. (1) In this Act, Definitions.
- (a) "band" means a body of Indians "band."
- (i) for whose use and benefit in common, lands, the legal title to which is vested in His Majesty, have been set apart before or after the coming into force of this Act,
- (ii) for whose use and benefit in common, moneys are held by His Majesty, or
- (iii) declared by the Governor in Council to be a band for the purposes of this Act;
- (b) "child" includes a legally adopted Indian child: "child."
- (c) "council of the band" means "Council of the band."
- (i) in the case of a band to which section seventy-three applies, the council established pursuant to that section,
- (ii) in the case of a band to which section seventy-three does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;
- (d) "Department" means the Department of Citizenship and Immigration: "Department."
- (e) "elector" means a person who "elector."
- (i) is registered on a Band List,
- (ii) is of the full age of twenty-one years, and
- (iii) is not disqualified from voting at band elections;
- (f) "estate" includes real and personal property and any interest in land; "estate."

- "Indian." (g) "Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;
- "Indian moneys." (h) "Indian moneys" means all moneys collected, received or held by His Majesty for the use and benefit of Indians or bands;
- "intoxicant." (i) "intoxicant" includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating;
- "member of a band." (j) "member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List;
- "mentally incompetent Indian." (k) "mentally incompetent Indian" means an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons;
- "Minister." (l) "Minister" means the Minister of Citizenship and Immigration;
- "registered." (m) "registered" means registered as an Indian in the Indian Register;
- "Registrar." (n) "Registrar" means the officer of the Department who is in charge of the Indian Register;
- "reserve." (o) "reserve" means a tract of land, the legal title to which is vested in His Majesty, that has been set apart by His Majesty for the use and benefit of a band;
- "superintendent." (p) "superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent and any other person declared by the Minister to be a superintendent for the purposes of this Act, and with reference to a band or a reserve, means the superintendent for that band or reserve;
- "surrendered lands." (q) "surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in His Majesty, that has been released or surrendered by the band for whose use and benefit it was set apart.
- "band." (2) The expression "band" with reference to a reserve or surrendered lands means the band for whose use and benefit the reserve or the surrendered lands were set apart.
- Exercise of powers conferred on band or council. (3) Unless the context otherwise requires or this Act otherwise provides
- (a) a power conferred upon a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band, and

(b) a power conferred upon the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.

ADMINISTRATION.

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

(2) The Minister may authorize the Deputy Minister of Citizenship and Immigration or the chief officer in charge of the branch of the Department relating to Indian affairs to perform and exercise any of the duties, powers and functions that may be or are required to be performed or exercised by the Minister under this Act or any other Act of the Parliament of Canada relating to Indian affairs. Authority of Deputy Minister and chief officer.

APPLICATION OF ACT.

4. (1) This Act does not apply to the race of aborigines commonly referred to as Eskimos. Eskimos.

(2) The Governor in Council may by proclamation declare that this Act or any portion thereof, except sections thirty-seven to forty-one, shall not apply to G. in C. may declare Act inapplicable.

(a) any Indians or any group or band of Indians, or

(b) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration.

DEFINITION AND REGISTRATION OF INDIANS.

5. An Indian Register shall be maintained in the Department, which shall consist of Band Lists and General Lists and in which shall be recorded the name of every person who is entitled to be registered as an Indian. Indian Register.

6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the Band List for that band, and the name of every person who is not a member of a band and is entitled to be registered shall be entered in a General List. Band Lists and General Lists.

7. (1) The Registrar may at any time add to or delete from a Band List or a General List the name of any person who, in accordance with the provisions of this Act, is entitled or not entitled, as the case may be, to have his name included in that List. Deletions and additions

(2) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom. Date of change.

Existing lists to constitute Register.

8. Upon the coming into force of this Act, the band lists then in existence in the Department shall constitute the Indian Register, and the applicable lists shall be posted in a conspicuous place in the superintendent's office that serves the band or persons to whom the list relates and in all other places where band notices are ordinarily displayed.

Deletions and additions may be protested.

9. (1) Within six months after a list has been posted in accordance with section eight or within three months after the name of a person has been added to or deleted from a Band List or a General List pursuant to section seven

(a) in the case of a Band List, the council of the band, any ten electors of the band, or any three electors if there are less than ten electors in the band,

(b) in the case of a posted portion of a General List, any adult person whose name appears on that posted portion, and

(c) the person whose name was included in or omitted from the list referred to in section eight, or whose name was added to or deleted from a Band List or a General List,

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.

Registrar to cause investigation.

(2) Where a protest is made to the Registrar under this section he shall cause an investigation to be made into the matter and shall render a decision, and subject to a reference under subsection three, the decision of the Registrar is final and conclusive.

Reference to Judge.

(3) Within three months from the date of a decision of the Registrar under this section

(a) the council of the band affected by the Registrar's decision, or

(b) the person by or in respect of whom the protest was made,

may, by notice in writing, request the Registrar to refer the decision to a judge for review, and thereupon the Registrar shall refer the decision, together with all material considered by the Registrar in making his decision, to the judge of the county or district court of the county or district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other county or district as the Minister may designate, or in the Province of Quebec, to the judge of the Superior Court for the district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other district as the Minister may designate.

(4) The judge of the county, district or Superior Court, as the case may be, shall inquire into the correctness of the Registrar's decision, and for such purposes may exercise all the powers of a commissioner under Part I of the *Inquiries Act*; the judge shall decide whether the person in respect of whom the protest was made is, in accordance with the provisions of this Act, entitled or not entitled, as the case may be, to have his name included in the Indian Register, and the decision of the judge is final and conclusive.

Inquiry and decision.

R.S., c. 99.

10. Where the name of a male person is included in, omitted from, added to or deleted from a Band List or a General List, the names of his wife and his minor children shall also be included, omitted, added or deleted, as the case may be.

Wife and minor children.

11. Subject to section twelve, a person is entitled to be registered if that person

Persons entitled to be registered.

(a) on the twenty-sixth day of May, eighteen hundred and seventy-four, was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, chapter forty-two of the statutes of 1868, as amended by section six of chapter six of the statutes of 1869, and section eight of chapter twenty-one of the statutes of 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada,

(b) is a member of a band

(i) for whose use and benefit, in common, lands have been set apart or since the twenty-sixth day of May, eighteen hundred and seventy-four have been agreed by treaty to be set apart, or

(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act,

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph

(a) or (b),

(d) is the legitimate child of

(i) a male person described in paragraph (a) or (b),
or

(ii) a person described in paragraph (c),

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

(f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

Persons not
entitled to
be
registered.

12. (1) The following persons are not entitled to be registered, namely,

(a) a person who

(i) has received or has been allotted half-breed lands or money scrip,

(ii) is a descendant of a person described in subparagraph (i),

(iii) is enfranchised, or

(iv) is a person born of a marriage entered into after the coming into force of this Act and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph (a), (b), (d), or entitled to be registered by virtue of paragraph (e) of section eleven, unless, being a woman, that person is the wife or widow of a person described in section eleven, and

(b) a woman who is married to a person who is not an Indian.

Certificate.

(2) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

Admission
to band of
persons on
General List.

13. (1) Subject to the approval of the Minister, a person whose name appears on a General List may be admitted into membership of a band with the consent of the band or the council of the band.

Transfer of
band
membership.

(2) Subject to the approval of the Minister, a member of a band may be admitted into membership of another band with the consent of the latter band or the council of that band.

Woman
marrying
outside band
ceases to
be member.

14. A woman who is a member of a band ceases to be a member of that band if she marries a person who is not a member of that band, but if she marries a member of another band, she thereupon becomes a member of the band of which her husband is a member.

Payments to
persons
ceasing to be
members.

15. (1) Subject to subsection two, an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from His Majesty

(a) one *per capita* share of the capital and revenue moneys held by His Majesty on behalf of the band, and

(b) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the band and His Majesty if he had continued to be a member of the band.

Payments
not to be
made in
certain cases.

(2) A person is not entitled to receive any amount under subsection one

(a) if his name was removed from the Indian register pursuant to a protest made under section nine, or

(b) if he is not entitled to be a member of a band by reason of the application of paragraph (e) of section eleven or subparagraph (iv) of paragraph (a) of section twelve.

(3) Where by virtue of this section moneys are payable to a person who is under the age of twenty-one, the Minister may Payments to minors

(a) pay the moneys to the parent, guardian or other person having the custody of that person, or

(b) cause payment of the moneys to be withheld until that person reaches the age of twenty-one.

(4) Where the name of a person is removed from the Indian Register and he is not entitled to any payment under subsection one, the Minister shall, if he considers it equitable to do so, authorize payment, out of moneys appropriated by Parliament, of such compensation as the Minister may determine for any permanent improvements made by that person on lands in a reserve. Compensation for permanent improvements.

16. (1) Section fifteen does not apply to a person who ceases to be a member of one band by reason of his becoming a member of another band, but, subject to subsection three, there shall be transferred to the credit of the latter band the amount to which that person would, but for this section, have been entitled under section fifteen. Transfer of funds.

(2) A person who ceases to be a member of one band by reason of his becoming a member of another band is not entitled to any interest in the lands or moneys held by His Majesty on behalf of the former band, but he is entitled to the same interest in common in lands and moneys held by His Majesty on behalf of the latter band as other members of that band. Transferred member's interest in lands and moneys.

(3) Where a woman who is a member of one band becomes a member of another band by reason of marriage, and the *per capita* share of the capital and revenue moneys held by His Majesty on behalf of the first-mentioned band is greater than the *per capita* share of such moneys so held for the second-mentioned band, there shall be transferred to the credit of the second-mentioned band an amount equal to the *per capita* share held for that band, and the remainder of the money to which the woman would, but for this section, have been entitled under section fifteen shall be paid to her in such manner and at such times as the Minister may determine. Transfer of woman by marriage.

17. (1) The Minister may, whenever he considers it desirable,

(a) constitute new bands and establish Band Lists with respect thereto from existing Band Lists or General Lists, or both, and Minister may constitute new bands.

(b) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated.

Division of reserves and funds.

(2) Where pursuant to subsection one 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 Governor in Council determines shall be held for the use and benefit of the new band.

RESERVES.

Reserves to be held for use and benefit of Indians.

18. (1) Subject to the provisions of this Act, reserves shall be held by His 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 Governor in Council 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.

Minister may authorize 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 RESERVES.

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, at the commencement of this Act, holds 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.

(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. Temporary possession.

(5) Where the Minister withholds approval pursuant to subsection four, 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. Certificate of Occupation.

(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 Extension of Certificate of Occupation, and approval of allotment.

(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.

21. There shall be kept in the Department a register, to be known as the Reserve Land Register, in which shall be entered particulars relating to Certificates of Possession and Certificates of Occupation and other transactions respecting lands in a reserve. Register.

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 such lands at the time they are so included. Improvements on lands subsequently included in a reserve.

23. An Indian who is lawfully removed from lands in a reserve upon 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. Compensation for improvements.

24. An Indian who is lawfully in possession of lands in a reserve may transfer to the band or to 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. Transfer of possession.

Transfer where Indian ceases 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.

Right of possession not transferred reverts to band.

(2) Where an Indian does not dispose of his right of possession in accordance with subsection one, 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 Certificates.

26. Whenever a Certificate of Possession or Occupation 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 and issue a corrected Certificate in lieu thereof.

Cancellation of Certificates.

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

Grants, etc. of reserve lands void.

28. (1) Subject to subsection two, a 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 to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

Reserve lands exempt from seizure.

29. Reserve lands are not subject to seizure under legal process.

TRESPASS ON RESERVES.

Penalty for trespass.

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

Information by Attorney General.

31. (1) Without prejudice to section thirty, 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 upon

a reserve or part of a reserve, the Attorney General of Canada may exhibit an Information in the Exchequer Court of Canada claiming, on behalf of the Indian or the band, the relief or remedy sought.

(2) An Information exhibited under subsection one shall, for all purposes of the *Exchequer Court Act*, be deemed to be an action or suit by the Crown within the meaning of paragraph (d) of section thirty of that Act.

Information deemed action or suit by Crown. R.S., c. 34.

(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 His Majesty or to an Indian or a band.

Existing remedies preserved.

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.

Sale or barter of produce prohibited unless superintendent approves

(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.

Exemption.

33. Every person who enters into a transaction that is void under subsection one of section thirty-two is guilty of an offence.

Offence.

ROADS AND BRIDGES.

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.

Band to maintain roads, bridges, etc.

(2) Where, in the opinion of the Minister, a band has not carried out the instructions of the superintendent given under subsection one, 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 His Majesty and are payable to the band or such member.

Minister may maintain roads, bridges, etc.

LANDS TAKEN FOR PUBLIC PURPOSES.

Local
authorities
may take
lands with
consent of
G. in C.

35. (1) Where by an Act of the Parliament of Canada or a provincial legislature His 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 one shall be 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, authority or corporation of the powers referred to in subsection one, 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 such 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 upon 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 of Canada 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 one.

SPECIAL RESERVES.

Act applies
to reserves
not vested in
the Crown.

36. Where lands have been set apart for the use and benefit of a band and legal title thereto is not vested in His Majesty, this Act applies as though the lands were a reserve within the meaning of this Act.

SURRENDERS.

No sale etc.
until
surrender

37. Except where this Act otherwise provides, lands in a reserve shall not be sold, alienated, leased or otherwise disposed of until they have been surrendered to His Majesty by the band for whose use and benefit in common the reserve was set apart.

Band may
surrender.

38. (1) A band may surrender to His Majesty any right or interest of the band and its members in a reserve.

(2) A surrender may be absolute or qualified, conditional or unconditional. Absolute or qualified.

39. (1) A surrender is void unless How surrender made.

(a) it is made to His Majesty,

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

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

(ii) a special meeting of the band called by the Minister for the purpose of considering a proposed surrender, 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 called pursuant to subsection one of this section or pursuant to section fifty-one of the *Indian Act*, chapter ninety-eight 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. Minister may call meeting of band.

(3) Where a meeting is called pursuant to subsection two and the proposed surrender is assented to at the meeting 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. Assent of band.

(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. Secret ballot.

(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. Officials required.

40. When a proposed surrender has been assented to by the band in accordance with section thirty-nine, 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 Governor in Council for acceptance or refusal. Certification of surrender.

41. A surrender shall be deemed to confer all rights that are necessary to enable His Majesty to carry out the terms of the surrender. Effect of surrender.

DESCENT OF PROPERTY.

Powers of
Minister
with respect
to property of
deceased
Indians.

42. Unless otherwise provided in 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.

Particular
powers.

43. Without restricting the generality of section forty-two, the Minister may

(a) appoint executors of wills and administrators of estates of deceased Indians, remove them and appoint others in their stead,

(b) authorize executors to carry out the terms of the wills of deceased Indians,

(c) authorize administrators to administer the property of Indians who die intestate,

(d) carry out the terms of wills of deceased Indians and administer the property of Indians who die intestate, and

(e) make or give any order, direction or finding that in his opinion it is necessary or desirable to make or give with respect to any matter referred to in section forty-two.

Courts may
exercise
jurisdiction
with consent
of Minister.

44. (1) The court that would have jurisdiction if the deceased were not an Indian may, with the consent of the Minister, exercise, in accordance with this Act, the jurisdiction and authority conferred in relation to matters and causes testamentary upon the Minister by this Act and any other powers, jurisdiction and authority ordinarily vested in that court.

Minister
may refer
a matter
to the court.

(2) The Minister may direct in any particular case that an application for the grant of probate of the will or letters of administration shall be made to the court that would have jurisdiction if the deceased were not an Indian, and the Minister may refer to such court any question arising out of any will or the administration of any estate.

Orders
relating
to lands.

(3) A court that is exercising any jurisdiction or authority under this section shall not without the consent in writing of the Minister enforce any order relating to real property on a reserve.

WILLS.

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

(2) The Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes or intention with respect to the disposition of his property upon his death. Form of will.

(3) No will executed by an Indian shall be of any legal force or effect as a disposition of property until the Minister has approved the will or a court has granted probate thereof pursuant to this Act. Probate.

46. (1) The Minister may declare the will of an Indian to be void in whole or in part if he is satisfied that Minister may declare will void.

- (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.

(2) Where a will of an Indian is declared by the Minister or by a court to be wholly void, the person executing the will shall be deemed to have died intestate, and where the will is so declared to be void in part only, any bequest or devise affected thereby, unless a contrary intention appears in the will, shall be deemed to have lapsed. Where will declared void.

APPEALS.

47. (1) A decision of the Minister made in the exercise of the jurisdiction or authority conferred upon him by section forty-two, forty-three or forty-six may, within two months from the date thereof, be appealed by any person affected thereby to the Exchequer Court of Canada, if the amount in controversy in the appeal exceeds five hundred dollars or if the Minister consents to an appeal. Appeal to Exchequer Court.

Rules. (2) The judges of the Exchequer Court may make rules respecting the practice and procedure governing appeals under this section.

DISTRIBUTION OF PROPERTY ON INTESTACY.

Widow's share where net value less than \$2,000.

48. (1) Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed in value two thousand dollars, the estate shall go to the widow,

Widow's share where estate \$2,000 or more.

(2) Where the net value of the estate of an intestate, in the opinion of the Minister, is two thousand dollars or more, two thousand dollars shall go to the widow, and the remainder shall go as follows, namely,

(a) if the intestate left no issue, the remainder shall go to the widow,

(b) if the intestate left one child, one-half of the remainder shall go to the widow,

(c) if the intestate left more than one child, one-third of the remainder shall go to the widow, and where a child has died leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate as if the child had been living at that date.

Where children not provided for.

(3) Notwithstanding subsections one and two,

(a) where in any particular case the Minister is satisfied that any children of the deceased will not be adequately provided for, he may direct that all or any part of the estate that would otherwise go to the widow shall go to the children, and

Right to occupy lands.

(b) the Minister may direct that the widow shall have the right, during her widowhood, to occupy any lands on a reserve that were occupied by her deceased husband at the time of his death.

Distribution to issue.

(4) Where an intestate dies leaving issue his estate shall be distributed, subject to the rights of the widow, if any, *per stirpes* among such issue.

Distribution to father and mother.

(5) Where an intestate dies leaving no widow or issue his estate shall go to his father and mother in equal shares if both are living, but if either of them is dead the estate shall go to the survivor.

Distribution to brothers, sisters and issue of brothers and sisters.

(6) Where an intestate dies leaving no widow or issue or father or mother his estate shall go to his brothers and sisters in equal shares, and if any brother or sister is dead the

children of the deceased brother or sister shall take the share their parent would have taken if living, but where the only persons entitled are children of deceased brothers and sisters, they shall take *per capita*.

(7) Where an intestate dies leaving no widow, issue, father, mother, brother or sister, and no children of any deceased brother or sister, his estate shall go to his next-of-kin. Next-of-kin.

(8) Where the estate goes to the next-of-kin it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in His Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister. Distribution amongst next-of-kin.

(9) For the purposes of this section, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree. Degrees of kindred.

(10) Descendants and relatives of the intestate begotten before his death but born thereafter shall inherit as if they had been born in the lifetime of the intestate and had survived him. Descendants and relatives born after intestate's death.

(11) All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate. Estate not disposed of by will.

(12) No widow is entitled to dower in the land of her deceased husband dying intestate, and no husband is entitled to an estate by curtesy in the land of his deceased wife so dying, and there is no community of real or personal property situated on a reserve. No dower or estate by curtesy.

(13) Illegitimate children and their issue shall inherit from the mother as if the children were legitimate, and shall inherit as if the children were legitimate, through the mother, if dead, any real or personal property that she would have taken, if living, by gift, devise or descent from any other person. Illegitimate children.

(14) Where an intestate, being an illegitimate child, dies leaving no widow or issue, his estate shall go to his mother, if living, but if the mother is dead his estate shall go to the other children of the same mother in equal shares, and where any child is dead the children of the deceased child shall take the share their parent would have taken if living; but where the only persons entitled are children of deceased children of the mother, they shall take *per capita*. Intestate being an illegitimate child.

(15) This section applies in respect of an intestate woman as it applies in respect of an intestate male, and for the purposes of this section the word "widow" includes "widower". "widow" includes "widower."

(16) In this section "child" includes a legally adopted child. "child."

Devisee of lands not entitled to possession until possession approved.

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 that land until the possession is approved by the Minister.

Where devisee not entitled to reside on reserve.

50. (1) A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession or occupation of land in that reserve.

Sale by superintendent.

(2) Where a right to possession or occupation of land in a reserve passes by devise or descent to a person who is not entitled to reside on a reserve, that right shall be offered for sale by the superintendent to the highest bidder among persons who are entitled to reside on the reserve and the proceeds of the sale shall be paid to the devisee or descendant, as the case may be.

Unsold lands revert to band.

(3) Where no tender is received within six months or such further period as the Minister may direct after the date when the right to possession or occupation is offered for sale under subsection two, the right shall revert to the band free from any claim on the part of the devisee or descendant, subject to the payment, at the discretion of the Minister, to the devisee or descendant, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Purchaser not entitled to possession until possession approved.

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

MENTALLY INCOMPETENT INDIANS.

Powers of Minister generally.

51. (1) Subject to this section, all jurisdiction and authority in relation to the property of mentally incompetent Indians is vested exclusively in the Minister.

Particular powers.

(2) Without restricting the generality of subsection one, the Minister may

(a) appoint persons to administer the estates of mentally incompetent Indians,

(b) order that any property of a mentally incompetent Indian shall be sold, leased, alienated, mortgaged, disposed of or otherwise dealt with for the purpose of

(i) paying his debts or engagements,

(ii) discharging encumbrances on his property,

(iii) paying debts or expenses incurred for his maintenance or otherwise for his benefit, or

(iv) paying or providing for the expenses of future maintenance, and

(c) make such orders and give such directions as he considers necessary to secure the satisfactory management of the estates of mentally incompetent Indians.

(3) The Minister may order that any property situated off a reserve and belonging to a mentally incompetent Indian shall be dealt with under the laws of the province in which the property is situated. Property off reserve.

GUARDIANSHIP.

52. The Minister may administer or provide for the administration of any property to which infant children of Indians are entitled, and may appoint guardians for such purpose. Administration of property of infant children.

MANAGEMENT OF RESERVES AND SURRENDERED LANDS.

53. (1) The Minister or a person appointed by him for the purpose may manage, sell, lease or otherwise dispose of surrendered lands in accordance with this Act and the terms of the surrender. Disposition of surrendered lands.

(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, upon receipt of proof in such manner as he directs and requires in support of any claim for the grant and upon being satisfied that the claim has been equitably and justly established, allow the claim and authorize a grant to issue accordingly. Grant where original purchaser dead.

(3) No person who is appointed to manage, sell, lease or otherwise dispose of surrendered lands or who is an officer or servant of His Majesty employed in the Department may, except with the approval of the Governor in Council, acquire directly or indirectly any interest in surrendered lands. Departmental employees not to acquire surrendered lands.

54. Where surrendered lands have been agreed to be sold or otherwise disposed of and Letters Patent relating thereto have not issued, or where surrendered lands have been leased, the purchaser, lessee or other person having an interest in the surrendered lands may, with the approval of the Minister, assign his interest in the surrendered lands or a part thereof to any other person. Assignments.

55. (1) There shall be kept in the Department a register, to be known as the Surrendered Lands Register, in which shall be entered particulars in connection with any lease or other disposition of surrendered lands by the Minister or any assignment thereof. Surrendered Lands Register.

(2) A conditional assignment shall not be registered.

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

Effect of
registration.

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

Certificate
of registration
rendered.

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 him 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 penalty not exceeding one hundred dollars or imprisonment for a term of three months or both fine and imprisonment that may be imposed on summary conviction for violation of any regulation made under this section, and
- (e) providing for the seizure and forfeiture of any timber or minerals taken in violation of any regulation made under this section.

Uncultivated
or unused
lands.

58. (1) Where land in a reserve is uncultivated or unused or remains uncultivated or unused for a period of two years, the Minister may, with the consent of the council of the band,

- (a) improve or cultivate such land and employ persons therefor, authorize and direct the expenditure of so much of the capital funds of the band as he considers necessary for such 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 such land for agricultural or grazing purposes or for any purpose that is for the benefit of the person in possession, and
- (c) where the land is not in the lawful possession of any individual, grant for the benefit of the band a lease of such 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 (b) of subsection one, 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 such improvements from the rent payable to such individual under this subsection.

(3) The Minister may lease for the benefit of any Indian upon his application for that purpose, the land of which he is lawfully in possession without the land being surrendered.

Lease at request of occupant.

(4) Notwithstanding anything in this Act, the Minister may, without a surrender

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

- (a) dispose of wild grass or dead or fallen timber,
 (b) with the consent of the council of the band, dispose of sand, gravel, clay and other non-metallic substances upon or under lands in a reserve, or, where such 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 upon or under lands in a reserve, renewable only with the consent of the council of the band,

and the proceeds of such transactions 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.

59. The Minister may, with the consent of the council of a band

Adjustment of contracts.

- (a) reduce or adjust the amount payable to His Majesty in respect of a sale, lease or other disposition of surrendered lands or a lease or other disposition of 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.

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.

G. in C. may grant to band control over lands.

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

Withdrawal.

MANAGEMENT OF INDIAN MONEYS.

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 Governor in Council 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.

Indian moneys to be held for use and benefit.

Interest.

(2) Interest upon Indian moneys held in the Consolidated Revenue Fund shall be allowed at a rate to be fixed from time to time by the Governor in Council.

Capital and revenue.

62. All Indian moneys derived from the sale of surrendered lands or the sale of capital assets of a band shall be deemed to be capital moneys of the band and all Indian moneys other than capital moneys shall be deemed to be revenue moneys of the band.

Payments to Indians.
1931, c. 27.

63. Notwithstanding *The Consolidated Revenue and Audit Act, 1931*, where moneys to which an Indian is entitled are paid to a superintendent under any lease or agreement made under this Act, the superintendent may pay the moneys to the Indian.

Expenditure of capital moneys with consent.

64. With the consent of the council of a band, the Minister may authorize and direct the expenditure of capital moneys of the band

- (a) to distribute *per capita* to the members of the band an amount not exceeding fifty per cent of the capital moneys of the band derived from the sale of surrendered lands,
- (b) to construct and maintain roads, bridges, ditches and water courses on the reserves or on surrendered lands,
- (c) to construct and maintain outer boundary fences on reserves,
- (d) to purchase land for use by the band as a reserve or as an addition to a reserve,
- (e) to purchase for the band the interest of a member of the band in lands on a reserve,
- (f) to purchase livestock and farm implements, farm equipment, or machinery for the band,
- (g) to construct and maintain on or in connection with a reserve such permanent improvements or works as in the opinion of the Minister will be of permanent value to the band or will constitute a capital investment,
- (h) to make to members of the band, for the purpose of promoting the welfare of the band, loans not exceeding one-half of the total value of
 - (i) the chattels owned by the borrower, and
 - (ii) the land with respect to which he holds or is eligible to receive a Certificate of Possession, and may charge interest and take security therefor.
- (i) to meet expenses necessarily incidental to the management of lands on a reserve, surrendered lands and any band property, and
- (j) for any other purpose that in the opinion of the Minister is for the benefit of the band.

65. The Minister may pay from capital moneys

Expenditure
of capital.

- (a) compensation to an Indian in an amount that is determined in accordance with this Act to be payable to him in respect of land compulsorily taken from him for band purposes, and
- (b) expenses incurred to prevent or suppress grass or forest fires or to protect the property of Indians in cases of emergency.

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 his opinion will promote the general progress and welfare of the band or any member of the band.

Expenditure
of revenue
moneys with
consent of
band

(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.

Minister may
direct
expenditure.

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

Expenditure
of revenue
moneys with
authority of
G. in C.

- (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.

67. (1) Where the Minister is satisfied that a male Indian

Maintenance
of
dependents.

- (a) has deserted his wife or family without sufficient cause,
- (b) has conducted himself in such a manner as to justify the refusal of his wife or family to live with him, or
- (c) has been separated by imprisonment from his wife and family,

he may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of the wife or family or both the wife and family of that Indian.

Maintenance
of
illegitimate
child

(2) Where the Minister is satisfied that a female Indian has deserted her husband or family, he may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of her family.

Illegitimate
children.

(3) Where the Minister is satisfied that one or both of the parents of an illegitimate child is an Indian, he may stop payments out of any annuity or interest moneys to which either or both of the parents would otherwise be entitled and apply the moneys to the support of the child, but not so as to prejudice the welfare of any legitimate child of either Indian.

Management
of revenue
moneys by
band.

68. (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 one and may declare therein the extent to which this Act and *The Consolidated Revenue and Audit Act, 1931*, shall not apply to a band to which an order made under subsection one applies.

1931, c. 27.

LOANS TO INDIANS.

Loans to
Indians.

69. (1) The Minister of Finance may from time to time advance to the Minister out of the Consolidated Revenue Fund such sums of money as the Minister may require to enable him

(a) to make loans to bands, groups of Indians or individual Indians for the purchase of 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

(b) to expend or to lend money for the carrying out of co-operative projects on behalf of Indians.

Regulations

(2) The Governor in Council may make regulations to give effect to subsection one.

Accounting.

(3) Expenditures that are made under subsection one shall be accounted for in the same manner as public moneys.

Repayment.

(4) The Minister shall pay to the Minister of Finance all moneys that he receives from bands, groups of Indians or individual Indians by way of repayments of loans made under subsection one.

Limitation.

(5) The total amount of outstanding advances to the Minister under this section shall not at any one time exceed three hundred and fifty thousand dollars.

(6) The Minister shall within fifteen days after the termination of each fiscal year or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session thereof, lay before Parliament a report setting out the total number and amount of loans made under subsection one during that year.

Report to
Parliament.

FARMS.

70. (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.

Minister
may operate
farms.

(2) The Minister may apply any profits that result from the operation of farms pursuant to subsection one 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 such profits in any way that he considers to be desirable to promote the progress and development of the Indians.

Application
of profits.

TREATY MONEY.

71. Moneys that are payable to Indians or to Indian bands under a treaty between His Majesty and the band and for the payment of which the Government of Canada is responsible, may be paid out of the Consolidated Revenue Fund.

Treaty
money
payable
out of
C.R.F.

REGULATIONS.

72. (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,

Regulations.

- (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, and
- (l) for the construction and maintenance of boundary fences.

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

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

ELECTIONS OF CHIEFS AND BAND COUNCILS.

G. in C. may declare chiefs and councillors to be elected. **73.** (1) Whenever he deems it advisable for the good government of a band, the Governor in Council 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) The council of a band in respect of which an order has been made under subsection one 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.

Regulations (3) The Governor in Council may, for the purposes of giving effect to subsection one, make orders or regulations to provide

- (a) that the chief of a band shall be elected by
 - (i) a majority of the votes of the electors of the band, or
 - (ii) a majority of the votes of the elected councillors of the band from among themselves, but the chief so elected shall remain a councillor,
- (b) that the councillors of a band shall be elected by
 - (i) a majority of the votes of the electors of the band, or
 - (ii) a majority of the votes of the electors of the band in the electoral section in which the candidate resides and that he proposes to represent on the council of the band,

(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, and

(d) for the manner in which electoral sections established under paragraph (c) shall be distinguished or identified.

(4) Where the Minister is satisfied that a majority of the electors of a band do not desire to have the reserve divided into electoral sections and reports to the Governor in Council accordingly, the Governor in Council may order that the reserve shall for voting purposes consist of one electoral section.

Single
electoral
section.

74. (1) No person other than an elector who resides in a section may be nominated for the office of councillor to represent that section on the council of the band.

Eligibility.

(2) No person may be a candidate for election as chief or councillor unless his nomination is moved and seconded by persons who are themselves eligible to be nominated.

Nomination.

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

Regulations
governing
elections.

(a) meetings to nominate candidates,

(b) the appointment and duties of electoral officers,

(c) the manner in which voting shall be carried out,

(d) election appeals, and

(e) the definition of residence for the purpose of determining the eligibility of voters.

(2) The regulations made under paragraph (c) of subsection one shall make provision for secrecy of voting.

Secrecy
of voting.

76. (1) A member of a band who is of the full age of twenty-one years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band, and where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors.

Eligibility
of voters
for chief.

(2) A member of a band who is of the full age of twenty-one years and is ordinarily resident in a section that has been established for voting purposes is qualified to vote for a person nominated to be councillor to represent that section.

Councillor.

77. (1) Subject to this section, chiefs and councillors shall hold office for two years.

Tenure
of office.

(2) The office of chief or councillor becomes vacant when

Vacancy.

(a) the person who holds that office

(i) is convicted of an indictable offence,

(ii) dies or resigns his office, or

- (iii) is or becomes ineligible to hold office by virtue of this Act, or
- (b) the Minister declares that in his opinion the person who holds that office
- (i) is unfit to continue in office by reason of his having been convicted of an offence,
 - (ii) has been absent from meetings of the council for three consecutive meetings without being authorized to do so, or
 - (iii) was guilty, in connection with an election, of corrupt practice, accepting a bribe, dishonesty or malfeasance.
- Disqualifi- cation.** (3) The Minister may declare a person who ceases to hold office by virtue of subparagraph (iii) of paragraph (b) of subsection two to be ineligible to be a candidate for chief or councillor for a period not exceeding six years.
- Special election** (4) Where the office of chief or councillor becomes vacant more than three months before the date when another election would ordinarily be held, a special election may be held in accordance with this Act to fill the vacancy.
- Governor in Council may set aside election.** **78.** The Governor in Council may set aside the election of a chief or a councillor on the report of the Minister that he is satisfied that
- (a) there was corrupt practice in connection with the election,
 - (b) there was a violation of this Act that might have affected the result of the election, or
 - (c) a person nominated to be a candidate in the election was ineligible to be a candidate.
- Regulations respecting band and council meetings.** **79.** The Governor in Council 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
- (a) presiding officers at such meetings,
 - (b) notice of such meetings,
 - (c) the duties of any representative of the Minister at such meetings, and
 - (d) the number of persons required at the meeting to constitute a quorum.

POWERS OF THE COUNCIL.

- By-laws.** **80.** The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,
- (a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases,

- (b) the regulation of traffic,
- (c) the observance of law and order,
- (d) the prevention of disorderly conduct and nuisances,
- (e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services,
- (f) the construction and maintenance of water courses, roads, bridges, ditches, fences and other local works,
- (g) the dividing the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone,
- (h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band,
- (i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section sixty,
- (j) the destruction and control of noxious weeds,
- (k) the regulation of beekeeping and poultry raising,
- (l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies,
- (m) the control and prohibition of public games, sports, races, athletic contests and other amusements,
- (n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise,
- (o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve,
- (p) the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prescribed purposes,
- (q) with respect to any matter arising out of or ancillary to the exercise of powers under this section, and
- (r) the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days or both fine and imprisonment for violation of a by-law made under this section.

81. (1) A copy of every by-law made under the authority of section eighty shall be forwarded by mail by the chief or a member of the council of the band to the Minister within four days after it is made.

Copies of by-laws to be sent to Minister.

Effective
date of
by-law.

(2) A by-law made under section eighty shall come into force forty days after a copy thereof is forwarded to the Minister pursuant to subsection one, unless it is disallowed by the Minister within that period, but the Minister may declare the by-law to be in force at any time before the expiration of that period.

Money
by-laws

S2. (1) Without prejudice to the powers conferred by section eighty, where the Governor in Council 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,

(a) the raising of money by

(i) the assessment and taxation of interests in land in the reserve of persons lawfully in possession thereof, and

(ii) the licencing of businesses, callings, trades and occupations,

(b) the appropriation and expenditure of moneys of the band to defray band expenses,

(c) the appointment of officials to conduct the business of the council, prescribing their duties and providing for their remuneration out of any moneys raised pursuant to paragraph (a),

(d) the payment of remuneration, in such amount as may be approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a),

(e) the imposition of a penalty for non-payment of taxes imposed pursuant to this section, recoverable on summary conviction, not exceeding the amount of the tax or the amount remaining unpaid, and

(f) with respect to any matter arising out of or ancillary to the exercise of powers under this section.

Restriction
on expen-
ditures.

(2) No expenditures shall be made out of moneys raised pursuant to paragraph (a) of subsection one except under the authority of a by-law of the council of the band.

Recovery
of taxes.

S3. Where a tax that is imposed upon an Indian by or under the authority of a by-law made under section eighty-two is not paid in accordance with the by-law, the Minister may pay the amount owing together with an amount equal to one-half of one per cent thereof out of moneys payable out of the funds of the band to the Indian.

G. in C. may
revoke
authority to
make money
by-laws.

S4. The Governor in Council may revoke a declaration made under section eighty-two 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 Governor in Council.

85. A copy of a by-law made by the council of a band under this Act, if it is certified to be a true copy by the superintendent, is *prima facie* evidence that the by-law was duly made by the council and approved by the Minister, without proof of the signature or official character of the superintendent, and no such by-law is invalid by reason of any defect in form. Evidence.

TAXATION.

86. (1) Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection two of this section and to section eighty-two, the following property is exempt from taxation, namely, Property exempt from taxation.

(a) the interest of an Indian or a band in reserve or surrendered lands, and

(b) the personal property of an Indian or band situated on a reserve,

and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under *The Dominion Succession Duty Act* on or in respect of other property passing to an Indian. 1940-41, c. 14.

(2) Subsection one does not apply to or in respect of the personal property of an Indian who has executed a waiver under the provisions of paragraph (f) of subsection two of section fourteen of *The Dominion Elections Act, 1938*. Tax exemption not applicable. 1938, c. 46.

LEGAL RIGHTS.

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 to and in respect of Indians 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. General provincial laws applicable to Indians.

88. (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, Property on reserve not subject to alienation.

seizure, distress or execution in favour or at the instance of any person other than an Indian.

Conditional sales.

(2) A person who sells to a band or a member of a band a chattel under an agreement whereby the right of property or right of possession thereto remains wholly or in part in the seller, may exercise his rights under the agreement notwithstanding that the chattel is situated on a reserve.

Property deemed situated on reserve.

89. (1) For the purposes of sections eighty-six and eighty-eight, personal property that was

(a) purchased by His Majesty with Indian moneys or moneys appropriated by Parliament for the use and benefit of Indians or bands, or

(b) given to Indians or to a band under a treaty or agreement between a band and His Majesty, shall be deemed always to be situated on a reserve.

Restriction on transfer.

(2) Every transaction purporting to pass title to any property that is by this section deemed to be situated on a reserve, or any interest in such property, is void unless the transaction is entered into with the consent of the Minister or is entered into between members of a band or between the band and a member thereof.

Destruction of property.

(3) Every person who enters into any transaction that is void by virtue of subsection two is guilty of an offence, and every person who, without the written consent of the Minister, destroys personal property that is by this section deemed to be situated on a reserve, is guilty of an offence.

TRADING WITH INDIANS.

Certain property on a reserve may not be acquired.

90. (1) No person may, without the written consent of the Minister, acquire title to any of the following property situated on a reserve, namely,

(a) an Indian grave house,

(b) a carved grave pole,

(c) a totem pole,

(d) a carved house post, or

(e) a rock embellished with paintings or carvings.

Articles manufactured for sale. Removal, destruction, etc.

(2) Subsection one does not apply to chattels referred to therein that are manufactured for sale by Indians.

(3) No person shall remove, take away, mutilate, disfigure, deface or destroy any chattel referred to in subsection one without the written consent of the Minister.

Penalty.

(4) A person who violates this section is guilty of an offence and is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months.

Departmental employees, etc., prohibited from trading without a licence.

91. (1) No person who is

(a) an officer or employee in the Department,

(b) a missionary engaged in mission work among Indians, or

(c) a school teacher on a reserve, shall, without a licence from the Minister or his duly authorized representative, trade for profit with an Indian or sell to him directly or indirectly goods or chattels, but no such licence shall be issued to a full-time officer or employee in the Department.

(2) The Minister or his duly authorized representative may at any time cancel a licence given under this section. Cancellation of licence.

(3) A person who violates subsection one is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars. Penalty.

(4) Without prejudice to subsection three, an officer or employee in the Department who contravenes subsection one may be dismissed from office. Dismissal.

PENALTIES.

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

(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. Offence and penalty.

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

(a) sells, barter, supplies or gives an intoxicant to

(i) any person on a reserve, or

(ii) an Indian outside 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. An Indian who

(a) has intoxicants in his possession, Possession of intoxicants off a reserve.

(b) is intoxicated, or

(c) makes or manufactures intoxicants off 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 re
sale of intoxi-
cants.

95. (1) No offence is committed against subparagraph (ii) of paragraph (a) of section ninety-three or paragraph (a) of section ninety-four if intoxicants are sold to an Indian for consumption in a public place in accordance with a law of the province where the sale takes place authorizing the sale of intoxicants to a person for consumption in a public place.

Coming into
force.

(2) This section shall not come into force in any province until a proclamation bringing it into force in the province is issued by the Governor in Council at the request of the Lieutenant-Governor in Council of the province.

Possession of
intoxicants
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
where
intoxicant
used for
sickness.

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

Onus of
proof.

98. 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
is evidence.

99. 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.

Penalty
where no
other
provided.

100. Every person who is guilty of an offence against any provision of this Act or any regulation made by the Governor in Council or the Minister for which a penalty is not provided elsewhere in this Act or the regulations, is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

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-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.

Seizure of goods.

(2) All goods and chattels seized pursuant to subsection one may be detained for a period of three months following the day of seizure unless during that period proceedings under this Act in respect of such offence are undertaken, in which case the goods and chattels may be further detained until such proceedings are finally concluded.

Detention.

(3) Where a person is convicted of an offence against the sections mentioned in subsection one, 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 His Majesty.

Forfeiture

102. Every fine, penalty or forfeiture imposed under this Act belongs to His Majesty for the benefit of the band with respect to which or to one or more members of which the offence was committed or to which the offender, if an Indian, belongs, but the Governor in Council may from time to time direct that the fine, penalty or forfeiture shall be paid to a provincial, municipal or local authority that bears in whole or in part the expense of administering the law under which the fine, penalty or forfeiture is imposed, or that the fine, penalty or forfeiture shall be applied in the manner that he considers will best promote the purposes of the law under which the fine, penalty or forfeiture is imposed, or the administration of that law.

Disposition of fines.

103. In any order, writ, warrant, summons or proceeding issued under this Act it shall be sufficient if the name of the person or Indian referred to therein is the name given to, or the name by which the person or Indian is known by, the person who issues the order, writ, warrant, summons or proceedings, and if no part of the name of the person is given to or known by the person issuing the order, writ, warrant, summons or proceedings, it is sufficient if the person or Indian is described in any manner by which he may be identified.

Description of Indians in writs, etc.

104. A police magistrate or a stipendiary magistrate shall have and may exercise, with respect to matters arising under this Act, jurisdiction over the whole county, union of counties or judicial district in which the city, town or other

Jurisdiction of magistrates.

place for which he is appointed or in which he has jurisdiction under provincial laws is situated.

Appointment
of justices.

105. The Governor in Council may appoint persons to be, for the purposes of this Act, justices of the peace and those persons shall have and may exercise the powers and authority of two justices of the peace with regard to

(a) offences under this Act,

R.S., c. 36.

(b) offences under the *Criminal Code* with respect to inciting Indians on reserves to commit riotous acts, and robbing of Indian graves, and

(c) any offence against the provisions of the *Criminal Code* relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the person or property of an Indian.

Indian agent
ex officio
a J.P.

106. Where, immediately prior to the coming into force of this Act, an Indian agent was *ex officio* a justice of the peace under the *Indian Act*, chapter ninety-eight of the Revised Statutes of Canada, 1927, he shall be deemed, for the purposes of this Act, to have been appointed under section one hundred and five, and he may exercise the powers and authority conferred by that section until his appointment is revoked by the Minister.

Commis-
sioners for
taking oaths.

107. For the purposes of this Act or any matter relating to Indian affairs

(a) persons appointed by the Minister for the purpose,

(b) superintendents, and

(c) the Minister, Deputy Minister and the chief officer in charge of the branch of the Department relating to Indian affairs

are *ex officio* commissioners for the taking of oaths.

ENFRANCHISEMENT

Enfranchise-
ment of
Indian and
wife and
minor
children.

108. (1) On the report of the Minister that an Indian has applied for enfranchisement and that in his opinion the Indian

(a) is of the full age of twenty-one years,

(b) is capable of assuming the duties and responsibilities of citizenship, and

(c) when enfranchised, will be capable of supporting himself and his dependants, the Governor in Council may by order declare that the Indian and his wife and minor unmarried children are enfranchised.

(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.

Enfranchisement of married women.

(3) Where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection one that enfranchises the Indian unless the wife has applied for enfranchisement, but where the Governor in Council is satisfied that such wife is no longer living apart from her husband, the Governor in Council may by order declare that the wife and the minor children are enfranchised.

Where wife living apart.

(4) A person is not enfranchised unless his name appears in an order of enfranchisement made by the Governor in Council.

Order of enfranchisement.

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

Enfranchised person ceases to be Indian.

110. (1) Upon the issue of an order of enfranchisement, any interest in land and improvements on an Indian reserve of which the enfranchised Indian was in lawful possession or over which he exercised rights of ownership, at the time of his enfranchisement, may be disposed of by him by gift or private sale to the band or another member of the band, but if not so disposed of within thirty days after the date of the order of enfranchisement such land and improvements shall be offered for sale by tender by the superintendent and sold to the highest bidder and the proceeds of such sale paid to him; and if no bid is received and the property remains unsold after six months from the date of such offering, the land, together with improvements, shall revert to the band free from any interest of the enfranchised person therein, subject to the payment, at the discretion of the Minister, to the enfranchised Indian, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Sale of lands of enfranchised Indian.

(2) When an order of enfranchisement issues or has issued, the Governor in Council 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 shall cease to be Indian reserve lands.

Grant to enfranchised Indian.

(3) When an order has been made under subsection two, the enfranchised Indian is entitled to occupy such lands for a period of ten years from the date of his enfranchisement, and the enfranchised Indian shall pay to the funds of the band, or there shall, out of any money payable to the enfranchised Indian under this Act, be transferred to the funds of the band, 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.

(4) At the end of the ten-year period referred to in subsection three the Minister shall cause a grant of the lands to be made to the enfranchised Indian or to his legal representatives.

Enfranchisement of band.

111. (1) Where the Minister reports that a band has applied for enfranchisement, and has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, and in his opinion the band is capable of managing its own affairs as a municipality or part of a municipality, the Governor in Council may by order approve the plan, declare that all the members of the band are enfranchised, either as of the date of the order or such later date as may be fixed in the order, and may make regulations for carrying the plan and the provisions of this section into effect.

Majority vote required.

(2) An order for enfranchisement may not be made under subsection one unless more than fifty per cent of the electors of the band signify, at a meeting of the band called for the purpose, their willingness to become enfranchised under this section, and their approval of the plan.

Agreements with provinces or municipalities.

(3) The Governor in Council may, for the purpose of giving effect to this section, authorize the Minister to enter into an agreement with a province or a municipality, or both, upon such terms as may be agreed upon by the Minister and the province or municipality, or both.

Financial assistance.

(4) Without restricting the generality of subsection three, an agreement made thereunder may provide for financial assistance to be given to the province or the municipality or both to assist in the support of indigent, infirm or aged persons to whom the agreement applies, and such financial assistance, or any part thereof, shall, if the Minister so directs, be paid out of moneys of the band, and any such financial assistance not paid out of moneys of the band shall be paid out of moneys appropriated by Parliament.

Committee of inquiry.

112. (1) The Minister may appoint a committee to inquire into and report upon the desirability of enfranchising within the meaning of this Act an Indian or a band, whether or not the Indian or the band has applied for enfranchisement.

Composition.

(2) A committee appointed under subsection one shall consist of

- (a) a judge or retired judge of a superior, surrogate, district or county court,
- (b) an officer of the Department, and
- (c) a member of the band to be appointed by the council of the band, but if no appointment is made by the council of the band within thirty days after a request therefor is sent by the Minister to the band, a member of the band appointed by the Minister.
- (3) Where the committee or a majority thereof reports Report of committee.
- (a) in the case of an Indian, that in its opinion the Indian is qualified under paragraphs (a), (b) and (c) of subsection one of section one hundred and eight to be enfranchised,
- (b) in the case of a band, that in the opinion of the committee the band is capable of managing its own affairs as a municipality or part of a municipality, and the committee has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, and
- (c) that it is desirable that the Indian or the band, as the case may be, should be enfranchised,
- the report, if approved by the Minister, shall be deemed to be an application for enfranchisement by the Indian or by the band and shall be dealt with as such in accordance with this Act, except that, in the case of a band, the provisions of subsection two of section one hundred and eleven, are not applicable.
- (4) An Indian or the members of a band shall not be enfranchised under this section contrary to the terms of any treaty, agreement or undertaking between a band and His Majesty that is applicable. Treaty to be observed.

SCHOOLS.

113. The Governor in Council may authorize the Schools.
Minister, in accordance with this Act,

- (a) to establish, operate and maintain schools for Indian children,
- (b) to enter into agreements on behalf of His Majesty for the education in accordance with this Act of Indian children, with
- (i) the government of a province,
 - (ii) the council of the Northwest Territories,
 - (iii) the council of the Yukon Territory,
 - (iv) a public or separate school board, and
 - (v) a religious or charitable organization.

114. The Minister may

- (a) provide for and make regulations with respect to Regulations.
standards for buildings, equipment, teaching, education, inspection and discipline in connection with schools,

- (b) provide for the transportation of children to and from school,
- (c) enter into agreements with religious organizations for the support and maintenance of children who are being educated in schools operated by those organizations, and
- (d) apply the whole or any part of moneys that would otherwise be payable to or on behalf of a child who is attending a residential school to the maintenance of that child at that school.

Attendance.

115. (1) Subject to section one hundred and sixteen, every Indian child who has attained the age of seven years shall attend school.

Idem.

(2) The Minister may

- (a) permit an Indian who has attained the age of six years to attend school,
- (b) require an Indian who becomes sixteen years of age during the school term to continue to attend school until the end of that term, and
- (c) require an Indian who becomes sixteen years of age to attend school for such further period as the Minister considers advisable, but no Indian shall be required to attend school after he becomes eighteen years of age.

When
attendance
not
required.

116. An Indian child is not required to attend school if the child

- (a) is, by reason of sickness or other unavoidable cause that is reported promptly to the principal, unable to attend school,
- (b) has passed entrance examinations for high school,
- (c) is, with the permission in writing of the superintendent, absent from school for a period not exceeding six weeks in each term for the purpose of assisting in husbandry or urgent and necessary household duties,
- (d) is under efficient instruction at home or elsewhere, within one year after the written approval by the Minister of such instruction, or
- (e) is unable to attend school because there is insufficient accommodation in the school that the child is entitled or directed to attend.

School to be
attended.

117. Every Indian child who is required to attend school shall attend such school as the Minister may designate, but no child whose parent is a Protestant shall be assigned to a school conducted under Roman Catholic auspices and no child whose parent is a Roman Catholic shall be assigned to a school conducted under Protestant auspices, except by written direction of the parent.

118. (1) The Minister may appoint persons, to be called Truant officers. truant officers, to enforce the attendance of Indian children at school, and for that purpose a truant officer shall have the powers of a peace officer.

(2) Without restricting the generality of subsection one, Powers. a truant officer may

(a) enter any place where he believes, on reasonable grounds, that there are Indian children who are between the ages of seven and sixteen years of age, or who are required by the Minister to attend school,

(b) investigate any case of truancy, and

(c) serve written notice upon the parent, guardian or other person having the care or legal custody of a child to cause the child to attend school regularly thereafter.

(3) Where a notice has been served in accordance with Notice to attend school. paragraph (c) of subsection two with respect to a child who is required by this Act to attend school, and the child does not within three days after the service of notice attend school and continue to attend school regularly thereafter, the person upon whom the notice was served is guilty of an offence and is liable on summary conviction to a fine of not more than five dollars or to imprisonment for a term not exceeding ten days or to both fine and imprisonment.

(4) Where a person has been served with a notice in No further notices required within one year of previous notice. accordance with paragraph (c) of subsection two, it is not necessary within a period of twelve months thereafter to serve that person with any other notice in respect of further non-compliance with the provisions of this Act, and whenever such person within the period of twelve months fails to cause the child with respect to whom the notice was served or any other child of whom he has charge or control to attend school and continue in regular attendance as required by this Act, such person is guilty of an offence and liable to the penalties imposed by subsection three as if he had been served with the notice.

(5) A child who is habitually late for school shall be Tardiness. deemed to be absent from school.

(6) A truant officer may take into custody a child whom Take into custody. he believes on reasonable grounds to be absent from school contrary to this Act and may convey the child to school, using as much force as the circumstances require.

119. An Indian child who

(a) is expelled or suspended from school, or

Child who is expelled or fails to attend deemed juvenile delinquent

(b) refuses or fails to attend school regularly, shall be deemed to be a juvenile delinquent within the meaning of *The Juvenile Delinquents Act, 1929*.

Denomination of teacher.

120. (1) Where the majority of the members of a band belongs to one religious denomination the school established on the reserve that has been set apart for the use and benefit of that band shall be taught by a teacher of that denomination.

Idem

(2) Where the majority of the members of a band are not members of the same religious denomination and the band by a majority vote of those electors of the band who were present at a meeting called for the purpose requests that day schools on the reserve should be taught by a teacher belonging to a particular religious denomination, the school on that reserve shall be taught by a teacher of that denomination.

Minority religious denominations.

121. A Protestant or Roman Catholic minority of any band may, with the approval of and under regulations to be made by the Minister, have a separate day school or day school classroom established on the reserve unless, in the opinion of the Governor in Council, the number of children of school age does not so warrant.

Definitions.

122. In sections one hundred and thirteen to one hundred and twenty-one

"child."

(a) "child" means an Indian who has attained the age of six years but has not attained the age of sixteen years, and a person who is required by the Minister to attend school,

"school."

(b) "school" includes a day school, technical school, high school and residential school, and

"truant officer."

(c) "truant officer" includes

- (i) a member of the Royal Canadian Mounted Police,
- (ii) a special constable appointed for police duty on a reserve, and
- (iii) a school teacher and a chief of the band, when authorized by the superintendent.

REPEAL.

Repeal.

123. (1) Section one of the *Indian Act*, chapter ninety-eight of the Revised Statutes of Canada, 1927, is repealed and the following substituted therefor:

Short title.

"**1.** This Act may be cited as the *Indian (Soldier Settlement) Act*."

(2) Sections two to one hundred and eighty-six of the said Act are repealed. Repeal.

(3) Where in sections one hundred and eighty-seven to one hundred and ninety of the said Act References.

(a) reference is made to the *Indian Act*, it shall be deemed to be a reference to this Act, and

(b) reference is made to the Superintendent General or Deputy Superintendent General of Indian Affairs, it shall be deemed to be a reference to the Minister.

PRIOR GRANTS.

124. Where, prior to the coming into force of this Act, Prior grants deemed authorized.

(a) a reserve or portion of a reserve was released or surrendered to the Crown pursuant to Part I of the *Indian Act*, chapter ninety-eight of the Revised Statutes of Canada, 1927, or pursuant to the provisions of the statutes relating to the release or surrender of reserves in force at the time of the release or surrender,

(b) Letters Patent under the Great Seal of Canada were issued purporting to grant a reserve or portion of a reserve so released or surrendered, or any interest therein, to any person, and

(c) the Letters Patent have not been declared void or inoperative by any Court of competent jurisdiction, the Letters Patent shall, for all purposes, be deemed to have been issued at the date thereof under the direction of the Governor in Council.

COMING INTO FORCE.

125. This Act shall come into force on a day to be fixed by proclamation of the Governor in Council. Coming into force.

EXHIBIT I-16

1894 Amendments to the *Indian Act*



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57-58 VICTORIA.

CHAP. 32.

An Act further to amend "The Indian Act."

[Assented to 23rd July, 1894.]

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

1. Section twenty of *The Indian Act*, chapter forty-three of the Revised Statutes, is hereby repealed and the following substituted therefor :—

R.S.C., c. 43, s. 20 amended.

"20. Indians may devise or bequeath property of any kind in the same manner as other persons: Provided that no devise or bequest of land in a reserve or of any interest therein shall be made to any one not entitled to reside on such reserve, except when the devise or bequest of land is made to the daughter, sister or grand-children of the testator, and that no will purporting to dispose of land in a reserve or any interest therein shall be of any force or effect unless or until the will has been approved by the superintendent general, and that if a will be disapproved by the superintendent general the Indian making the will shall be deemed to have died intestate; and provided further that the superintendent general may approve of a will generally and disallow any disposition thereby made of land in a reserve or of any interest in such land, in which case the will so approved shall have force and effect except so far as such disposition is concerned and the Indian making the will shall be deemed to have died intestate as to the land or interest as to which such disallowance takes place.

Indians may devise or bequeath all property by will.

Proviso: as to approval by superintendent general.

Effect of partial approval.

"2. Upon the death of an Indian intestate his property of all kinds, real and personal, movable and immovable, including any recognized interest he may have in land in a reserve, shall devolve one-third upon his widow, if any, if she is a woman of good moral character, as to which fact the superintendent general shall be the sole and final judge, and the remainder (or the whole if there is no widow or if the widow is not of good moral character) upon the children in equal shares if they are Indians within the meaning of this Act: provided that if one

Distribution of estate in case of intestacy.

or more of the children of such intestate Indian are living and one or more are dead the inheritance shall devolve upon the children who are living and the descendants of such children as have died, so that each child who is living shall receive such share as would have descended to him if all the children of the intestate who have died leaving issue had been living, and so that the descendants of each child who is dead shall inherit in equal shares the share which their parent would have received if living, and the rule of descent thus prescribed shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, are of unequal degrees of consanguinity to the intestate, so that those who are in the nearest degree of consanguinity shall take the shares which would have descended to them, had all the descendants in the same degree of consanguinity who have died leaving issue, been living, and so that the issue of the descendants, who have died, shall respectively take the shares which their parents, if living, would have received : provided that the superintendent general may in his discretion direct that the widow, if she is of good moral character, shall have the right during her widowhood to occupy any land in the reserve of the band to which the deceased belonged of which he was the recognized owner and to have the use of any property of the deceased for which under section seventy-seven of this Act he was not liable to taxation.

Descendants to inherit *per stirpes*.

Proviso : as to widow.

Administration of property of minors.

“3. During the minority of the children of an Indian who dies intestate the administration and charge of the property to which they are entitled as aforesaid shall devolve upon the widow, if any, of the intestate, if she is of good moral character, and in such case, as each male child attains the age of twenty-one years, and as each female child attains that age or with the consent of the widow marries before that age, the share of such child, shall, subject to the approval of the superintendent general, be conveyed or delivered to him or her ; but the superintendent general may at any time remove the widow from such administration and charge and confer the same upon some other person and in like manner may remove such other person and appoint another and so from time to time as occasion requires.

Distribution in case of death without issue.

“4. In case any Indian dies intestate without issue, leaving a widow of good moral character, all his property of whatever kind shall devolve upon her, and if he leaves no widow the same shall devolve upon the Indian nearest of kin to the deceased ; any interest which he may have had in land in a reserve shall be vested in Her Majesty for the benefit of the band owning such reserve if his nearest of kin is more remote than a brother or sister.

Distribution of property of Indian woman dying intestate.

“5. The property of a married Indian woman who dies intestate shall descend in the same manner and be distributed in the same proportions as that of a male Indian under the like circumstances, her widower, if any, taking the share which the widow of such male Indian would take ; and the other provisions

sions of this section shall in like manner apply to the case of an intestate married woman, the word "widower" being substituted for the word "widow" in each case. The property of an unmarried Indian woman who dies intestate shall descend in the same manner as if she had been a male.

"6. A claimant of land in a reserve or of any interest therein as devisee or legatee or heir of a deceased Indian shall not be held to be lawfully in possession thereof or to be the recognized owner thereof until he shall have obtained a location ticket therefor from the superintendent general.

In any case location ticket requisite for possession.

"7. The superintendent general may, whenever there are minor children, appoint a fit and proper person to take charge of such children and their property and may remove such person and appoint another and so from time to time as occasion requires.

Appointment of guardians of minors.

"8. The superintendent general may decide all questions which arise under this Act, respecting the distribution among those entitled thereto of the property of a deceased Indian, and he shall be the sole and final judge as to who the persons so entitled are. The superintendent general may do whatsoever in his judgment will best give to each claimant his share according to the true intent and meaning of this Act, and to that end if he thinks fit may direct the sale, lease or other disposition of such property or any part thereof and the distribution or application of the proceeds or income thereof, regard being always had in any such disposition to the restrictions upon the disposition of property in a reserve.

Superintendent general to decide disputes.

"9. Notwithstanding anything in this Act it shall be lawful for the courts having jurisdiction in that regard in the case of persons other than Indians, with but not without the consent of the superintendent general, to grant probate of the wills of Indians and letters of administration of the estate and effects of intestate Indians, in which case such courts and the executors and administrators obtaining such probate or thereby appointed shall have the like jurisdiction and powers as in other cases, except that no disposition shall, without the consent of the superintendent general, be made of or dealing had with regard to any right or interest in land in a reserve or any property for which, under section seventy-seven of this Act, an Indian is not liable to taxation."

Probate and letters of administration.

2. Section twenty-one of *The Indian Act* is hereby repealed and the following substituted therefor:—

Section 21 amended.

"**21.** Every person, or Indian other than an Indian of the band, who, without the authority of the superintendent general, resides or hunts upon, occupies or uses any land or marsh, or who resides upon or occupies any road, or allowance for road, running through any reserve belonging to or occupied by such band, shall be liable, upon summary conviction, to imprisonment for a term not exceeding one month or to a penalty not exceeding ten dollars and not less than five dollars, with costs of prosecution, half of

Only Indians of the band to reside on or use reserve.

Penalty.

which

All permis-
sions to the
contrary are
void.

which penalty shall belong to the informer; and all deeds, leases, contracts, agreements or instruments of whatsoever kind made, entered into, or consented to by any Indian, purporting to permit persons or Indians other than Indians of the band to reside or hunt upon such reserve, or to occupy or use any portion thereof, shall be void."

Section 38
amended.

3. Section thirty-eight of *The Indian Act* is hereby repealed and the following substituted therefor:—

Provisions re-
specting sale
or lease of re-
serves.

"**38.** No reserve or portion of a reserve shall be sold, alienated or leased until the same has been released or surrendered to the Crown for the purposes of this Act; but the superintendent general may lease, for the benefit of Indians engaged in occupations which interfere with their cultivating land on the reserve, and of sick, infirm or aged Indians, and of widows and orphans or neglected children, lands to which they are entitled without the same being released or surrendered."

Section 72
amended, and
1887, c. 33, s. 8.

4. The section substituted for section seventy-two of *The Indian Act* by section eight of chapter thirty-three of the Statutes of 1887 is hereby repealed and the following substituted therefor:—

Disposal of
annuity, etc.,
in case of de-
sertion of
family.

"**72.** The superintendent general may stop the payment of the annuity and interest money of, as well as deprive of any participation in the real property of the band, any Indian who is proved, to the satisfaction of the superintendent general, guilty of deserting his family, or of conduct justifying his wife or family in separating from him, or is separated from his family by imprisonment; and the superintendent general may apply the same towards the support of the wife or family of such Indian."

Section 75
amended.

5. Subsection one of section seventy-five of *The Indian Act* is hereby amended by inserting after the word "deposed" in the seventh line thereof the following words "and declared ineligible for re-election for three years."

Deposition of
chiefs for bad
conduct.

Section 94
amended, and
1888, c. 22,
s. 4.

6. The section substituted for section ninety-four of *The Indian Act* by section four of chapter twenty-two of the Statutes of 1888, is hereby amended by adding thereto the following subsection:—

Meaning of
"Indian."

"**2.** In this section the expression 'Indian,' in addition to its ordinary signification as defined in section two of this Act, shall extend to and include any person, male or female, who is reputed to belong to a particular band, or who follows the Indian mode of life, or any child of such person."

Section 99
amended.

7. Section ninety-nine of *The Indian Act* is hereby repealed and the following substituted therefor:—

Arrest and
punishment of
gamblers,
drunken per-
sons, and per-

"**99.** Any constable or peace officer may arrest without warrant any person or Indian found gambling, or drunk, or with intoxicants in his possession, on any part of a reserve, and

and may detain him until he can be brought before a justice of the peace, and such person or Indian shall be liable upon summary conviction to imprisonment for a term not exceeding three months or to a penalty not exceeding fifty dollars and not less than ten dollars, with costs of prosecution, half of which penalty shall belong to the informer.”

sons having
intoxicants.

8. The section substituted for section one hundred and seventeen of *The Indian Act* by section nine of chapter twenty-nine of the Statutes of 1890, is hereby repealed and the following substituted therefor:—

Section 117
amended and
1890, c. 29, s.
9.

“117. Every Indian agent shall, for all the purposes of this Act, or of any other Act respecting Indians, and with respect to any offence against the provisions thereof or against the provisions of section ninety-eight or section one hundred and ninety of *The Criminal Code*, 1892, and with respect to any offence by an Indian against any of the provisions of part XIII. of the said Code, be *ex officio* a justice of the peace, and have the power and authority of two justices of the peace, anywhere within the territorial limits of his jurisdiction as a justice, as defined in his appointment or otherwise defined by the Governor in Council, whether the Indian or Indians charged with or in any way concerned in or affected by the offence, matter or thing to be tried, investigated or dealt with, are or are not within his ordinary jurisdiction, charge or supervision as an Indian agent.

Indian agents
to be *ex officio*
justices of the
peace.

Jurisdiction.

“2. In the North-west Territories and the provinces of Manitoba and British Columbia every Indian agent shall for all such purposes and with respect to any such offence be *ex officio* a justice of the peace and have the power and authority of two justices of the peace anywhere in the said Territories or provinces within which his agency is situated, whether or not the territorial limits of his jurisdiction as a justice, as defined in his appointment or otherwise defined as aforesaid, extend to the place where he may have occasion to act as such justice or to exercise such power or authority, and whether the Indians charged with or in any way concerned in or affected by the offence, matter or thing to be tried, investigated or otherwise dealt with, are or are not within his ordinary jurisdiction, charge or supervision as Indian agent.”

Special provi-
sion as to their
jurisdiction in
the N. W.
Territories,
Manitoba and
British Col-
umbia.

9. Section one hundred and thirty-two, as added to *The Indian Act* by section five of chapter twenty-two of the Statutes of 1888, is hereby repealed and the following substituted therefor:—

Section 132
amended and
1888, c. 22, s.5.

“132. Every fine, penalty or forfeiture under this Act, except so much thereof as is payable to an informer or person suing therefor, shall belong to Her Majesty for the benefit of the band of Indians with respect to which or to one or more members of which the offence was committed, or to which the offender if an Indian belongs; but the Governor General in Council may from time to time direct that the same be paid

Application of
penalties.

Powers of
Governor in
Council.

to any provincial, municipal or local authority which wholly or in part bears the expense of administering the law under which such fine, penalty or forfeiture is imposed, or that the same be applied in any other manner deemed best adapted to attain the objects of such law or to secure its due administration; and may in case of doubt decide what band is entitled to the benefit of any such fine, penalty or forfeiture."

Section 134
amended and
1890, c. 29,
s. 10.

10. Subsection one of section one hundred and thirty-four added to *The Indian Act* by section ten of chapter twenty-nine of the Statutes of 1890, is hereby amended by inserting after the word "shall," in the fifth line thereof, the following words: "without the special license, in writing, of the Superintendent General of Indian Affairs, which license he may at any time revoke."

New sections
added.

11. *The Indian Act* is hereby amended by adding the following sections thereto:—

Powers of
Governor in
Council as to
regulations for
attendance at
school.

"**137.** The Governor in Council may make regulations, either general or affecting the Indians of any province or of any named band, to secure the compulsory attendance of children at school.

"2. Such regulations, in addition to any other provisions deemed expedient, may provide for the arrest and conveyance to school, and detention there, of truant children and of children who are prevented by their parents or guardians from attending: and such regulations may provide for the punishment, upon summary conviction, by fine or imprisonment, or both, of parents and guardians, or persons having the charge of children, who fail, refuse or neglect to cause such children to attend school."

Powers as to
establishment
of industrial
or boarding
schools.

"**138.** The Governor in Council may establish an industrial school or a boarding school for Indians, or may declare any existing Indian school to be such industrial school or boarding school for the purposes of this section.

Regulations.

"2. The Governor in Council may make regulations, which shall have the force of law, for the committal by justices or Indian agents of children of Indian blood under the age of sixteen years, to such industrial school or boarding school, there to be kept, cared for and educated for a period not extending beyond the time at which such children shall reach the age of eighteen years.

Powers as to
application of
annuities.

"3. Such regulations may provide, in such manner as to the Governor in Council seems best, for the application of the annuities and interest moneys of children committed to such industrial school or boarding school, to the maintenance of such schools respectively, or to the maintenance of the children themselves."

Powers as to
direction of
expenditure of
capital of
bands.

"**139.** The Governor in Council may, with the consent of a band, authorize and direct the expenditure of any capital moneys standing at the credit of such band, in the purchase of land as a reserve for the band or as an addition to its reserve,

or in the purchase of cattle for the band, or in the construction of permanent improvements upon the reserve of the band, or such works thereon or in connection therewith as, in his opinion, will be of permanent value to the band, or will, when completed, properly represent capital.”

12. All regulations made by the Governor in Council under this Act shall be published in the *Canada Gazette*, and shall be laid before both Houses of Parliament within the first fifteen days of the session next after the date thereof.

Regulations
to be pub-
lished.

OTTAWA : Printed by SAMUEL EDWARD DAWSON, Law Printer to the Queen's most Excellent Majesty.

EXHIBIT I-17

Regulations Relating to the Education of Indian Children (1894)

REGULATIONS

RELATING TO THE

EDUCATION

OF

INDIAN CHILDREN

OTTAWA
GOVERNMENT PRINTING BUREAU
1894

The following regulations are passed in accordance with section 11, chap. 32 of 57-58 Vic., but are to be put in force by any agent only after being authorized by the Department of Indian Affairs.

HAYTER REED,
Deputy Supt.-Gen. of Indian Affairs.

Ottawa, 7th Dec., 1894.

AT GOVERNMENT HOUSE, OTTAWA.

SATURDAY, 10TH NOVEMBER, 1894.

PRESENT :

HIS EXCELLENCY THE GOVERNOR GENERAL
IN COUNCIL.

His Excellency, in virtue of the powers conferred upon him by sections 137 and 138, which are added to the Indian Act by section eleven of chapter 32 of the Acts 57-58 Victoria, and by and with the advice of the Queen's Privy Council for Canada, is pleased to make the following regulations :—

1. All Indian children between the ages of seven and sixteen shall attend a day school on the reserve on which they reside for the full term during which the school is open each year, unless excused for the reasons hereinafter mentioned.

2. Any person who receives into his house a child of any other person between the aforesaid ages, and which child is resident with him, or in his care or employment, shall be deemed thereby to be subject to the same duty with respect to the education of such child during such residence,

as a parent, and shall be liable to be proceeded against as in the case of a parent, if he should fail to cause such child to be educated to the extent required of a parent under these regulations ; but the duty of the parent under these regulations shall not thereby be affected or diminished, and shall continue in full force.

3. No parent, guardian or other person shall be liable to any of the penalties of these regulations in respect of any child—

- (a.) If the child is under efficient instruction ;
- (b.) If the child is unable to attend school by reason of sickness or other unavoidable cause ;
- (c.) If there is no school within two miles, measured by the nearest road from such child's residence, if such child is under ten years of age, or within three miles, if over this age ;
- (d.) If the child has been excused, as hereinafter provided, from attending school ;
- (e.) If the child has passed the entrance examination for high schools.

4. Where, in the opinion of any Indian Agent, or of any teacher authorized by such agent to issue such certificate as is hereinafter referred to, the services of such child are required in husbandry or in urgent and necessary household duties, or for the necessary maintenance of such child, or of some person dependent upon such child, such Indian Agent or teacher may, by certificate setting forth the reasons therefor, relieve

such child from attendance at school for any period not exceeding two weeks, during each of the four school terms or quarters.

5. Indian Agents may appoint one or more persons to act as truant officers on each reserve for the enforcement of these regulations, and such truant officers shall, for the purposes of these regulations, be vested with police powers, and shall perform such services as shall be deemed necessary by the Indian Agents by whom they are appointed for the enforcement of these regulations.

6. It shall be the duty of truant officers appointed under these regulations to examine into all cases of non-attendance at school which may be brought to their notice, to notify the parent, guardian or other person having the charge or control of any child between seven and sixteen years of age when such child is not attending school, and to require such parent, guardian or other person to cause the child to attend some school within three days.

7. If the parent, guardian or other person having the legal charge or control of any child, shall neglect or refuse to cause such child to attend some school after being notified as herein required (unless such child has been excused from such attendance as provided by these regulations) the truant officer shall make, or cause to be made, a complaint against such parent, guardian or other person, before any Justice of the Peace having jurisdiction in the county or district in which the offence occurred, or before the Indian Agent for the locality ; and upon convic-

tion of such refusal or neglect, such parent, guardian or other person, shall be liable to a fine of not more than two dollars, or imprisonment for a period not exceeding ten days, or both.

8. For the purposes of section 138, which is added to the Indian Act by section 11 of chapter 32, 57-58 Victoria, the following schools are declared to be industrials schools :—Mount Elgin Institute, at Muncey ; Mohawk Institute, at Brantford ; Shingwauk and Wawanosh Homes, at Sault Ste. Marie ; Wikwemikong Industrial School, at Wikwemikong—all in the Province of Ontario ; Brandon Industrial School, at Brandon ; St. Boniface Industrial School, at St. Boniface ; Rupert's Land Industrial School, at Middle Church ; Washakada Home, at Elkhorn—all in the Province of Manitoba ; McDougall Orphanage, at Morley ; Battleford Industrial School, at Battleford ; St. Joseph's Industrial School, at High River ; Regina Industrial School, at Regina ; Qu'Appelle Industrial School, at Qu'Appelle ; Red Deer Industrial School, at Red Deer ; St. Albert Industrial School, in the Edmonton Agency ; Emmanuel Training School, at Prince Albert—all in the North-west Territories ; Kuper Island Industrial School, at Kuper Island ; Kamloops Industrial School, at Kamloops ; Kootenay Industrial School, at Kootenay ; Alert Bay Industrial School, at Alert Bay ; Metlakahtla Industrial School, at Metlakahtla ; William's Lake Industrial School, at William's Lake ; Coqualeetza Home, at Chilliwack—all in the Province of British Columbia. And for the aforesaid purposes the following schools are declared to be boarding schools :—Portage la Prairie Boarding

School, at Portage la Prairie; Pine Creek Boarding School, at Pine Creek; Birtle Boarding School, at Birtle—all in the Province of Manitoba; Onion Lake Boarding Schools, in the Onion Lake Agency; Blackfoot Boarding Schools, on the Blackfoot Reserve; Blood Boarding School, in the Blood Agency; Crowstand Boarding School, in the Swan River Agency; File Hills Boarding School, in the File Hills Agency; Gordon's Boarding School, on George Gordon's Reserve, Touchwood Hills Agency; Muscowequan's Boarding School, on Muscowequan's Reserve, in the Touchwood Hills Agency; Lac la Biche Boarding School, in the Saddle Lake Agency; Piegan Boarding School, on the Piegan Reserve; Round Lake Boarding School, at Round Lake, in the Crooked Lakes Agency; Sarcee Boarding School, on the Sarcee Reserve; Stony Plain Boarding School, on Enoch la Potac's Reserve, in the Edmonton Agency; Duck Lake Boarding School, at Duck Lake—all in the North-west Territories; Port Simpson Girl's Home, at Port Simpson; All Hallows Boarding School, at Yale—both in the Province of British Columbia.

9. An Indian Agent or Justice of the Peace, on being satisfied that any Indian child between six and sixteen years of age is not being properly cared for or educated, and that the parent, guardian or other person having the charge or control of such child, is unfit or unwilling to provide for the child's education, may issue a warrant authorizing the person named therein to search for and take such child and place it in an industrial or boarding school, in which there may be a vacancy for such child, and a child so

placed in an industrial or boarding school may be retained until the age of eighteen years is reached ; but no child shall be committed to any industrial or boarding school before the parent, guardian or other person having the charge or control of such child, is notified orally, or in writing, by a Justice of the Peace, Indian Agent or truant officer, of the intention to commit the child, and four days shall be allowed to elapse between the giving of such notice and the committal of the child, except in the Province of Manitoba and the North-west Territories, where an Indian child may be committed by an Indian Agent or Justice of the Peace, as aforesaid, without notice.

10. If any such parent, guardian or other person who has been notified as aforesaid, objects within the aforesaid four days to the placing of the child in an industrial or boarding school, the Indian Agent, or Justice of the Peace, shall appoint a day for a formal inquiry into the case, and may take evidence under oath as to the manner in which the child is being cared for and educated ; and, if it be shown that adequate provision is being made or will be made for the child's care and education, the child shall be left in the custody of such parent, guardian or other person.

11. The share of annuity or interest money, or other band revenue, belonging to a child committed to an industrial or boarding school, may be retained by the Superintendent General of Indian Affairs, and may be expended by the Superintendent General for the maintenance and education of such child or funded for its benefit.

12. If any child placed under these regulations in an industrial or boarding school should leave such school without permission of the Superintendent General, the Assistant Indian Commissioner, or of the Principal of the School, or should any child who has been allowed out, fail to return at the stipulated time, any Indian Agent or Justice of the Peace shall, on information made to that effect by any officer of such school, issue a warrant authorizing the person named therein to search for and take such child back to the school in which it had been previously placed as aforesaid. But notwithstanding anything in this section it shall be competent for any employee of the Indian Department, or any constable, to arrest without a warrant any child found in the act of escaping from any industrial or boarding school, and to convey such child to the school from which it escaped.

13. Any person authorized by warrant under these regulations to search for and take any child to an industrial or boarding school may enter (if need be by force) any house, building or other place specified in the warrant, and may remove the child therefrom. (2.) The warrant may be addressed to any policeman or constable, or to any truant officer appointed under these regulations, or to the Principal of any industrial or boarding school, or to any employee of the Department of Indian Affairs.

14. Notwithstanding anything in these regulations contained, no Protestant child shall be placed in a Roman Catholic school, or in a school conducted under Roman Catholic aus-

pices ; and no Roman Catholic child shall be placed in a Protestant school, or in a school conducted under Protestant auspices.

15. The Superintendent General of Indian Affairs shall have the right, notwithstanding anything in these regulations contained, to return to the custody of its parent, guardian or other person having the charge or control thereof, any child placed in an industrial or boarding school under these regulations.

JOHN J. MCGEE,
Clerk, Privy Council.

EXHIBIT I-18

1985 Order-in-Council



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At the Government House at Ottawa
Monday 1st day of April, 1895
Present
His Excellency The Governor General
The Hon. Sir Mackenzie Bowell
Sir Adolphe P. Caron
John Galt
Sir Charles Herbert Tupper
John Haggart
J. C. Patterson
A. P. Angus
W. B. Ross
In Council
His Excellency, in virtue of the
powers conferred upon him by sections
137
To Dept General of Indian Affairs 4 April 1895
Canada Gazette page 1804 dated 18

AMENDING, O. C. 3327
NOVEMBER, 1894

137 and 138, which are added to the Indian Act by section eleven of Chapter 32 of the Acts 57-58 Victoria, and by and with the advice of the Queen's Privy Council for Canada, is pleased to order that Section 12 of the Regulations established by the Order in Council of the 15th November, 1894, shall be and the same is hereby repealed, and the following section substituted therefor:—

"12. If any child in an industrial or boarding school should leave such school without permission of the Superintendent General, the Assistant Indian Commissioner, or of the Principal of the school, or should any child who has been allowed out, fail to return at the stipulated time, any Indian Agent or Justice of the Peace shall, on information made

" made to that effect by any officer of such
 " school, issue a warrant authorizing the
 " person named therein to search for and
 " take such child back to and again place
 " it in the school in which it had been pre-
 " viously placed as aforesaid. But notwith-
 " standing anything in this section, it shall
 " be competent for any employee of the Indian
 " Department, or any constable, to arrest without
 " a warrant any child found in the act of
 " escaping from any industrial or boarding
 " school, and to convey such child to the school
 " from which it escaped."

Washburne Bonnell

Approved
1st Apr: 1895

Blundell

EXHIBIT I-19

Regulations Relating to the Education of Indian Children (1908)

L. D. Holden 1914

REGULATIONS

RELATING TO THE

EDUCATION

OF

INDIAN CHILDREN

OTTAWA
GOVERNMENT PRINTING BUREAU
1908

2001091709

AT GOVERNMENT HOUSE, OTTAWA,

THURSDAY, the 6th day of August, 1908.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

His Excellency the Governor General in Council in pursuance of the powers conferred upon him by Sections 9, 10 and 11 of the Indian Act, Chapter 81 of the Revised Statutes of Canada, 1906, is pleased to order that the Regulations relating to the Education of Indian children established by the Order in Council of the 10th November, 1894, and the amendment thereto of the 1st April, 1895, shall be and the same are hereby repealed and the following Regulations substituted therefor:

1. All Indian children between the ages of six and fifteen shall attend a day school on the reserve on which they reside for the full term during which the school is open each year, unless excused for the reasons hereinafter mentioned.

2. Any Indian or other person who receives into his house an Indian child between the aforesaid ages, and which child is resident with him, or in his care or employment, shall be deemed thereby to be subject to the same duty with respect to the education of such child during such residence as a parent, and shall be liable to be proceeded against as in the case of a parent, if he should fail to cause such child to be educated to the extent required of a parent under these Regulations; but the duty of the parent under these Regu-

lations shall not thereby be affected or diminished and shall continue in full force.

3. No parent, guardian or other person shall be liable to any of the penalties of these Regulations in respect of any child—

- (a) If the child is under efficient instruction;
- (b) If the child is unable to attend school by reason of sickness or other unavoidable cause;
- (c) If there is no school within two miles, measured by the nearest road from such child's residence, if such child is under ten years of age, or within three miles, if over this age;
- (d) If the child has been excused, as hereinafter provided, from attending school;
- (e) If the child has passed the entrance examination for high schools.

4. Where, in the opinion of any Indian Agent or of any teacher authorized by such Agent to issue such certificate as is hereinafter referred to, the services of such child are required in husbandry or in urgent and necessary household duties, or for the necessary maintenance of such child, or of some Indian dependent upon such child, such Indian Agent or teacher may, by certificate setting forth the reasons therefor, relieve such child from attendance at school for any period not exceeding two weeks during each of the four school terms or quarters.

5. Indian Agents may appoint one or more persons to act as Truant Officers on each reserve for the enforcement of these Regulations and such Truant Officers shall perform such

services as the Indian Agents by whom they are appointed shall deem necessary for the enforcement of these Regulations.

6. It shall be the duty of Truant Officers appointed under these Regulations to examine into all cases of non-attendance at school which may be brought to their notice, to notify the parent, guardian or other person having the charge or control of any child between six and fifteen years of age when such child is not attending school, and to require such parent, guardian or other person to cause the child to attend some school within three days. It shall also be the duty of the Truant Officers to make every effort to see that the children attend school regularly and to arrest and convey to school any child not sick or otherwise lawfully excused from attending school that they may find absent from school during school hours.

7. If the parent, guardian or other person having charge or control of any child shall neglect or refuse to cause such child to attend some school after being notified as herein required (unless such child has been excused from such attendance as provided by these Regulations) the Truant Officer shall make, or cause to be made, a complaint against such parent, guardian or other person before any Justice of the Peace having jurisdiction in the county or district in which the offence occurred, or before the Indian Agent for the locality; and upon conviction such parent, guardian or other person shall be liable to a fine of not more than two dollars or imprisonment for a period not exceeding ten days, or both.

8. Under the provisions of Section 10 of Chapter 81 of the said Act all industrial and

boarding schools receiving a per capita or other grant from the Government for the education of Indian children are declared to be industrial and boarding schools for the purposes of Sections 10 and 11 of the said Act.

9. An Indian Agent or Justice of the Peace on requisition from the Department of Indian Affairs or from one of its authorized officers on being satisfied that any Indian child between six and fifteen years of age is not being properly cared for or educated, and that the parent, guardian or other person having the charge or control of such child, is unfit or unwilling to provide for the child's education, may issue a warrant authorizing the person named therein to search for and take such child and place it in an industrial or boarding school in which there may be a vacancy for such child, and a child so placed in an industrial or boarding school may be retained until the age of eighteen years is reached; but no child shall be committed to any industrial or boarding school before the parent, guardian or other person having the charge or control of such child is notified orally, or in writing, by a Justice of the Peace, Indian Agent or Truant Officer of the intention to commit the child, and four days shall be allowed to lapse between the giving of such notice and the committal of the child.

10. If any such parent, guardian or other person who has been notified as aforesaid, objects within the aforesaid four days to the placing of the child in an industrial or boarding school, the Indian Agent or Justice of the Peace who issued the warrant shall appoint a day for the formal inquiry into the case, and may take evidence under oath as to the manner in which the child is being

cared for and educated ; and, if it be shewn that adequate provision is being made or will be made for the child's care and education, the child shall be left in the custody of such parent, guardian or other person.

11. The share of annuity or interest money, or other band revenue, belonging to a child committed to an industrial or boarding school may be retained by the Superintendent General of Indian Affairs and may be expended by the Superintendent General for the maintenance and education of such child or funded for its benefit.

12. If any child in an industrial or boarding school should leave such school without permission of the Superintendent General or other authorized officer of the Department of Indian Affairs, or of the Principal of the school, or should any child who has been allowed out, fail to return at the stipulated time, any Indian Agent or Justice of the Peace shall, on information made to that effect by an authorized officer of the Department, issue a warrant authorizing the person named therein to search for and take such child back to the school in which it had been previously placed as aforesaid.

But notwithstanding anything in this section it shall be competent for any employee of the school, or of the Indian Department, or any constable to arrest without a warrant any child found in the act of escaping from such school and to convey such child to the school from which it escaped.

13. Any person authorized by warrant under these Regulations to search for and take any child to an industrial or boarding

school may enter (if need be by force) any house, building or other place, specified in the warrant and may remove the child therefrom.

(2) The warrant may be addressed to any policeman or constable, or to any Truant Officer appointed under these Regulations, or to any employee of the Department of Indian Affairs.

14. Notwithstanding anything in these Regulations contained, no Protestant child shall be committed to a Roman Catholic school or to a school conducted under Roman Catholic auspices; and no Roman Catholic child shall be committed to a Protestant school or to a school conducted under Protestant auspices.

15. The Superintendent General of Indian Affairs shall have the right, notwithstanding anything in these Regulations contained, to return to the custody of its parent, guardian or other person having the charge or control thereof any child placed in an industrial or boarding school under these Regulations.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

EXHIBIT I-20
1920 *Indian Act*



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10-11 GEORGE V.

CHAP. 50.

An Act to amend the Indian Act.

[Assented to 1st July, 1920.]

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

R.S., c. 81;
1910, c. 28;
1911, c. 14;
1914, c. 35;
1918, c. 26;
1919, c. 56.

1. Sections nine and eleven of the *Indian Act*, Revised Statutes of Canada, 1906, chapter eighty-one, and section ten of the said Act as enacted by chapter thirty-five of the statutes of 1914, are repealed and the following are substituted therefor:—

“**9.** (1) The Governor in Council may establish,—

“(a) day schools in any Indian reserve for the children of such reserve;

Power to establish day schools and industrial or boarding schools.

“(b) industrial or boarding schools for the Indian children of any reserve or reserves or any district or territory designated by the Superintendent General.

“(2) Any school or institution the managing authorities of which have entered into a written agreement with the Superintendent General to admit Indian children and provide them with board, lodging and instruction may be declared by the Governor in Council to be an industrial school or a boarding school for the purposes of this Act.

Or to declare any school to be industrial or boarding school.

“(3) The Superintendent General may provide for the transport of Indian children to and from the boarding or industrial schools to which they are assigned, including transportation to and from such schools for the annual vacations.

Transport of children to schools.

“(4) The Superintendent General shall have power to make regulations prescribing a standard for the buildings, equipment, teaching and discipline of and in all schools, and for the inspection of such schools.

Regulations to prescribe standards.

“(5) The chief and council of any band that has children in a school shall have the right to inspect such school at such reasonable times as may be agreed upon by the Indian agent and the principal of the school.

Inspection of schools by chief and council.

“(6)

Annuities and interest applied to maintenance.

"(6) The Superintendent General may apply the whole or any part of the annuities and interest moneys of Indian children attending an industrial or boarding school to the maintenance of such school or to the maintenance of the children themselves.

Children from 7 to 15 to attend school.

"10. (1) Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school as may be designated by the Superintendent General for the full periods during which such school is open each year. Provided, however, that such school shall be the nearest available school of the kind required, and that no Protestant child shall be assigned to a Roman Catholic school or a school conducted under Roman Catholic auspices, and no Roman Catholic child shall be assigned to a Protestant school or a school conducted under Protestant auspices.

Proviso as to religions.

Truant officers and compulsory attendance.

"(2) The Superintendent General may appoint any officer or person to be a truant officer to enforce the attendance of Indian children at school, and for such purpose a truant officer shall be vested with the powers of a peace officer, and shall have authority to enter any place where he has reason to believe there are Indian children between the ages of seven and fifteen years, and when requested by the Indian agent, a school teacher or the chief of a band shall examine into any case of truancy, shall warn the truants, their parents or guardians or the person with whom any Indian child resides, of the consequences of truancy, and notify the parent, guardian or such person in writing to cause the child to attend school.

Power to investigate cases of truancy.

Notice to parents, guardians, etc.

Penalty for guardian, parent or others failing to cause child to attend school, after notice.

"(3) Any parent, guardian or person with whom an Indian child is residing who fails to cause such child, being between the ages aforesaid, to attend school as required by this section after having received three days' notice so to do by a truant officer shall, on the complaint of the truant officer, be liable on summary conviction before a justice of the peace or Indian agent to a fine of not more than two dollars and costs, or imprisonment for a period not exceeding ten days or both, and such child may be arrested without a warrant and conveyed to school by the truant officer: Provided that no parent or other person shall be liable to such penalties if such child, (a) is unable to attend school by reason of sickness or other unavoidable cause; (b) has passed the entrance examination for high schools; or, (c) has been excused in writing by the Indian agent or teacher for temporary absence to assist in husbandry or urgent and necessary household duties."

Exemptions from penalties.

2. Section fourteen of the said Act is repealed and the following is substituted therefor:—

Effect of marriage of Indian woman.

"14. Any Indian woman who marries any person other than an Indian, or a non-treaty Indian, shall cease to be

an Indian in every respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents: Provided that such income may be commuted to her at any time at ten years' purchase, with the approval of the Superintendent General."

Superintendent may commute income.

3. Paragraph (h) of section two, and sections one hundred and seven to one hundred and twenty-three, both inclusive, of the said Act are repealed and the following are substituted therefor:—

Enfranchisement of Indians.

"107. (1) The Superintendent General may appoint a Board to consist of two officers of the Department of Indian Affairs and a member of the Band to which the Indian or Indians under investigation belongs, to make enquiry and report as to the fitness of any Indian or Indians to be enfranchised. The Indian member of the Board shall be nominated by the council of the Band, within thirty days after the date of notice having been given to the council, and in default of such nomination, the appointment shall be made by the Superintendent General. In the course of such enquiry it shall be the duty of the Board to take into consideration and report upon the attitude of any such Indian towards his enfranchisement, which attitude shall be a factor in determining the question of fitness. Such report shall contain a description of the land occupied by each Indian, the amount thereof and the improvements thereon, the names, ages and sex of every Indian whose interests it is anticipated will be affected, and such other information as the Superintendent General may direct such Board to obtain.

Enquiry and report as to fitness of Indians to be enfranchised.

"(2) On the report of the Superintendent General that any Indian, male or female, over the age of twenty-one years is fit for enfranchisement, the Governor in Council may by order direct that such Indians shall be and become enfranchised at the expiration of two years from the date of such order or earlier if requested by such Indian, and from the date of such enfranchisement the provisions of the *Indian Act* and of any other Act or law making any distinction between the legal rights, privileges, disabilities and liabilities of Indians and those of His Majesty's other subjects, shall cease to apply to such Indian or to his or her minor unmarried children, or, in the case of a married male Indian, to the wife of such Indian, and every such Indian and child and wife shall thereafter have, possess and enjoy all the legal powers, rights and privileges of His Majesty's other subjects, and shall no longer be deemed to be Indians within the meaning of any laws relating to Indians.

Governor in Council may enfranchise Indians, on approval of report of Superintendent.

Effect of enfranchisement.

"(3)

Right of Indian to choose name, and to be known by same.

“(3) An Indian over the age of twenty-one years shall have the right to choose the christian name and surname by which he or she wishes to be enfranchised and thereafter known, and from the date of the order of enfranchisement such Indian shall thereafter be known by such names, and if no such choice is made such Indian shall be enfranchised by and bear the name or names by which he or she has been theretofore commonly known.

Letters patent for his land to be issued to Indian upon enfranchisement.

“(4) Upon the issue of an order of enfranchisement the Superintendent General shall, if any Indian enfranchised holds any land on a reserve, cause letters patent to be issued to such Indian for such land: Provided that such Indian shall pay to the funds of the band such amount per acre for the land he holds as the Superintendent General considers to be the value of the common interest of the band in such land, and such payment shall be a charge against the share of such Indian in the funds of the band. The Superintendent General shall also pay to each Indian upon enfranchisement his or her share of the funds to the credit of the band, including such amount as the Superintendent General determines to be his or her share of the value of the common interest of the band in the lands of the reserve or reserves, or share of the principal of the annuities of the band capitalized at five per centum, out of such moneys as are provided by Parliament for the purpose or which may be otherwise available for such purpose. The land and money of any minor, unmarried children may be held for the benefit of such minor or may be granted or paid in whole or in part to the father, or, if the father is dead, to the mother, or in either case to such person as the Superintendent General may select for such purpose for the maintenance of such minor, and the land and money of the wife shall be granted and paid to the husband, unless in any case the Superintendent General shall direct that the whole or any part thereof be granted or paid to the wife herself, in which case the same shall be granted or paid to the wife.

Receives his share of funds.

Land and money of children and wife.

Payments from funds of band, if no land.

“(5) If such Indian holds no land in a reserve he or she shall be paid from the funds of the band such amount as the Superintendent General determines to be his or her share of the value of the common interest of the band in the lands of the reserve or reserves, and shall also be paid his or her share of the funds or annuities of the band capitalized as aforesaid.

Indians not members of band, and non-treaty Indians, enfranchised, and granted letters patent.

“(6) Every Indian who is not a member of the band and every non-treaty Indian who, with the acquiescence of the band and approval of the Superintendent General, has been permitted to reside on the reserve or to obtain a holding or location thereon, may be enfranchised and given letters patent for such land as a member of the band, provided that such Indian or non-treaty Indian shall pay to the credit

credit of the band the value of the common interest of the band in the land for which he receives a patent.

“(7) On the issue of the letters patent to any enfranchised Indian for any land he may be entitled to, or the payment from the capital funds or annuities of the band, as above provided, such Indian and his or her minor unmarried children and, in the case of a male married Indian, the wife of such Indian shall cease to have any further claims whatsoever against any common property or funds of the band.

Claims on funds of band cease on issue of letters patent.

“108. Where an Indian is undergoing a period of probation in accordance with the provisions of sections one hundred and seven to one hundred and twenty-two, inclusive, heretofore in force, such Indian may on the recommendation of the Superintendent General be enfranchised by order of the Governor in Council, and given letters patent for the lands held by such Indian under location ticket issued to him or her in respect of such enfranchisement, and paid his or her share of the capital funds at the credit of the band or share of the principal of the annuities of the band capitalized at five per centum as aforesaid, out of such moneys as are provided for the purpose by Parliament or which may be otherwise available for such purpose.

Enfranchisement of Indian on probation.

Receives letters patent and payment of share of fund.

“109. When a majority of the members of a band is enfranchised, the common land or other public property of the band shall be equitably allotted to members of the band, and thereafter the residue, if any, of such land or public property may be sold by the Superintendent General and the proceeds of such sale placed to the credit of the funds of the band to be divided as provided in section one hundred and seven: Provided, however, that the Governor in Council may reserve and set apart from the funds of the band such sum as the Superintendent General may consider necessary for the perpetual care and protection of any Indian cemetery or burial plot belonging to such Indians, and any other common property which in the opinion of the Superintendent General should be preserved as such. And provided also that no part of such land or other property shall be sold to any person other than a member of the band except by public auction after three months' advertisement in the public press.

Disposal of common lands or public property.

Care of Indian cemeteries, and common property which should be preserved.

Sales at public auction.

“110. The Governor in Council shall have power to make regulations for the carrying out of the provisions of the three sections immediately preceding this section, and subject to the provisions of this Act for determining how the land, capital moneys and other property of a band, or any part thereof, shall be divided, granted and paid, upon the enfranchisement of any Indian or Indians belonging to such band or having any interest in any of the property of such band,

Regulations to enforce these provisions.

Final decision
of Governor
in Council.

band, and to decide any questions arising under the said sections, and the decision of the Governor in Council thereon shall be final and conclusive.

Report to
Parliament.

“111. The Minister shall, within fifteen days after the opening of each session of Parliament, submit to both Houses of Parliament a list of the Indians enfranchised under this Act during the previous fiscal year, and the amount of land and money granted and paid to each Indian so enfranchised.”

Offences.

4. Section one hundred and thirty-nine of the said Act is amended by adding thereto the following subsection:—

Gambling,
drinking or
possession of
liquor on
Indian
reserve.
Penalty.

“(2) Any person or Indian who has been gambling or has been drunk on an Indian reserve, or has had liquor in his possession on an Indian reserve, shall be liable on summary conviction to imprisonment for any term not exceeding three months, or to a penalty not exceeding fifty dollars and not less than ten dollars, with costs of prosecution, half of which pecuniary penalty shall belong to the informer.”

Powers of
Council to
make by-
laws.

5. Subsection two of section one hundred and ninety-four of the said Act is amended by inserting the following paragraph immediately after paragraph (g) thereof:—

“(gg) the construction, maintenance and improvement of water, sewerage and lighting works and systems.”

EXHIBIT I-21

P.H. Bryce Report, “The Story of a National Crime” (1922)

THE STORY
OF
A NATIONAL CRIME

Peter Henderson
BY
P. H. BRYCE, M.A., M.D.

BEING
AN APPEAL FOR JUSTICE
TO THE
INDIANS OF CANADA

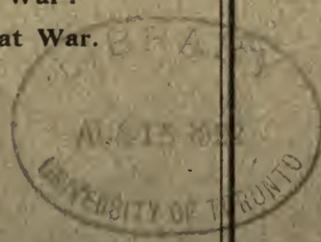
The Wards of the Nation :
Our Allies in the Revolutionary War :
Our Brothers-in-Arms in the Great War.

PRICE, 35 CENTS

Published by James Hope & Sons, Limited

OTTAWA, CANADA

1922



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THE STORY OF A NATIONAL CRIME

BEING A

Record of the Health Conditions of the Indians of Canada from 1904 to 1921

—BY—

DR. P. H. BRYCE, M. A., M. D.

Chief Medical Officer of the Indian Department.

I. By Order in Council dated Jan. 22nd, 1904, the writer was appointed Medical Inspector to the Department of the Interior and of Indian Affairs, and was entrusted with the health interests of the Indians of Canada. The Order in Council recites : —

“The undersigned has the honour to report that there is urgent necessity for the appointment of a medical inspector to represent the Department of the Interior and Department of Indian Affairs. The undersigned believes that the qualifications for the position above mentioned are possessed in an eminent degree by Mr. Peter Henderson Bryce, M. D., at present and for a number of years past Secretary for the Provincial Board of Health of Ontario, and who has had large experience in connection with the public health of the province.”

(Signed)

CLIFFORD SIFTON,

Minister of the Interior and
Superintendent General of Indian Affairs.

For the first months after the writer's appointment he was much engaged in organizing the medical inspection of immigrants at the sea ports ; but he early began the systematic collection of health statistics of the several hundred Indian Bands scattered over Canada. For each year up to 1914 he wrote an annual report on the health of the Indians, published in the Departmental report, and on instructions from the minister made in 1907 a special inspection of thirty-five Indian schools in the three prairie provinces. This report was published separately ; but the recom-

mendations contained in the report were never published and the public knows nothing of them. It contained a brief history of the origin of the Indian Schools, of the sanitary condition of the schools and statistics of the health of the pupils, during the 15 years of their existence. Regarding the health of the pupils, the report states that 24 per cent. of all the pupils which had been in the schools were known to be dead, while of one school on the File Hills reserve, which gave a complete return to date, 75 per cent. were dead at the end of the 16 years since the school opened.

Briefly the recommendations urged, (1) Greater school facilities, since only 30 per cent. of the children of school age were in attendance; (2) That boarding schools with farms attached be established near the home reserves of the pupils; (3) That the government undertake the complete maintenance and control of the schools, since it had promised by treaty to insure such; and further it was recommended that as the Indians grow in wealth and intelligence they should pay at least part of the cost from their own funds; (4) That the school studies be those of the curricula of the several Provinces in which the schools are situated, since it was assumed that as the bands would soon become enfranchised and become citizens of the Province they would enter into the common life and duties of a Canadian community; (5) That in view of the historical and sentimental relations between the Indian schools and the Christian churches the report recommended that the Department provide for the management of the schools, through a Board of Trustees, one appointed from each church and approved by the minister of the Department. Such a board would have its secretary in the Department but would hold regular meetings, establish qualifications for teachers, and oversee the appointments as well as the control of the schools; (6) That Continuation schools be arranged for on the school farms and that instruction methods similar to those on the File Hills farm colony be developed; (7) That the health interests of the pupils be guarded by a proper medical inspection and that the local physicians be encouraged through the provision at each school of fresh air methods in the care and treatment of cases of tuberculosis.

Recommendations of school report 1907.

II. The annual medical reports from year to year made re-

ference to the unsatisfactory health of the pupils, while different local medical officers urged greater action in view of the results of their experience from year to year. As the result of one such report the Minister instructed the writer in 1909 to investigate the health of the children in the schools of the Calgary district in a letter containing the following :—

“As it is necessary that these residential schools should be filled with a healthy class of pupils in order that the expenditure on Indian education may not be rendered entirely nugatory, it seems desirable that you should go over the same ground as Dr. Lafferty and check his inspection. ”

These instructions were encouraging and the writer gladly undertook the work of examining with Dr. J. D. Lafferty the 243 children of 8 schools in Alberta, with the following results :—

recommen-
dations
based upon
examination
of 243 school
children.

(a) Tuberculosis was present equally in children at every age ; (b) In no instance was a child awaiting admission to school found free from tuberculosis ; hence it was plain that infection was got in the home primarily ; (c) The disease showed an excessive mortality in the pupils between five and ten years of age ; (d) The 10,000 children of school age demanded the same attention as the thousand children coming up each year and entering the schools annually.

Recommendations, made in this report, on much the same lines as those made in the report of 1907, followed the examination of the 243 children ; but owing to the active opposition of Mr. D. C. Scott, and his advice to the then Deputy Minister, no action was taken by the Department to give effect to the recommendations made. This too was in spite of the opinion of Prof. George Adami, Pathologist of McGill University, in reply to a letter of the Deputy Minister asking his opinion regarding the management and conduct of the Indian schools. Prof. Adami had with the writer examined the children in one of the largest schools and was fully informed as to the actual situation. He stated that it was only after the earnest solicitation of Mr. D. C. Scott that the whole matter of Dr. Bryce's report was prevented from becoming a matter of critical discussion at the annual meeting of the National Tuberculosis Association in 1910, of which he was then president,

and this was only due to Mr. Scott's distinct promise that the Department would take adequate action along the lines of the report. Prof. Adami stated in his letter to the Deputy Minister :—

“It was a revelation to me to find tuberculosis prevailing to such an extent amongst these children, and as many of them were only suffering from the early incipient form of the disease, though practically everyone was affected, when under care it may be arrested, I was greatly impressed with the responsibility of the government in dealing with these children I can assure you my only motive is a great sympathy for these children, who are the wards of the government and cannot protect themselves from the ravages of this disease.”

III. In reviewing his correspondence the writer finds a personal letter, written by him to the Minister dated March 16th, 1911, following an official letter regarding the inaction of the Department with regard to the recommendations of the report. This letter refers to the most positive promises of Mr. D. C. Scott that the Department would at once take steps to put the suggestions contained in the report into effect. The letter further says :—

“It is now over 9 months since these occurrences and I have not received a single communication with reference to carrying out the suggestions of our report. Am I wrong in assuming that the vanity of Mr. D. C. Scott, growing out of his success at manipulating the mental activities of Mr. Pedley, has led him to the fatal deception of supposing that his cleverness will be equal to that of Prospero in calming any storm that may blow up from a Tuberculosis Association or any where else, since he knows that should he fail he has through memoranda on file placed the responsibility on Mr. Pedley and yourself. In this particular matter, he is counting upon the ignorance and indifference of the public to the fate of the Indians ; but with the awakening of the health conscience of the people, we are now seeing on every hand, I feel certain that serious trouble will come out of departmental inertia, and I am not personally disposed to have any blame fall upon me.”

It will then be understood with what pleasure the writer hailed the appointment of Dr. W. A. Roche as Superintendent General of Indian Affairs after the year's term of the Hon. R. Rogers, whose chief activity was the investigation of the Deputy Minister, which led up to his retirement. Now at last he said, “A medical minister exists who would understand the situation as relates to the health of the Indians.” So an early opportunity was taken to set forth in a memorandum to Dr. Roche, dated Dec. 9th, 1912, data and statistics relating to the several hundred scat-

tered bands on whose health the total expenditure was but little more than \$2 per capita, while the death rate in many of the bands was as high as forty per thousand. The reply acknowledging receipt of this memorandum contained the following :—

Dr. Roche is urged to act. “There is certainly something in your suggestion that should meet with every consideration, and some time when I can find an opportunity and it is convenient for you, I shall be pleased to discuss this matter with you.” As Dr. Roche became ill and was absent for some months nothing further was done ; but on his return the writer in a personal interview urged that this serious medical Indian problem be taken up in earnest. It was stated that medical science now knows just what to do and what was necessary was to put our knowledge into practice. Dr. Roche stated that on his return from the West he would certainly take the matter up. Since that moment however, to the present, the matter has awaited the promised action.

The writer had done no regular inspection work since Mr. D. C. Scott was made Deputy minister in 1913, but had in each year up to 1914 prepared his medical report, printed in the annual report of the Department. About this time the following letter was received :—

P. H. Bryce, M. D.
Medical Inspector,
Immigration Branch.

Ottawa,
June 17, 1914.

Dear Sir,

In reply to your letter of the first instant, asking that the files of the Department, containing our medical officers' reports be placed at your disposal, so that you may peruse them to enable you to furnish a report for publication, I desire to point out, that by the organization of this Department, under the Civil Service Act of 1908 you were not included therein and since that time your whole salary has been a charge against the Department of the Interior. It is true that since then we have availed ourselves of your services on a few occasions ; but during the past year, so far as I am aware, you have not been called upon to do any duty for the Department. I may say also that Dr. Grain of Winnipeg, has lately been appointed to oversee the Western schools and reserves and his time is fully occupied in the work. Under these circumstances, I do not think that you should be asked to furnish a report on the medical work in connection with Indians during the fiscal year.

I must thank you cordially for the offer to again prepare a report for publication.

Yours sincerely,

DUNCAN C. SCOTT,

D. S. G. I. A.

The transparent hypocrisy contained in this remarkable communication sent, not by the Minister Dr. W. A. Roche, but by his deputy, will be seen in the fact that from 1908, five annual reports had been prepared by the writer, while the special report on the eight schools of the Calgary district with the recommendations Mr. Scott's already referred to had been made on the instructions malign influence. of the Department in 1909. The other reason given, to the effect that a certain physician, since retired for good cause, quite inexperienced in dealing with Indian disease problems, had been appointed as Medical Inspector for the Western Provinces, showed how little the Minister cared for the solution of the tuberculosis problem. As a matter of fact the Order in Council appointing the writer had neither been changed nor rescinded, while the transfer to the Interior Department of the payment of the total salary was made in 1908 in order that his regular increase of pay under the new classification of the Civil Service Act of that year might be made.

IV. As the war broke out in 1914 and immigration was largely suspended, an unexpected opportunity occurred through Dr. Roche's the greater time at his disposal for the writer's special culpable apathy- knowledge and experience to be utilized in improving the health of the Indians; but in no single instance, thereafter, were the services of the writer utilized by this medical Minister, who in 1917 was transferred to preside over the Civil Service Commission, and who must be held responsible for the neglect of what proved to be a very serious situation. In 1917, the writer prepared, at the request of the Conservation Commission, a pamphlet on "The Conservation of the Man Power of Canada," which dealt with the broad problems of health which so vitally affect the man power of a nation. The large demand for this pamphlet led to the preparation of a similar study on "The Conservation of the Man Power of the Indian Population of Canada," which had already supplied over 2000 volunteer soldiers for the Empire. For obvious reasons this memorandum was not published, but was

Value of
man power
of Indians.

placed in the hands of a minister of the Crown in 1918, in order that all the facts might be made known to the Government. This memorandum began by pointing out that in 1916 4,862,303 acres were included in the Indian reserves and that 73,716 acres were then under cultivation; that while the total per capita income for farm crops in that year in all Canada was \$110, that from the Indian reserves was \$69, while it was only \$40 for Nova Scotia. It is thus obvious that from the lowest standard of wealth producers the Indian population of Canada was already a matter of much importance to the State. From the statistics given in the "Man Power" pamphlet it was made plain that instead of the normal increase in the Indian population being 1.5 per cent. per annum as given for the white population, there had been between 1904 and 1917 an actual decrease in the Indian population in the age period over twenty years of 1,639 persons whereas a normal increase would have added 20,000 population in the 13 years. The comparisons showed that the loss was almost wholly due to a high death rate since, though incomplete, the Indian birth rate was 27 per thousand or higher than the average for the whole white population.

The memorandum states, "As the Indian people are an unusually strong native race, their children at birth are large and sturdy, and under good sanitary conditions have a low mortality. Thus of the 134 children born in the File Hills Farm Colony in 17 years only 34 died, while of 15 births in 1916 only 1 died, giving the unusually low rate of 77 per thousand within the year."

As it was further desirable to obtain the latest returns of deaths by age periods and causes the writer communicated with the Secretary of the Indian Department asking for such returns. In reply he received the following letter.

Dear Dr. Bryce,

Ottawa, May 7, 1918.

I have your letter of the third instant asking for certain vital statistics. I am unable to give you the figures you ask as we are not receiving any vital statistics now, and last year we obtained only the total number of births and deaths from each Agency. These were not printed and are not therefore available for distribution. The causes of deaths have never been noted in our reports and we have no information.

Your obedient servant,

(Signed) J. D. McLean,
Asst. Deputy and Secretary.

Thus after more than a hundred years of an organized Department of Indian Affairs in Canada, though the writer had at once begun in 1904 on his appointment the regular collection of statistics of diseases and deaths from the several Indian bands, he was officially informed that in a Department with 287 paid medical officers, due to the direct reactionary influence of the former Accountant and present Deputy Minister no means exists, such as is looked upon as elementary in any Health Department today, by which the public or the Indians themselves can learn anything definite as to the actual vital conditions amongst these wards of the nation.

A study of the 1916-17 statistics shows that in the wage earning period of life, from 21 to 65 years, the Indians of Alberta had 161 less population, of British Columbia 901 less, of Ontario 991 less and of Nova Scotia 399 less. In order however to show how an Indian population may increase, the writer obtained from Mr. W. M. Graham, at that time Superintendent of the File Hills colony from 1901 to 1917, the complete record for this period. In all there were 53 colonists from the neighbouring Indian schools, starting with five in 1901, who had taken up homesteads in the colony. Most of them married although 15 either left or had died previous to marriage. In June 1917 there were resident 38 men, 26 women and 106 children, or 170 colonists in all. Thus we have the picture of a young Indian population of 49 males who remained in the colony, of whom 10 died of tuberculosis after an average sickness there of 2.7 years and of 29 females of whom 3

died and to whom had been born in all 134 children. In 1916 the colony had 3,991 acres under cultivation or over a hundred acres per farmer. This was one nineteenth of the total area cultivated by 105,000 persons in all the Indian bands in Canada, while 87,498 bushels of grain were grown, and 33,052 head of live stock were kept. That this variation from the normal is viewed as an anomaly may be judged from the following extract from the Deputy Minister's Annual Report for 1917; "The Indian population does not vary much from year to year." How misleading this statement is may be judged from the fact that between 1906 and 1917 in the age periods over 20 years in every Province but two the Indians had decreased in population by a total of 2,632 deaths.

Naturally it is asked ; Why this decrease should have taken place? In 1906 the report of the Chief Medical Officer shows that statistics collected from 99 local medical officers having the care of a population of 70,000 gave a total of 3,169 cases of tuberculosis or 1 case for every seven in a total of 23,109 diseases reported, and the death rates in several large bands were 81.8, 82.6, and in a third 86.4 per thousand; while the ordinary death rate for 115,000 in the city of Hamilton was 10.6 in 1921. What these figures disclose has been made more plain year by year, namely that tuberculosis, contracted in infancy, creates diseases of the brain, joints, bones, and to a less degree of the lungs and also that if not fatal till adolescence it then usually progresses rapidly to a fatal termination in consumption of the lungs.

Extraordinary mortality from tuberculosis.

The amazing reduction of tuberculosis in Hamilton. The memorandum prepared by the writer in 1918 further showed that the city of Hamilton with a population greater than the total Indian population had reduced the death rate from tuberculosis in the same period, from 1904 to 1917, by nearly 75 per cent. having in 1916 actually only 68 deaths. The memorandum further states, "If a similar method had been introduced amongst the bands on the health-giving uplands of Alberta, much might have been done to prevent such a splendid race of warriors as the Blackfeet from decreasing from 842 in 1904 to 726 in 1916, or, allowing for natural increase, an actual loss of 40 per cent. since they should have numbered at least 1,011."

V. Such then is the situation made known to the Hon. N. W. Rowell, who applied to the writer in 1918 to supply him with such facts and arguments as would support the Bill he proposed to introduce into Parliament for the creation of a Federal Department of Health.

It was with pleasure that the memorandum dealing with Indian health matters was given him, along with a proposed Bill for a Department of Health, which contained amongst its provisions one for including the Indian Medical Service along with the other Medical Federal services in the new Department. In the special medical committee called by Mr. Rowell to discuss the

Bill, such inclusion was of course approved of and the clause appeared in the First Reading in Parliament. But something then happened: What special occult influences came into action may be imagined, when the Second Reading of the Bill took place with this clause regarding the Indian Medical Service omitted. It has been noted that from 1913 up to the time when Dr. W. A. Roche was eliminated from the government in 1917 to make room for a more hardy and subtle representative of Unionism the activities of the Chief Medical Inspector of the Indian Department, had in practice ceased; yet now he was to see as the outcome of all this health legislation for which he had been struggling for years, the failure of one of his special health dreams, which he has hoped to see realized.

If the writer had been much disturbed by the incapacity or inertia of a medical Minister in the matter of the Indian health situation, he now saw that it was hopeless to expect any improvement in it when the new Minister of Health, who had posed as the Bayard of Social Uplift, the Protagonist of Prohibition, the Champion of Oppressed Labour, the Sir Galahad of Women's rights, and the *preux Chevalier* of Canadian Nationalism, could with all the accumulated facts and statistics before him condemn to further indefinite suffering and neglect these Wards of the Canadian people, whom one Government after another had made treaties with and whom deputies and officials had sworn to assist and protect.

A side light however, may serve to illumine the beclouded situation. With the formation of the Unionist Government the usual shuffle of portfolios was made and the then dominating Solicitor General, grown callous and hardened over a franchise Bill, which disfranchised many thousands of his fellow native-born citizens, had now become Minister of the Interior. That the desire for power and for the control appointments should override any higher consideration such as saving the lives of the Indians must be inferred from the following statement of the Hon. A. Meighen, Minister of the Interior and now Prime Minister. On June 8th, 1920, the estimates of the Indian Department were under consideration in Parliament. Page 3275 of Hansard has the following:—

Mr. D. D. McKenzie, "I understand that frightful ravages are being made amongst them (Indians) by tuberculosis and the conditions of life are certainly not such as to preserve them from the ravages of that dread disease. I should be pleased to know at the earliest possible moment if that branch of the Department was going to be transferred to the Department of Health."

Mr. Meighen, "The Health Department has no power to take over the matter of the health of the Indians. That is not included in the Act establishing the department. It was purposely left out of the Act. I did not then think and do not think yet that it would be practicable for the Health Department to do that work, because they would require to duplicate the organization away in the remote regions, where Indian reserves are, and there would be established a sort of divided control and authority over the Indians."

Mr. Beland, "Is tuberculosis increasing or decreasing amongst the Indians?"

Mr. Meighen, "I am afraid I cannot give a very encouraging answer to the question. We are not convinced that it is increasing, but it is not decreasing."

In this reply of the Minister we see fully illustrated the dominating influence, stimulated by the reactionary Deputy Minister, which prevents even the simplest effective efforts to deal with the health problem of the Indians along modern scientific lines. To say that confusion would arise is the equivalent of saying that co-operation between persons toward a desired social end is impracticable; whereas co-operation between Provincial and Federal Health Departments is the basis upon which real progress is being made, while further a world peace is being made possible in a league of once discordant nations. The Premier has frankly said he can give no encouraging answer to Dr. Beland's question, while at the same moment he condemns the Indians to their fate by a pitiable confession of utter official helplessness and lack of initiative, based upon a cynical "*non possumus*."

Thus we find a sum of only \$10,000 has been annually placed in the estimates to control tuberculosis amongst 105,000 Indians scattered over Canada in over 300 bands, while the City of Ottawa, with about the same population and having three general hospitals spent thereon \$342,860.54 in 1919 of which \$33,364.70 is devoted to tuberculous patients alone. The many difficulties of our pro-

Red tape
condemns
the Indians
because of
a pitiable
inertia

blem amongst the Indians have been frequently pointed out, but the means to cope with these have also been made plain. It can only be said that any cruder or weaker arguments by a Prime Minister holding the position of responsibility to these treaty wards of Canada could hardly be conceived, and such recall the satirical jibe of Voltaire, regarding the Treaty of Shackmaxon between Wm. Penn and the Indians, which he describes as "the only known treaty between savages and Christians that was never sworn to and never broken."

The degree and extent of this criminal disregard for the treaty pledges to guard the welfare of the Indian wards of the nation may be gauged from the facts once more brought out at the meeting of the National Tuberculosis Association at its annual meeting held in Ottawa on March 17th, 1922. The superintendent of the Qu'Appelle Sanatorium, Sask., gave there the results of a special study of 1575 children of school age in which advantage was taken of the most modern scientific methods. Of these 175 were Indian children, and it is very remarkable that the fact given that some 93 per cent. of these showed evidence of tuberculous infection coincides completely with the work done by Dr. Lafferty and the writer in the Alberta Indian schools in 1909.

It is indeed pitiable that during the thirteen years since then this trail of disease and death has gone on almost unchecked by any serious efforts on the part of the Department of Indian Affairs, placed by the B. N. A. Act especially in charge of our Indian population, and that a Provincial Tuberculosis Commission now considers it to be its duty to publish the facts regarding these children living within its own Province.

EPILOGUE.

This story should have been written years ago and then given to the public; but in my oath of office as a Civil Servant swore that "without authority on that behalf, I shall not disclose or make known any matter or thing which comes to my knowledge by reason of my employment as Chief Medical Inspector of Indian Affairs." Today I am free to speak, having been retired from the Civil Service and so am in a position to write the sequel to the story. It has already been stated that in 1918 and 1919 I had supplied to my then Minister of Immigration, the Hon. J. A. Calder and to the then President of the Council, the Hon. N. W. Rowell various memoranda regarding the establishment of a Federal Department of Health, amongst these being a draft of the Bill which later became the Act establishing the Department of Health. To my disappointment the position of Deputy Minister of Health to which I had a right to aspire after twenty-two years as Chief Medical Officer of Ontario, and fifteen years as Chief Medical Officer of Immigration and Indian Affairs was given to another, wholly outside the Federal Civil Service and in violation of the principle of promotion, which was supposed to prevail when the patronage system was to be done away with. The excuse was on the ground of my advancing years, although at that moment the position of Auditor General was being filled by the promotion of one who had reached sixty-five years, while a Historian to the Militia Department was appointed at a salary of \$7,000 per year, who likewise had reached just then this age.

Naturally I felt that it would be impossible to carry on and retain my self respect as a subordinate, while performing the duties, which I had been engaged in for fifteen years as Chief Medical Officer and so asked that I be given other congenial work. That my claims to the position were deemed reasonable may be judged from the following letter addressed to my brother the Rev. Professor Bryce, D.D., of Winnipeg. Writing from Victoria, B. C., on March 9th, 1920, to myself he said, quoting from a letter received from the Hon. Mr. Calder in reply to one of his own :—

"I quite appreciate the views of your brother in reference to his situation here, and personally would be only too glad to do anything I can to help out. When the Public Health Department was created, your brother certainly had claims to the appointment as Deputy Minister. Owing to his advanced age however, Council finally concluded that a younger man should receive the appointment. The government has on several occasions considered the question of placing your brother in some other branch of the Service, and I have no doubt that this will be arranged in some way or other shortly. He is now an official of the Public Health Department. He could of course remain there but this apparently is not agreeable to him. As a consequence some other arrangement, if possible must be made.

Signed, J. A. Calder.

My indignation at subsequent treatment may be imagined when the same Mr. Calder introduced the Act in 1920, commonly known as the Calder Act, providing for the "Retirement of Certain Members of the Civil Service." This Act states that anyone retired thereunder shall receive 1/60 of his salary for each year of service. So it came about that on the 17th Sept. 1920, I received notice that I was recommended for retirement under this Act. The clause of the Act quoted for my information states:—

"Section 2 (3). When it is decided to retire anyone under the provisions of this Act, notice in writing giving the reasons for such retirement shall be sent to such person, and he shall have the right to appeal to the Civil Service Commission, and the Commission, after giving such person an opportunity to be heard, shall make full report to the Governor in Council and the decision of the Council thereon shall be final."

I appealed and in my appeal stated that no reason was assigned as provided in the Act, and further that I was still Chief Medical Officer in the Department of Indian Affairs as set out in the Order in Council of 1904.

As bearing on this point made in my appeal I find the following in Hansard of June 8th, 1921. The matter being dealt with is the amendment to the Calder Act:

Mr. Fielding: But cases have been brought to my attention of men in advanced years—some may think them old, I do not—being notified of their retirement, although they are blessed with good health and strength, both mental and physical, and are well able to discharge their duties. How is such a man dealt with?

Mr. Calder: No man will be notified unless a proper official has advised that his condition of life is such that in the public interest he should be retired.....

Mr. Calder : That in the main has been the practice in the past and that is what the law contemplated last year. The question of age alone was not taken into consideration.

But it was hardly to be supposed that Dr. W. A. Roche, now Chairman of the Civil Service Commission, who during the years 1913-17 referred to had failed to utilise my services when he was Superintendent of Indian Affairs would now consider my services as necessary in that Department. So my protest was of no avail ; my elimination from the Service had been decreed and I received the following Order in Council :

Ottawa, 14th Feb., 1921.

The Committee have had before them a report, dated Feb. 1st, 1921, from the acting Secretary of State, from the Civil Service Commission :

In accordance with the provisions of Cap. 67, 10-11 George V. "An Act to provide for the Retirement of Certain Members of the Public Service" the Civil Service has to report that Dr. P. H. Bryce of the Department of Health at Ottawa was recommended by the Deputy Minister of Health for retirement ; that under Section 2 (3) of the said Act he was given a personal hearing, which has resulted in the Civil Service Commission now recommending that his appeal be not allowed, but that his retirement be made effective from the 1st of March, 1921. Dr. Bryce was born on August 17th, 1853, and is consequently sixty-seven years of age. He was appointed temporarily to the Service on Feb. 1st, 1904, and was made permanent on September 1st, 1908, and therefore will have been in the Service seventeen years and one month on the 1st March, 1921, the date upon which his retirement is proposed to be effective."

So it came about that I was retired in March, 1921, without any years being added to my term of Federal service, though I had been brought to Ottawa as an expert after 22 years in the Ontario Health Service, as is provided for in the Superannuation Act of 1870. Neither did I get any gratuity on leaving the Ontario Service after twenty-two years, the excuse being then given that I was improving my position.

The irony and injustice of this Order in Council will be seen when it is stated that a similar Order was passed on May 18th, 1921, retiring 231 persons from the Customs Department as being over sixty-five years of age ; but which was recalled when the protests of the many friends of men who were faithfully performing their duties were made. These and hundreds of other Civil

Servants of similar age are in different Departments still performing their duties.

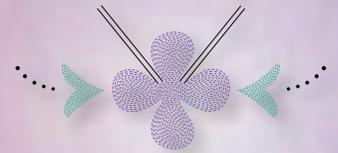
In view, therefore, of all the facts herein recited I make my appeal for simple justice ; that I be permitted to carry on my work as Chief Medical Officer of Indian Affairs, and I believe that I have the right to demand, after a thorough investigation into all the facts of the case, that the chief obstacle, as set forth in the story, to insuring the health and prosperity of the one hundred thousand Indians, the Wards of the nation, be removed.

Since the time of Edward I. the people have ever exercised their historic right to lay their petitions before the King and Parliament. I now desire herein respectfully to bring my appeal for the Indians of Canada before the King's representative and the Parliament of Canada, feeling sure that justice will be done both to them and to myself.

P. H. BRYCE.

EXHIBIT I-22

Missing and Murdered Indigenous Women and Girls Final Report, Vol. 1(a) (2019)



National Inquiry into
Missing and Murdered
Indigenous Women and Girls

RECLAIMING POWER AND PLACE

THE FINAL REPORT
OF THE NATIONAL INQUIRY
INTO MISSING AND
MURDERED INDIGENOUS
WOMEN AND GIRLS

Volume 1a

Reclaiming Power and Place: The Final Report of the National Inquiry into
Missing and Murdered Indigenous Women and Girls, Volume 1a



Cette publication est également disponible en français :

Réclamer notre pouvoir et notre place : le rapport final de l'enquête sur les
femmes et les filles autochtones disparues et assassinées, volume 1a

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COVER IMAGE:

Special thanks to the artists whose work appears on the cover of this report:

Dee-Jay Monika Rumbolt (Snowbird), for *Motherly Love*
The Saa-Ust Centre, for the star blanket community art piece
Christi Belcourt, for *This Painting is a Mirror*



Indian Hospitals and Social Dislocation

During the 20th century, Canada also developed a segregated system of health care in the form of Indian hospitals for many First Nations women, girls, and 2SLGBTQIA people, as well as Inuit, many of whom were removed from their communities in the name of public health. While there is no single experience of Indian hospitals in Canada, the common features of some experiences, including fear, boredom, and physical and psychological harm, are linked to the crisis of missing and murdered women, girls, and 2SLGBTQIA people. In our testimonies, many witnesses spoke about the challenges of medical relocation and about the questions left unanswered when mothers, aunties, sisters, or children were removed, and never returned.

The system of Indian hospitals arose from missionary efforts to provide at least a basic level of hospital care on some reserves in the late 1800s and early 1900s. These hospitals were part of the assimilation project and part of missionary efforts to stamp out Indigenous ways of healing, especially when those healers were women.

Indian hospitals focused on biomedicine – that is, on non-Indigenous medicine. By the 1930s, though, the need for more concentrated care arose because of fears about tuberculosis spreading to non-Indigenous

communities. Dr. David Stewart, superintendent of the Ninette sanatorium in Manitoba, asserted that reserves were not “disease-tight compartments” and that tuberculosis spread in non-Indigenous communities through Indigenous trade goods. Further, he characterized First Nations as careless and ignorant, and as “soaked with tuberculosis.”¹ As a result of Dr. Stewart’s and others’ anxieties, including those from communities near First Nations reserves, these hospitals and facilities were intended to address the threat to public health and to provide “limited care to a dying race.”¹¹



*Dr. Peter Bryce was Chief Medical Officer for the federal government starting in 1904. In 1907, he raised a number of issues related to the deadly conditions of residential schools and, in 1922, after leaving the public service, published *The Story of a National Crime: An Appeal for Justice to the Indians of Canada*, documenting the government’s role in the crisis and its refusal to act on his previous reports. Source: Library and Archives Canada/National Film Board of Canada fonds/e002265633.*



Canada had 22 Indian hospitals by 1960, operated by the Indian Health Service. Most were not in ideal condition, having been erected in borrowed facilities and abandoned military installations, like in North Battleford in Saskatchewan, Miller Bay near Prince Rupert in British Columbia, and Nanaimo on Vancouver Island, also in British Columbia. They operated at approximately half the cost of care as non-Indian hospitals.

Hospital staff saw themselves largely as agents of progress. As Brooke Claxton, minister of National Health and Welfare, put it in 1946:

Neither law nor treaty impose an obligation on the Dominion government to establish a health service for the Indians and Eskimos ... however, for humanitarian reasons and as very necessary protection to the rest of the population of Canada, it is essential to do everything possible to stamp out disease at its source, wherever it may be within the confines of the country.ⁱⁱⁱ

The idea that Indian hospitals, administered by the Indian Health Service within the new department of National Health and Welfare and not by Indian Affairs, were agents of humanity and progress was, for many First Nations, simply an articulation of a Treaty promise made decades prior. But for non-Indigenous communities, the hospitals served as reassurance that their own access to modern medical care need not be shared with Indigenous patients.^{iv}

Some communities wanted the facilities. The Siksika, for instance, established the Blackfoot Hospital on its reserve with funds from the sale of some reserve lands to provide in-community care, on the condition that Indigenous healers and midwives be allowed to attend patients, alongside other forms of care offered there. Historian Maureen Lux points out, “Many communities saw nothing necessarily incompatible in incorporating Western biomedicine into their indigenous healing practices. Indeed, medical plurality is the norm in much of the world.”^v In many of these places, First Nations workers – though underpaid and often poorly treated by non-Indigenous staff – provided some level



*A child undergoes physiotherapy at Charles Camsell Hospital in Edmonton Alberta, 1958.
Source: Library and Archives Canada/National Film Board of Canada fonds/a111429.*

of comfort to patients by acting as interpreters and speaking the patient’s language.^{vi} The hospital built by the Siksika in the 1920s became a target for government takeover in the 1940s and 1950s, partially due to its policies, which included generous visiting hours and the ability of Elders or children to accompany ill parents to the hospital and stay with them.^{vii}

For many First Nations who were transferred between residential schools and Indian hospitals – and there were many, due to the poor conditions in many residential schools that fed disease – Indian hospitals felt a lot like residential school, in both impact and structure. For instance, Minnie Freeman, a former patient and later, employee, notes the experience of a child patient at the St. Boniface Hospital in 1957 who had completely forgotten his language and would be



unable to communicate with his own family upon returning home.^{viii} The National Inquiry also heard similar stories, including this one from Lina G.:

I was put in the hospital. And my leg was swollen right up, and I was hospitalized because – I think they had to operate on my leg, but I don't even know if I have – if I have my two kidneys. I think I just have only one, because I got to go [to the] washroom, and I was put in Shaw Council Hospital for operation when I was young. In five years of being in Fort Smith school, I come back here in 1970s not knowing any Dogrib language. I lost it in the hospital, being put in the hospital in Fort Smith and lost my language, but I fought to get it back.^{ix}

Others noted systems for keeping patients “in line,” including special privileges that could be withdrawn in cases of non-cooperation, or, as a former nurse who worked at Camsell Indian Hospital in the 1950s described it, “despairing resignation” not unlike the residential school experience.^x

Extended absences from home, especially at any distance from their community, also left many patients to worry about the impact on loved ones. These fears were compounded by fears of arrest, if treatment was refused or abandoned: in 1951, the *Indian Act's* section 72(1) was amended to allow for warrants to be issued for “compulsory treatment of venereal disease and tuberculosis, including detention in a sanatorium, and the compulsory return of patients who left against medical advice.”^{xi} Further regulations in 1953 also provided for this measure if a province was deemed unable or unwilling to take appropriate action.^{xii} That it was the Royal Canadian Mounted Police (RCMP) who served the warrants further contributed to the relationship of distrust and animosity that already existed due to their other involvement in communities, particularly in the context of residential schools and of policing women.

In 1946, a patient dubbed “George Hamilton” left the Dynevor Indian Hospital in Manitoba to attend to family matters. When he didn't return, a warrant was issued and local RCMP arrested him to bring him back. The family he had gone to tend to had no other source



Girls gather in their dormitory at Shingwauk Residential School, n.d. © Government of Canada. Reproduced with the permission of Library and Archives Canada (2019). Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/a185528.

of support, but, as Lux reports, only after his two children had died did the Department of Indian Affairs arrange for a monthly ration and wood supply to ensure the rest of the family wouldn't perish while “Hamilton” was in treatment.^{xiii} This particular situation was not the same for everyone, but RCMP records demonstrate that the enforcement provision for compulsory medical care was one they attended to, especially in Manitoba, for sentences generally of one year.^{xiv}

In 1952, for example, two Inuuk women walked out of the Parc Savard Hospital in Quebec City in February, dressed only in their bathrobes and slippers. Parc Savard was known by the Health Service as a rat- and mouse-infested hospital with crumbling infrastructure and limited medical care. The women were quickly returned to the hospital, but, as Maureen Lux points out, for the women, who had been at Parc Savard for four years without interpretation services,



"it is not clear where [they] hoped to go ... but they could be forgiven for thinking they would be better off elsewhere."^{xv}

Among Inuit, the annual patrol ship known as "Matavik," or "where you strip," also inspired fear and uncertainty. Inuit were treated like cattle as they moved through the various stages of examination, only to be marked with a serial number on their hand that indicated which tests they had undergone. Without proper interpretation, those marked with "TB" on their hand often had no idea why they were being evacuated to the South, with no chance to say goodbye.^{xvi}

At the hospital, as former patient and interpreter Minnie Aodla Freeman recounts, "it was very sad to see

all these Inuit. Some had children in the North from whom they had not heard since they arrived. So many worries..."^{xvii} In addition, the lack of interpretation or cultural understanding on behalf of southern medical staff was often used against Inuit patients. Minnie said that, as she waited for weeks for treatment, "my culture told me not to ask, that in this situation I might cause the people who were taking care of me to alter their behavior completely, that I should accept what was happening and not force the hands that held my destiny. I figured they would tell me when they were ready."^{xviii} This type of reaction was used by medical staff as representing consent, and led to many instances where patients were treated without understanding why, or where procedures were performed to which they would not necessarily have agreed.^{xix}

I As chronicled in Lux, *Separate Beds*, 9.

II Ibid., 18.

III Ibid., 47.

IV Ibid., 4.

V Ibid., 5.

VI Ibid., 4.

VII Ibid., 139.

VIII Ibid., 119.

IX Lina G. (Dene Nation, Fort Rae Behchokò), Part 1, Statement Volume 197, Yellowknife, NWT, pp. 2-3.

X Lux, *Separate Beds*, 109.

XI Cited in *ibid.*, 45.

XII Ibid., 116.

XIII Ibid., 114.

XIV Ibid.

XV Ibid., 115-16.

XVI Ibid., 99-100.

XVII Cited in *ibid.*, 72.

XVIII Ibid., 111.

XIX Ibid., 111.

EXHIBIT I-23

Conclusion, Maureen Lux, “Separate Beds: A History of Indian Hospitals in Canada, 1920s-1980s” (2016)

Separate beds: a history of Indian hospitals in Canada, 1920s-1980s

Author(s) Lux, Maureen K.

Imprint University of Toronto Press, 2016

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Conclusion

The history of “separate beds” for Aboriginal people complicates our understanding of twentieth-century health care in Canada. Indian hospitals stood alongside their more modern white counterparts, putting racial segregation at the core of the nascent welfare state. The Indian Health Service (IHS), removed from Indian Affairs and attached to the national health bureaucracy, acknowledged that Aboriginal people would be included in schemes for postwar health care, if only to keep them excluded. Underfunded, poorly staffed, and racially segregated institutions isolated the putative threat posed by Aboriginal people, while Canada consciously defined national health as liberal white citizenship. First Nations communities that saw hospitals as a first step towards better health found instead that the state’s commitment ended with hospitalization while reserve poverty continued unabated. Separate bureaucratic silos of Indian Affairs, responsible for reserve sanitation and housing, and Indian Health Service, in charge of health care, encouraged this “vertical” or disease- or treatment-specific approach to health services and all but ensured continued poor health. Medicare only made matters worse. Accomplishing what the 1969 White Paper could not, national hospital and health insurance finally provided the federal government with a golden opportunity to jettison its legal responsibilities for Aboriginal people’s health. For more than twenty years communities wrestled with an entrenched bureaucracy that sought to undermine their efforts to improve health through an integrated approach based on a measure of self-government. While most Canadians celebrated Medicare, Aboriginal communities faced arbitrary and often punitive health policies that exacerbated persistent socio-economic inequities to maintain health disparities based on race.

The meanings of Indian hospitals are inextricably linked to the larger story of health care in modern Canada. As tuberculosis retreated in the 1930s, the migration of First Nations to towns and cities reawakened fears of infection. The concerns of medical experts transformed the "Indian problem" into a threat to the public health. In urging the federal government to take responsibility, the Canadian Tuberculosis Association (CTA) encouraged the state to confine Aboriginal people in institutions well segregated from white patients. As the voice of sanatorium directors and provincial health bureaucrats, the CTA constructed the problem of "Indian tuberculosis" and devised its solution in racially segregated institutions financed by the federal state. While the first Indian Health Service hospital at Fort Qu'Appelle in 1936 was intended to provide a maternity ward to further the BCG vaccine trial on First Nations infants, the "remarkable economy" of the institution that operated at half the cost of sanatoria quickly recommended it as an ideal prototype. That model of maternity/general hospitals that also treated tuberculosis – an "unholy combination" according to one physician – underscores the baleful role of Indian hospitals as institutions of segregation and confinement.

First Nations communities initially greeted Indian hospitals as the harbinger of a brighter future where the state acknowledged its treaty obligations to better health care. But the promise rang increasingly hollow in the coercive and dangerously underfunded institutions. Shipped from their homes like spoiled cargo, patients often found themselves isolated by culture and language, unable to understand their situation, their treatments, or their prognosis. Those who challenged IHS control, like the Siksika at their Blackfoot Hospital, paid a heavy price. Overwhelmingly paternalistic, the IHS readily resorted to degrees of compulsion "for their own good," from body casts and straitjackets to the Indian Health Regulations, which essentially criminalized the ill. The promise of opportunities for medical training and employment in Indian hospitals likewise proved illusory. IHS mirrored broader social and economic inequities through rigid racialized and gendered medical hierarchies that left Aboriginal workers the least trained and worst paid. That Aboriginal employees (and patients) were often "graduates" of residential schools not only highlights the pervasive role of state institutions; it also exposes the state's hand in producing its own workforce. Nevertheless, as cultural brokers and interpreters, First Nations employees could mitigate the atmosphere of coercion and confinement that characterized the hospitals.

Blunt and unequivocal in his 1946 announcement, the minister of health rationalized the IHS and its hospitals as a humanitarian measure to protect the Canadian public. Aboriginal peoples' interests were subsumed in the medical bureaucracy's slippery understanding of humanitarianism. Constructed as objects of Ottawa's benevolence, Aboriginal people had little say in their own health care. Meanwhile, their bodies were readily exploited for research and teaching. As for postwar Canadians, Indian hospitals seemed to confirm that theirs was a vigilant yet compassionate state. As promises of a comprehensive welfare state quickly faded, Canadians could be assured that the most vulnerable were not forgotten. As the minister promised, the IHS established Indian hospitals in redundant military facilities and renovated residential schools. Meanwhile, the same bureaucracy's National Health Grants funded an unprecedented increase in hospital construction and expansion, adding thirty new institutions each year in the decade after 1948 and increasing the number of hospital beds by two-thirds. Indian hospitals had the added benefit of assuring Canadians that their new community hospitals would remain white, at least initially.

The logic of Indian hospitals for the 1940s combined enlightened self-interest, the rising social and political authority of medicine, and broad anxieties about the "Indian problem." But the 1960s saw profound transformations in national health. Massive investments in hospital infrastructure led to escalating operating costs, which yielded the national hospital insurance program and, with much political wrangling, health insurance in 1968. With the federal government sharing costs with the provinces, the seemingly redundant Indian hospitals could be "quietly closed." Responsibility for Aboriginal health care (and welfare) now shifted to the provinces. But the jurisdictional disputes that accompanied Medicare exposed Aboriginal people to the excesses of aggrieved provincial administrations and local hospital boards, which dismissed them as interlopers and less worthy of care. More ominous still was the understanding that Medicare would enable the federal government to fulfil its assimilationist goal and abandon its legal and treaty obligations.

Medicare's threat – or promise – to accomplish that aim was most clearly articulated in the protracted struggle over the North Battleford Indian Hospital. That bitter dispute exposed an obdurate and calculating bureaucracy that relentlessly undercut First Nations' efforts to address the links between ill health and the poverty that led to it. The effort to sever the legal and treaty relationship through the "equality"

of Medicare continued for more than a decade after the White Paper's withdrawal, despite clear evidence that curative medical services had little impact on community health status. Medicare, not the medicine chest, would determine the state's role in health care.

To most Canadians, then as now, this was as it should be. The liberal democratic principles of individual political and legal equality imbued both the White Paper and Medicare. But Prime Minister Trudeau, who eventually admitted it was shortsighted, abandoned the White Paper within the year, saying, "we had perhaps the prejudices of small 'l' liberals and white men at that who thought that equality meant the same law for everybody."¹ Yet, shifting policies in the 1960s for hospital and health care insurance, and their implications for collective rights based on treaties and self-government, were not easily assailed. In the 1960s the court rejected First Nations attempts to assert a treaty right to health care, while the IHS bureaucracy directed them to discuss treaty issues with Indian Affairs. Nevertheless, dividing the authority between Indian Affairs, which was responsible for matters such as water quality, sanitation, and housing, and Health and Welfare, in charge of health services, did little to alleviate public health problems. Medicare threatened to exacerbate the problem by cutting the links between the roots of illness and health care services, not to mention the treaty relationship itself. Amid the socially and politically disruptive demands from Aboriginal people and Quebecers in the 1960s for collective rather than individual rights, the seemingly apolitical Medicare program bestowed a veneer of national unity that may account for its iconic status.² A cherished social program for a Canada that embraced liberal notions of social and political equality as the basis for good health, Medicare damaged the aspirations of many First Nations. Canadians remain eminently satisfied with Medicare, proudly proclaiming its values of equity, fairness, and solidarity as "intimately tied to their understanding of citizenship."³ But Aboriginal citizenship was always incomplete and contingent. Denied the most basic right of the franchise before 1960, First Nations faced serial projects aimed at terminating their rights after. Medicare bestowed its benefits unevenly: "Aboriginal status" remains one of the key social determinants of health that includes other primary factors such as income, education, housing, and employment.⁴

The 1979 Indian Health Policy continues as the federal government's guiding statement on health care. Drafted in response to the determined resistance by First Nations to the state's continued attempts to shift responsibilities to the provinces, the policy pledged to preserve

the federal government's "special relationship" with Aboriginal people. It employs the language of self-determination in its laudable goal "to achieve an increasing level of health in Indian communities, generated and maintained by the Indian communities themselves."⁵ With a stronger federal commitment, the broken-down Indian hospitals, once powerful symbols in the long struggle for effective health care, were replaced by health clinics to provide primary care in communities. To address the problem of chronically understaffed hospitals in northern regions, IHS partnered with university medical schools to provide qualified personnel, who in turn benefited from the expanded opportunities for teaching and research. Nevertheless, significant disparities in health status persist between Aboriginal and non-Aboriginal Canadians. As T. Kue Young concluded in his study of the Anishinaabe of north-western Ontario and the Sioux Lookout Indian Hospital, real change in health status required resources dedicated to community authority and control of health care, not highly specialized medical services.⁶ In 1988, as Young's book went to press, five men from Sandy Lake First Nation went on a hunger strike at the Indian hospital to draw attention to years of worsening health care and deteriorating relations between First Nations communities and the Department of Health and Welfare.⁷

A decade after its inception, the broader promise of the 1979 Indian Health Policy, to address health care in communities, was abandoned for an exclusive focus on federal transfers to First Nations for some aspects of health care delivery. As minister of health Jake Epp told the Assembly of First Nations health transfer conference in 1987, "We, in Health and Welfare, and many others in the health field, are convinced that the future health of the Indian people rests in your hands, not in ours ... God bless you all." Author Dara Culhane Speck wondered if the minister's statement was a threat or a promise.⁸ Critics suggested that the transfer policy merely offloaded the responsibility for health care to communities without actually sharing any power to develop or control programs. Was health transfer another "hidden agenda" of termination like the White Paper? The Assembly of First Nations argued that until First Nations had actual control over resources and economic development, communities would simply be "administering their own misery."⁹ The policy's "non-enrichment" clause froze funding at levels in place at the time of transfer, with no provision for on-reserve population increases or shifting community needs. Other critics noted that the transfer program failed to address the wider social, economic, and environmental sources of ill health, while reinforcing a medical model

of health that maintained colonial relations of power over Aboriginal people.¹⁰ Tellingly, non-insured health benefits were excluded from the transfer program, which led to suspicions that the benefits might be withdrawn, and they would certainly be administered by government criteria.¹¹ A recent study concluded that the transfer policy was less concerned with self-determination than with cutting costs; it does little more than meet the Indian Act's original commitment to health – to control the spread of disease and provide sanitary conditions.¹²

In its brief to the Royal Commission on Aboriginal Peoples roundtable on health issues in 1993, the Federation of Saskatchewan Indian Nations (FSIN) asked how the transfer policy would affect the treaty right to health care. If First Nations assumed the government's authority for health care, did that mean that treaty groups had absolved the state of its treaty responsibility? The FSIN brief, presented by Alma Favel-King in her capacity as the Executive Director of Health and Social Development portfolio, reflected the concerns of all treaty communities to define and protect the right to health care. But Favel-King had also been involved in the bitter twenty-year-long struggle over closing the North Battleford Indian Hospital two decades earlier. Better than most, she understood how health care policy was beholden to political caprice and bureaucratic interference. Echoing Chief Swimmer, the activist community had then argued the government's eyes "needed to be opened" to the clear link between ill health and IHS's arbitrary management of care. Although the Constitution Act (1982) reaffirmed existing treaty and Aboriginal rights, the interpretation of the treaty right to health care continues to be contested. As Favel-King told the Royal Commission, with the Aboriginal right to self-government and treaty rights clearly defined, together with adequate resources, First Nations could plan housing, sanitation, training, and community development to deal with ill health, family violence, and addictions, "in fact, all issues with a direct impact on the health status of First Nations people."¹³ Until health policy was built on those acknowledged rights, she argued, health care remained vulnerable to the shifting political winds.¹⁴

It is only in the new century that "separate beds" has come to connote community management and control of some health care programs. With a fairly clear understanding of the health transfer's limitations, communities have embraced the opportunity for self-empowerment by managing nursing services, community health and addictions programs, prenatal nutrition, and mental health care.¹⁵ In 2004, as part of

the transfer process, the Touchwood and File Hills Qu'Appelle Tribal Councils took control of the sixty-eight-year-old Fort Qu'Appelle Indian Hospital and replaced it with the All Nations Healing Hospital, across the railroad tracks on Treaty Four reserve lands. The facility provides acute health care, community health programs, Indigenous ceremonies, and clinical counselling services in a holistic approach to health care to the whole community. The 1988 hunger strike at the Sioux Lookout Indian Hospital ended after the federal government agreed to permit the community to determine their own health needs and assert some control of the health delivery system.¹⁶ After years of planning, the four parties – First Nations, federal, provincial, and municipal governments – agreed to amalgamate the resources of the Indian and provincial hospitals. In 2010 the sixty-bed Sioux Lookout Meno Ya Win Health Centre opened for First Nations and non-Aboriginal residents, offering acute and long-term care, mental health and addiction services, as well as community-based and Indigenous healing services.¹⁷ Unlike earlier attempts, this “integration” has been accomplished, at least to some extent, on First Nations’ terms. The inclusion of Indigenous healing with biomedical services reminds us of fundamentally different, though not incompatible, definitions of health and healing.

The history of Indian hospitals and health care policy since the 1920s reveals the limits of Canada’s liberal democracy. Colonized in the interests of nineteenth-century state formation, Aboriginal people were marginalized in the construction of the welfare state. Lines of segregation and isolation, tended by the power of the state, and rationalized in the language of medical humanitarianism, did not negate Canada’s liberal democratic values. In fact they were integral to the formation of national health as normal white citizenship. More than a half-century of contradictory and arbitrary policies that served the interests of the non-Aboriginal population left a destructive legacy in Aboriginal communities and beyond. Health disparities – constructed not found – have come to be seen as normal or inevitable. It is a measure of the strength and resolve of Aboriginal communities that the federal government finally was compelled to acknowledge its commitments to health care. It is with similar resolve that communities embark on, or more properly return to, the management of their health care. Whether the health transfer truly represents a new departure that will translate into better health or if the rhetoric of self-government masks yet another attempt to offload responsibility for health care remains an open question.

EXHIBIT I-24

“Inuit and the Past Tuberculosis Epidemic” – CIRNAC (2019)



Inuit and the past tuberculosis epidemic

Tuberculosis is preventable and curable now thanks to advances in medicine, but it was not always so.

The contagious and potentially deadly lung disease reached epidemic proportions in Canada in the early 20th century and peaked among Inuit between the 1940s to the 1960s.

High incidence

The epidemic was not confined to Inuit, but Inuit were greatly affected due to the high incidence of tuberculosis, and the lengthy separation of patients from their families, and not receiving information on the fate of their loved one.

During the 1950s, at least one-third of the Inuit population was infected with tuberculosis.

Due in part to a lack of medical facilities in the north at the time, many Inuit were sent away from their home communities to medical facilities across Canada to receive treatment, under the administration of the federal government.

Long stays, limited treatments

Patients stayed in hospitals and sanatoria for an average of two-and-a-half years, but some stayed much longer.

Lengthy patient stays were the result of limited treatment options. Before the invention of antibiotics in the late 1950s, doctors had to rely on the "rest cure." This involved surgery to collapse a lung to allow it to heal. Travelling by boat was also the most common means of transportation for Inuit, so the duration stay was also impacted by the limited window of opportunity to travel back home during the thaw period in summer months.

Management of records

Geographic remoteness, different modes of transportation to treatment facilities, limited communication methods, and language barriers often combined to make the management of information about Inuit patients inconsistent and lacking rigour.

Many Inuit patients were treated and returned home, however, many others died and were laid to rest near treatment facilities. To this day, many Inuit are still searching for information, including the whereabouts of their family member's grave. Others do not know the complete history of what happened to their family members during treatment.

Federal responsibility for Inuit health was not confined to a single department. Because of this decentralized approach, information about a patient's health status, if they had died and details of their burial were not always communicated back to their family.

Ongoing trauma and repercussions

The difficulty Inuit had in learning the whereabouts and status of their family members has led to a mistrust of medical treatment and the health care system that has had intergenerational impacts, affecting the overall health in Inuit communities today. The trauma of the past tuberculosis era remains with many Inuit, who have vivid memories of going away for treatment or of a loved one being taken for x-rays and never coming back.

Date modified: 2019-03-15

EXHIBIT I-25

Vol. 6 of the Truth and Reconciliation Commission of Canada, Final Report

Canada's Residential Schools:
Reconciliation

The Final Report of the
Truth and Reconciliation
Commission of Canada

Volume 6



Truth and
Reconciliation
Commission of Canada

CHAPTER 2

Indigenous law: Truth, reconciliation, and access to justice

All Canadians need to understand the difference between Indigenous law and Aboriginal law. Long before Europeans came to North America, Indigenous peoples, like all societies, had political systems and laws that governed behaviour within their own communities and their relationships with other nations. Indigenous law is diverse; each Indigenous nation across the country has its own laws and legal traditions. Aboriginal law is the body of law that exists within the Canadian legal system. The Supreme Court of Canada has recognized the pre-existence and ongoing validity of Indigenous law.¹ Legal scholar John Borrows explains that,

The recognition of Indigenous legal traditions alongside other legal orders has historic precedent in this land. Prior to the arrival of Europeans and explorers from other continents, a vibrant legal pluralism sometimes developed amongst First Nations. Treaties, intermarriages, contracts of trade and commerce, and mutual recognition were legal arrangements that contributed to long periods of peace and helped to restrain recourse to war when conflict broke out. When Europeans came to North America, they found themselves in this complex socio-legal landscape....

There were wider systems of diplomacy in use to maintain peace through councils and elaborate protocols. For example, First Nations and powerful individuals would participate in such activities as smoking the peace pipe, feasting, holding a Potlatch, exchanging ceremonial objects, and engaging in long orations, discussions and negotiations. Diplomatic traditions among Indigenous peoples were designed to prevent more direct confrontation....

Treaties are a form of agreement that can be very productive as a method for securing peace....

Peace was also pursued through intersocietal activities between First Nations to bridge division and discord. These less formalized paths to peace should not be underestimated; they contain lessons about how to effectively overcome problems today.²

If Canada is to transform its relationship with Aboriginal peoples, Canadians must understand and respect First Nations, Inuit, and Métis peoples own concepts of reconciliation. Many of these concepts are found in Indigenous law.

In undertaking this journey, it must be recognized that understanding and applying these concepts can be hard work. As with the common law and civil law systems, Indigenous law is learned through a lifetime of work. Applying Indigenous law also requires an acknowledgement that it exists in the real world and has relevance today. It is most helpful when applied to humankind's most troubling behaviours.

One of the most damaging consequences of residential schools has been that so many Survivors, their families, and whole communities have lost the connection to their own cultures, languages, and laws. The opportunity to learn, understand, and practise the laws of their ancestors as part of their heritage and birthright was taken away. Yet despite years of oppression, this knowledge did not disappear; many Elders and Knowledge Keepers have continued to carry and protect the laws of their peoples to the present day.

At the Truth and Reconciliation Commission's (TRC) Traditional Knowledge Keepers Forum, Blackfoot Elder Reg Crowshoe said,

When I was younger, in my community my grandmother brought me to the societies ... I believed [that] everything was equal—plants, animals, the air, the moon, the sun, everything was equal. That was the belief system that we had in our culture. Out of that belief system, we developed practices, practices where we sat in circles in a learning society ... And once you join the society, you become part of that learning society and your responsibility [was] to be a part of [the] practices that allowed you to survive, which includes reconciliation and forgiveness ...

When we look at our oral cultures and we look at who we are and the environment, the geographic territory we've come from, we are given all kinds of challenges every day. How do we access our theories? How do we access our stories? How do we access our Elders? Where do we pay our fees and what are our protocols? So we are looking at finding those true meanings of reconciliation and forgiveness. We need to be aware or re-taught how to access those stories of our Elders, not only stories but songs, practices that give us those rights and privileges to access those stories ... So when we are looking at [the] concept of reconciliation, there's a lot to learn ...

The Elders say that we live in a geographic location in Southern Alberta as Blackfoot. Our authorities come from our ties to that land, the songs that come from that land, that's where our authorities come. Other First Nations have their geographic location, their ties to that land. So when I go into some other territory, I honour and respect that territory and use their songs. I have songs for rocks that allow me the rights and privileges to use rocks for a sweat, for example, but when I go into another territory, I have to depend on that territory's songs that allows

them to use their rocks for healing, I have to respect that, and for hundreds of years we respected each other and we visited each other. I encourage all the First Nations to go back to their theories, go back to their stories, go back to their Elders, go back to your protocols, and find the solutions because we need them today.³

There are many sources of Indigenous law that hold great insight for reconciliation. The further understanding and development of Indigenous law promise to reveal treasured resources for decision making, regulation, and dispute resolution. Legal scholar Val Napoleon explains,

Indigenous law is a crucial resource for Indigenous peoples. It is integrally connected with how we imagine and manage ourselves both collectively and individually. In other words, law and all it entails is a fundamental aspect of being collectively and individually self-determining as peoples. Indigenous law is about building citizenship, responsibility and governance, challenging internal and external oppressions, safety and protection, lands and resources, and external political relations with other Indigenous peoples and the state.⁴

First Nations, Inuit, and Métis communities across the country are making concerted efforts to recover and revitalize their laws and legal traditions. They must be supported in these efforts.

Canadian law and Aboriginal peoples: Uncovering truth

Law is essential to finding truth. It is a necessary part of realizing reconciliation. This is because law liberates the flow of information that might otherwise be blocked. Without this transparency, truth can fall victim to manipulation, suppression, and concealment. Without healthy legal processes, facts can be hidden from public view when people are charged with wrongdoing. Law provides public spaces for testing truth. It does so through oath-bound testimonies and disclosures concerning contested events. Law is also a tool for pursuing reconciliation. Whenever disputes arise, law facilitates dialogue through the hearing, consideration, incorporation, rejection, or adoption of different points of view. Law encourages listening and deliberation. It is designed to accomplish these goals while judging issues by broader standards aimed at societal peace.

Until recently, Canadian law was used by Canada to suppress truth and deter reconciliation. Parliament's creation of assimilative laws and regulations facilitated the oppression of Aboriginal cultures and enabled the Indian residential school system. In addition, Canada's laws and associated legal principles fostered an atmosphere of secrecy and concealment. When children were abused in residential schools, the law, and the ways that it was enforced (or not), became a shield behind which churches,

EXHIBIT I-29

Canadian Archaeological Association *Principles of Ethical Conduct (2022)*



Principles of Ethical Conduct

You are here: [Home](#) [About the CAA](#) [Ethics](#)

Preamble

The Canadian Archaeological Association (CAA) is committed to the promotion, protection, and conservation of archaeological heritage in Canada, as well as the advancement and dissemination of archaeological knowledge. The CAA and its members recognize the diverse interests, voices, and perspectives that inform archaeological interpretation, knowledge building, and the dissemination of information. In this document we respect and encourage the use of terminology as determined appropriate by the Indigenous community or communities. The archaeological record in Canada is predominantly that of Indigenous peoples. In this document, the term Indigenous peoples is used in reference to First Nations, Métis, and Inuit as recognized in s. 35 of the Canadian Constitution. We acknowledge the depth and breadth of the archaeological record and its far-reaching significance for Indigenous peoples and descendant populations. Accordingly, members of the CAA will conduct their activities according to the ethics and standards of scholarly practice, with a commitment to safety and non-discrimination, and will recognize the interests of those who may be socially, spiritually, or materially impacted by their work. We also recognize that heritage legislation across Canada remains deeply colonial. While all archaeologists should strive to comply with the spirit of the ethical principles, the CAA acknowledges that there are tensions between supporting Indigenous self-determination and complying with current heritage legislation and regulatory frameworks. We encourage all members to advocate for and work towards bringing existing legislation in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Members of the Association agree to abide by the following principles:

Professional Responsibilities

Archaeological sites and remains are finite, fragile, non-renewable and unique. Before undertaking responsibility for any excavation that impacts an archaeological site or remains, members of the CAA must:

- Keep up to date on developments in archaeological methods;
- Possess adequate training, support, resources and facilities to undertake excavation and analysis;
- Present the results of archaeological investigation in a timely and accessible manner;
- Preserve all documentation about archaeological investigation in a public archive with appropriate protocols for access;
- Comply with local protocols of Indigenous peoples in or outside of Canada;
- Comply with all appropriate archaeological legislation and international conventions regarding archaeological heritage;
- Respect colleagues and collaborators and cooperate with them in a collegial manner that fosters positive work environments and benefits research goals, professional development and partnerships;
- Recognize that documentation of any archaeological investigation should, within a reasonable period of time, become available to others with legitimate research interests;

Indigenous Rights and Reconciliation in Canada

Recognizing that when European settlers first arrived, First Nations and Inuit had established homelands that were thousands of years old and their activities created a major portion of the archaeological record in Canada, and recognizing that archaeology as a discipline has historically excluded and continues to exclude Indigenous peoples, the CAA is committed to working towards reconciliation.

CAA members will:

Indigenous Interests:



- Support, through their actions and recommendations, Indigenous peoples' right to maintain, control, protect, and develop their cultural heritage.
- Engage with Indigenous peoples and communities and make every reasonable effort to obtain free, prior, and informed consent from relevant Indigenous peoples prior to conducting archaeological investigation of Indigenous cultural sites and material remains.
- Respect, understand, and be mindful that archaeological evidence is a critical factor in the legal recognition and implementation of Indigenous rights and title;
- Acknowledge that Indigenous peoples have an inherent and unique relationship with their archaeological heritage;
- Respect Indigenous approaches to protection, conservation, and interpretation of that heritage;
- Make every effort to engage, cooperate, collaborate and/or partner with the relevant Indigenous peoples and communities on any archaeological work involving Indigenous archaeological sites, or sites that include an Indigenous component, including historic sites;
- Learn and respect the cultural protocols of Indigenous peoples and communities relating to the conduct of archaeological activities dealing with Indigenous culture and/or on Indigenous lands;
- Encourage all levels of government to engage with Indigenous peoples and communities to amend policies and legislation so that Indigenous rights to control and protect their archaeological/material heritage are consistent with the principles of the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission of Canada Calls to Action;

Collaborations and Strengthening Capacities:

- Encourage mutually beneficial partnerships with Indigenous peoples, communities, and organizations to undertake archaeological research, management, and education, based on respect and mutual sharing of knowledge and expertise;
- Work to co-develop protocols for archaeological projects or work;
- Provide opportunities for education and training whenever possible for all archaeological staff in their employ on Indigenous rights, history, and treaties, and the legacy of residential schools;
- Invite Indigenous people to participate on archaeological projects and make every reasonable effort to hire and train Indigenous people to conduct not only archaeological fieldwork, but also labwork analysis, interpretation of archaeological data, and writing of reports;
- Support formal training programs in archaeology for Indigenous people;

Cultural Places and Traditional Knowledges:

- Respect Indigenous, provincial, territorial, and federal standards, principles, protocols, and/or laws and regulations governing the investigation, removal, curation, and repatriation of Indigenous ancestors' remains and associated objects;
- Recognize that the traditional knowledge of Indigenous peoples is an important way of understanding the past;
- Recognize and respect the unique relationships, including spiritual ones, that exist between Indigenous peoples and special places and features on the landscape;
- Always treat Indigenous sacred sites, places, and objects with respect and caution, and avoid as much as possible the use of methods and techniques that could alter or damage such sites, places, and objects;
- Recognize the importance of repatriation of archaeological collections for Indigenous peoples and descendant populations, and assist with repatriation requests;

Communication and Interpretation:

- Respect the value of oral history and traditional knowledge in the interpretation and presentation of the past;
- Communicate the results of archaeological investigations to Indigenous peoples and organizations in a timely and accessible manner; and
- Respectfully balance the perspectives and interpretations that Indigenous peoples have about the past with those of archaeologists.

Stewardship:

We expect that the members of the CAA will exercise respect for archaeological remains and for those who share an interest in this irreplaceable material culture now and in the future. The archaeological record includes in-situ archaeological materials and sites, data, documents and records of investigation, artifact collections, and reports. Stewardship involves caring for and promoting the conservation of the archaeological record and collaborating with Indigenous peoples, descendant populations, and non-Indigenous community members and other stakeholders whenever possible, to make decisions about how to care for and interpret material culture. As stewards, archaeologists do not own the archaeological record

they excavate or study, particularly in the case of human remains and associated objects. CAA members acknowledge that:

- Access to knowledge from the past is an essential part of the heritage of all Canadians, but particularly those who have a historical or cultural connection to it;
- Equitable stewardship of archaeological heritage is a critical aspect of redressing the historical exclusion of peoples and their descendants from understandings and ownership of the past;
- Human remains are to be cared for and protected by Indigenous peoples and Canadians and should be treated with respect and dignity and studied in collaboration with the descendant population;
- Conservation is paramount and where conservation is not an option, excavations should be no more invasive/destructive than determined to mitigate circumstances or comprehensive research goals;
- Permit holders/Project directors/Principal investigators must ensure accurate documentation of all archaeological findings and timely reporting of the results of any archaeological investigation; and
- The CAA opposes the commodification of archaeological sites and artifacts through selling and trading, even in the absence of statutes.

Equity, Diversity, Inclusion and Safety

Members of the CAA recognize their responsibilities to keep their work spaces free of discrimination and harassment and to promote equity, diversity and inclusivity in our practice. CAA members will adhere to the [CAA Anti-harassment Policy and Procedures](#).

CAA members recognize that:

- Students and early career archaeologists can be particularly vulnerable to various forms of harassment in field and other contexts; and
- Individuals may face barriers and discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, disability or pardoned conviction, which can impact their ability to participate in archaeology.

CAA members will actively work to:

- Ensure the safety and security of all who participate in archaeological activities;
- Remove or mitigate systemic barriers to encourage more diverse participation in the discipline; and
- Promote archaeology as a profession to under-represented groups in order to diversify the discipline.

Public Education and Outreach

A fundamental commitment to stewardship is the sharing of knowledge about archaeological topics to a broader public and to enlist public support for stewardship. Members of the CAA are encouraged to:

- Communicate the results of archaeological work to a broad audience through various media;
- Encourage the public to support and participate in archaeological stewardship;
- Engage with organizations and individuals who participate in avocational archaeology;
- Actively cooperate with Indigenous people in the stewardship of their material culture;
- Promote public interest in and knowledge of archaeology in Canada;
- Explain appropriate archaeological methods and techniques to interested people;
- Promote archaeology through education;
- Support and be accessible to local archaeological and other heritage groups;
- Promote and integrate reconciliation and social justice into their communications.

EXHIBIT I-30

Canadian Archaeological Association *Statement of Principles for Ethical Conduct Pertaining to Aboriginal Peoples (2022)*



Statement of Principles for Ethical Conduct Pertaining to Aboriginal Peoples

You are here: [Home](#)

Preamble

The objectives of the Canadian Archaeological Association include the promotion, protection and conservation of the archaeological heritage of Canada, and the dissemination of archaeological knowledge. Canadian archaeologists conduct their activities according to the principles of scholarly practice and recognize the interests of groups affected by their research. Whereas the heritage of First Nations Peoples constitutes the greater part of the Canadian archaeological record, this document presents a Statement of Principles that guides members of the Association in their relationships with Aboriginal peoples.

Principles

Members of the CAA/ACA agree to abide by the following principles:

I Consultation:

1. To recognize the cultural and spiritual links between Aboriginal peoples and the archaeological record.
2. To acknowledge that Aboriginal people have a fundamental interest in the protection and management of the archaeological record, its interpretation and presentation.
3. To recognize and respect the role of Aboriginal communities in matters relating to their heritage.
4. To negotiate and respect protocols, developed in consultation with Aboriginal communities, relating to the conduct of archaeological activities dealing with Aboriginal culture.

II Aboriginal Involvement:

1. To encourage partnerships with Aboriginal communities in archaeological research, management and education, based on respect and mutual sharing of knowledge and expertise.
2. To support formal training programs in archaeology for Aboriginal people.
3. To support the recruitment of Aboriginal people as professional archaeologists.

III Sacred Sites and Places:

1. To recognize and respect the spiritual bond that exists between Aboriginal peoples and special places and features on the landscape.
2. To acknowledge the cultural significance of human remains and associated objects to Aboriginal peoples.
3. To respect protocols governing the investigation, removal, curation and reburial of human remains and associated objects.

IV Communication and Interpretation:

1. To respect the cultural significance of oral history and traditional knowledge in the interpretation and presentation of the archaeological record of Aboriginal peoples.
2. To communicate the results of archaeological investigations to Aboriginal communities in a timely and accessible manner.

EXHIBIT I-31

Canadian Archaeological Association *Recommended Pathway for Locating Unmarked Graves (Oct 15, 2021)*



Recommended Pathway for Locating Unmarked Graves Around Residential Schools

The Canadian Archaeological Association (President, Dr. Lisa Hodgetts) has struck a working group on unmarked graves (Chair, Dr. Kisha Supernant, Métis). We have posted preliminary technical guidance for communities on the CAA website ([Resources for Indigenous Communities Considering Investigating Unmarked Graves | Canadian Archaeological Association / Association canadienne d'archéologie \(canadianarchaeology.com\)](#)). We plan to develop further guidance, including information on technical issues for using remote sensing to locate graves.

This document can be used as a guide to develop a Scope of Work that focuses on the application of remote sensing to locate unmarked graves associated with Indian Residential Schools (IRS) and at related institutions. It provides recommendations to consider, focusing on remote sensing, including ground penetrating radar (GPR). It is not a template for deliverables or costing, but rather a guide to a series of steps for this complex task. We recommend further guides be developed for each step in the search for unmarked graves in residential school contexts. Any inquiry into missing children in residential school landscapes should begin with the Truth and Reconciliation Commission (TRC) of Canada's final report, especially Volume 4 and Calls to Action 71-76.

We recommend several key foundational principles in the search for unmarked graves of missing children:

- Any work to locate missing Indigenous children must be led by Indigenous communities. Indigenous communities should be supported to build capacity to do the work themselves without having to rely on outside experts.
- Remote sensing is not necessary to know the truth of the existence of unmarked graves of missing children in Canada and at specific residential school locations. Remote sensing methods can sometimes be used to show specific locations of those unmarked graves. Remote sensing cannot locate all children who died at or went missing from residential schools.
- Remote sensing should not be the first step in any effort to locate missing children. Several steps should be undertaken first, and each step requires specific skills. It is unlikely that any individual or entity would be able to undertake all the steps.
- Remote sensing cannot provide 100% assurance of the presence or absence of a specific grave. It can provide a range of confidence in grave identification depending on the context. Most remote sensing of graves has been undertaken

in formal cemetery contexts but locating unmarked graves of children may be complicated by different types of burials and their smaller size. Further refinement of remote sensing techniques is needed to improve the application of these techniques to less formal burials. The CAA Working Group is developing technical guidance on these issues.

Recommended Components

The following is a set of steps that we suggest communities consider if they wish to use remote sensing to search for unmarked graves of missing children. The selection of any step is optional and the order of steps is up to each community. For example, memorialization could happen at any stage. At every stage, decisions to proceed with further work rest solely with the Indigenous communities involved. This document does not replace the need for contracts/agreements with deliverables, costs, research design, training, and data sharing agreements to be established. For communities wondering where to start, the Institute of Prairie and Indigenous Archaeology has suggestions [here](#).

1. Community-based Work

The effort to locate missing children must be Indigenous-led and must follow the permissions and protocols of Indigenous communities. We have identified the following essential considerations:

- Outreach, permissions, introductions, ceremonies, and protocols should be adhered to. The TRC recommends that the community most impacted by a residential school should take the lead, and all communities with children who died or went missing from each school be involved in decision making.
- Training for community members to understand remote sensing techniques is important. Some communities may wish to develop training so that community members can conduct remote sensing surveys.
- Training for survey teams in community protocols is necessary.
- Data agreements and data management principles should be agreed upon.
- A scope of work contract or agreement specific to each community should be developed, disseminated, and agreed upon with Indigenous leadership and survivors from that community. Such agreements should follow [OCAP principles](#).

2. Survivor Wellbeing Supports

Efforts to locate missing children are likely to re-traumatize residential school survivors, their families, and communities. Necessary support must be in place in advance of such work.

- Spiritual, emotional, mental health, and physical support for individual well-being should be in place.
- Community ceremony/healing practices should be recognized and funded.
- Preparatory, continuing and ongoing (after the event) support for community and survey teams will likely be needed.

3. Archival Research

Considerable information on the location of missing children exists in archival records including those held by communities, by the NCTR, and by governments and churches. Communities are encouraged to seek archival data from all relevant sources. Some organizations that hold relevant information have not released it to communities seeking to locate their missing children and it is important that they do so immediately. Archival research is a complex endeavor. The National Center for Truth and Reconciliation (NCTR) is developing a more detailed guide to this work. Collection and analysis of archival documents, including school records.

- Collection of building plans/archival maps.
- Development of secure and accessible archives following [OCAP principles](#).
- Implementation of long-term storage plans for archival data and for any emergent data.

4. Community/Survivor Knowledge

Survivors have knowledge of the location of missing children. Recalling this information can be deeply traumatizing. Where survivors are willing to provide further testimony, supports and recording protocols, such as developed by the TRC, must be implemented.

- Identifying the location of missing children through survivor testimony.
- Provide survivors and their families with necessary supports.
- Develop and implement appropriate recording protocols.

The Institute of Prairie and Indigenous Archaeology has produced a useful [guide for collecting oral histories](#).

5. Spatial/Local Database Development

The location of missing children includes the compilation and analysis of spatial data. A secure and formal system of archiving and analysing both quantitative (e.g. documents and maps) and qualitative (e.g. survivor testimony) evidence must be developed. Such work is commonly done using a Geographical Information System (GIS) platform.

- Development of a culturally-appropriate spatial archive and analytical platform such as a GIS.
- Compilation of archival and survivor knowledge into a spatial frame.
- Assessment of landscapes for likely locations of missing children.

6. Area Mapping

Investigation of the landscapes within which missing children might be buried is complicated. Many areas have changed through time, so information about the history of land use, geology, and development is needed.

- Compilation of geological conditions that influence the location of missing children and can impact remote sensing methods.
- Compilation of recorded impacts such as construction, prior archaeological work, and other landscape modifications.
- Creation of a detailed surface topographic base map of the residential school landscape. We recommend the use of UAV (drone) LiDAR as a valuable method to create a digital elevation model (DEM) of the current landscape. Burial locations can include surface contour patterns that are visible in high resolution DEMs.

- Walkover survey by the entire research team, including survivors if they wish, to approach the land in a culturally respectful manner, gain familiarity with the physical landscape and the former layout of buildings and other features, and work with communities to select priority locations for remote sensing.
- Location preparation including removal of obstacles, and clearing of vegetation in areas identified for remote sensing investigation, being careful to not remove evidence of old grave markers that might remain hidden in the vegetation.

7. Subsurface Remote Sensing Fieldwork

Ground-penetrating radar (GPR) is well-established as a reliable method for the identification of burials in cemeteries. Other applicable methods include magnetic and electrical resistance tools, although these have been used less frequently. Remote sensing approaches typically proceed in two steps: 1) prospection (the initial assessment using a wide-area approach to identify potential areas of interest) and 2) investigation (detailed study of high potential areas, usually via rectangular grids). Local ceremonial protocols should be observed when conducting any such work.

- Subsurface methods
 - Ground-penetrating radar (GPR) uses reflected and refracted electromagnetic waves (radar waves) to map subsurface sediment patterns or buried objects. GPR allows for the identification of these patterns by size, shape and depth. When applied to a burial context, GPR typically identifies the grave shaft rather than its contents.
 - Magnetic techniques identify objects with magnetic signatures, e.g. heated materials, metal objects such as coffin hardware, slight changes in grave shaft composition, headstones, and other burial practices. Depth is difficult to map using these methods.
 - Resistivity can also identify the size and depth of potential graves based on the pattern and intensity of electrical signals passing through the ground.
- Each method captures different kinds of geophysical information, employs different forms of data collection and relies on established data collection and recording parameters.
- Each method also requires post-collection data processing, to identify anomalous signals.
- The interpretation of anomalous signals as having a particular cause, such as a burial, requires reference to established logic and interpretive models based on previous research. Such interpretative tools exist for formal cemeteries and are in development for informal areas such as clandestine burials.
- Multiple remote sensing approaches can work together to provide better guidance for the location of burials. Results from each technique can be compared to each other and to additional lines of evidence within a spatial archive, such as a GIS, to provide the most comprehensive assessment of the location of unmarked graves.

8. Communication of Results

Communication of results of remote sensing typically proceeds through formal presentation of results in a final written report to communities. Given the complex nature

of the task of locating missing children, we suggest caution in the release of preliminary findings of remote sensing work.

- Final report submission should take place at the completion of all field work in a specific location. Reports should include a summary of preparatory work, prior evidence, survey design, data collection parameters, an assessment of the relevant characteristics of the landscape, interpretive logic, taxonomy of identified anomalies, evaluation of confidence, and a complete inventory of all anomalies. Reports should include maps of the locations of anomalies, but communities might wish to keep this information confidential. Reports should be written in accessible language.
- This should include a presentation to the community of the final report results in accessible language.

9. Memorialization

The location of missing Indigenous children who died as a result of Canada's Indian Residential School system should be appropriately memorialized as defined in the TRC's final report and as decided by the communities whose children may be buried in these locations.

Optional Additional Steps

10. Possible Excavation and Forensic Work

Some communities will wish to confirm the identification of burials using excavation. Some will also wish to exhume missing children for identification and appropriate reburial. Some communities will not wish to take such steps. Moving forward with excavation and/or exhumation can be a difficult process. Children at each school were taken from multiple communities, and not all of those communities may wish to proceed in the same way. It is not possible to determine who is in an unmarked grave and therefore which community they are associated with, without further examination, including but not limited to DNA analysis.

Further, the excavation and recovery of human remains requires consideration of both heritage and medico-legal legislation and policy by province or territory. In most cases, a forensic anthropologist (an anthropologist with specialized training) is required as there are potential legal implications in such work. Forensic anthropological work and the analysis of the skeletal remains of individuals is a complex endeavor. The Canadian Association of Physical Anthropologists (CAPA) has developed a [resource guide](#) explaining important considerations for this stage of work and the kinds of questions that can be answered through different methods.

Possible options for communities to consider include:

- Confirmation of potential unmarked graves found using remote sensing may be possible using near-surface excavation to locate the grave shaft but not the ancestral remains. The individual is not seen or removed, the soil is returned to the area and the grave confirmed on the associated map.
- Exhumation of individuals to permit forensic anthropological analysis. Such work can have implications in criminal investigations and must follow relevant provincial/territorial policy.

- If individuals can be identified, either through a grave marker or DNA analysis, it may be possible to return missing children to their home communities for reburial in a culturally appropriate manner.

EXHIBIT I-32

Announcement – Alliance to Support Indian Residential School Missing Children Investigations (Dec. 12, 2021)

NEW ALLIANCE SUPPORTS INDIGENOUS COMMUNITIES IN INDIAN RESIDENTIAL SCHOOL
MISSING CHILDREN INVESTIGATIONS

December 12, 2021

We are a group of scholarly associations and organizations whose members have expertise and experience relevant to the search for children who died and went missing while attending Indian Residential Schools: the [Indigenous Heritage Circle](#), the [Canadian Historical Association](#), the [Canadian Archaeological Association](#), [Geophysics for Truth](#), the [Canadian Permafrost Association](#), and the [Canadian Association for Biological Anthropology](#). Together, we call ourselves the Alliance to Support Indian Residential School Missing Children Investigations. Drawing on the Truth and Reconciliation Commission Calls to Action and the United Nations Declaration on the Rights of Indigenous Peoples, we are committed to supporting Indigenous communities along this difficult journey. We recognize the moral obligation of non-Indigenous members of Canadian society to redress the wrongs that have been and are still being perpetrated by the residential school system, as the Canadian state is built on the wealth extracted from Indigenous lands. Canada has a legal obligation under Bill C-15 to ensure federal laws are consistent with UNDRIP, which means Canada must provide redress for the loss of language, culture, and other intergenerational harms of the residential school system. Such redress must go beyond simply financial compensation and include supporting communities to revitalize their languages and cultures.

Under Article 8 of the [UNDRIP](#): States shall provide effective mechanisms for prevention of, and redress for:

- (a) Any action which has the aim or effect of depriving [Indigenous Peoples] of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

We are dedicated to providing sources of reliable and independent information for Indigenous communities, and supporting them in their search for their missing children. Our organizations can provide support at different stages in the process as outlined below.

Guiding Principles

Truth before reconciliation – Meaningful reconciliation can only happen in Canada when settler Canadians understand and recognize what Indigenous communities have long known - the truth of the genocide that occurred at Indian Residential Schools. We aim to support communities in

uncovering the full extent of that truth. We also recognize the painful ongoing legacy of the IRS system in Indigenous communities and for Indigenous people.

Every child matters – The children who died and went missing were unique individuals who were loved by their families and communities. We strive to recognize their humanity and their individuality. They were not numbers. Every single child taken left a family and entire community grieving, and was one child too many.

Recognizing Indigenous rights and sovereignty – We recognize and support the right of every community to decide whether or not and how they wish to proceed with any investigations. We stand ready to provide information to assist in decision making and to support investigations to the best of our ability, recognizing that there are limits on our capacity.

Indigenous-led action – In addition to leading decision making, all aspects of this work should, as much as possible, be conducted by Indigenous communities. We are committed to providing training for Indigenous community members who wish to undertake this work.

Remembering Indigenous relations - The Residential School System sought to sever Indigenous connections with the Indigenous past, Indigenous lands, and Indigenous relations. Remembering relations is more than the erection of a plaque - it is recognizing that these children were the stewards of Indigenous languages, cultures, stories, and networks of kinship.

Areas where we can help

Investigations are complex, and undertaking them is a long process that should not be rushed. Given the difficult nature of this work and the potential for re-traumatizing Survivors, intergenerational Survivors, and their communities, having mental health supports in place should be a priority. Investigations will also involve navigating overlapping Indigenous and colonial jurisdictions.

The experience of communities that have already begun this work suggests a sequence of steps. At each stage, communities can decide whether to continue to the next. Some steps can occur in tandem, and memorialization and commemoration can happen at any stage. A possible work flow is outlined [here](#). Suggestions for first steps are [here](#).

Our associations can provide communities with information at each stage, and in some cases can connect communities with trusted, independent local experts who can advise on different stages of the process.

Culturally sensitive memory practices

Indigenous heritage is complex and dynamic. It encompasses ideas, experiences, belongings, artistic expressions, practices, knowledge, and places that are valued because they are meaningful and connected to shared memory. Remembering Indigenous ancestors will involve the revitalization of Indigenous cultural heritage and the recognition that kinship networks, and the role that they have in the transmission of culture, were severely damaged through the residential school system.



IHC • CPA

Indigenous Heritage Circle
Cercle du patrimoine autochtone

The Indigenous Heritage Circle is a growing network of Indigenous heritage practitioners who can provide assistance in regard to culturally-sensitive memory practices to remember Indigenous ancestors.

Contact: <https://indigenousheritage.ca/who-we-are/contact-us/>

Website: www.indigenousheritage.ca

Archival research and work with survivors

Initial information gathering can help to narrow the focus of investigations, helping communities make the most of available resources during investigations.

Canadian
Historical Association



Société historique
du Canada

Where communities seek assistance with archival searches and/or collecting oral histories, the Canadian Historical Association may be able to direct them to people in their region who can offer help.

Email: cha-shc@cha-shc.ca

Website: <https://cha-shc.ca/>

Relevant Resources: [IPIA Oral History Guide](#)

Mapping and geophysical survey

This stage of investigations aims to identify potential locations of graves without disturbing the ground surface. The organizations below have expertise in a range of techniques that are useful

in this regard. They can help to connect communities with local experts who can provide guidance on appropriate methods and support interpretation of the data.

Jurisdiction is often complex and can involve overlapping and contested claims. In some cases, regulatory bodies may require archaeological permits to conduct this work when it takes place outside reserve lands.

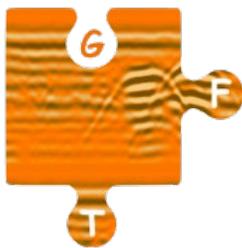


The Canadian Archaeological Association is Canada's only national association of archaeologists. Our Working Group on Unmarked Graves consists of archaeologists from across the country who have experience in supporting Indigenous Communities in searches for unmarked graves. We are dedicated to developing information resources to help communities make informed decisions, providing training to Indigenous communities who wish to conduct this work themselves, and advancing knowledge of the most appropriate methods and techniques for such investigations in different regions and varying conditions.

Email: unmarkedgraves@canadianarchaeology.com

Website: <https://canadianarchaeology.com/caa/>

Resource page: [CAA resources](#)



Geophysics for Truth

Geophysics For Truth is a volunteer initiative of 50+ geophysicists providing pro bono geophysical surveys, training and expertise for Indigenous Community projects across Canada. We offer Ground Penetrating Radar and other geophysical survey techniques to help with the detection and identification of burials related to former residential school sites.

Email: info@geophysicsfortruth.org

Website: <https://live.wp3.its.queensu.ca/gftwww/>



As many as 40 residential schools lie in northern Canada and the presence of permafrost at these sites may complicate the search for unmarked graves. Permafrost is ground that stays frozen year-round. The results of ground penetrating radar (GPR), and other geophysical techniques used to detect possible unmarked graves, can be affected by the presence of permafrost and related ground ice. Permafrost conditions are highly variable from place to place and can be dramatically different within a few metres. In areas with possible permafrost, specialized expertise is required to ensure the best geophysical technique is used and to accurately interpret the results. The Canadian Permafrost Association can direct communities interested in locating unmarked graves in places with possible permafrost to appropriate experts.

Email: secretary@canadianpermafrostassociation.ca

Website: <https://canadianpermafrostassociation.ca/>

Resource page: [What is Permafrost?](#)

Resource page: [Permafrost data](#)

Recovering and identifying the children: forensic and bioanthropological analysis

Some communities may decide to exhume unmarked graves, and other contexts, in order to identify and return missing children and/or to investigate their deaths. Doing so will mean navigating the ongoing discussions of law and jurisdiction on treaty and unceded lands both among Indigenous Peoples and between Indigenous Peoples and the governments of Canada. At this stage, investigations are likely to intersect with the responsibilities of multiple agencies of Canada and its provinces and territories, such as heritage regulators, police, coroners, and medical examiners.

Canadian Association for Biological Anthropology l'Association canadienne d'anthropologie biologique

Where communities wish to pursue identification, the Canadian Association for Biological Anthropology can help them identify the relevant authorities for a given school, and locate resources about the methods available to do this work.

Email: irs-unmarkedgraves@caba-acab.net

Website: <https://caba-acab.net/>

Resource page: <https://caba-acab.net/residential-schools>

**The Canadian Association for Biological Anthropology / l'Association canadienne d'anthropologie biologique has recently changed its name. It was previously known as the Canadian Association for Physical Anthropology / l'Association canadienne d'anthropologie physique*

EXHIBIT I-33

Canadian Archaeological Association *GPR Data Collection (Aug. 5, 2021)*



Ground-Penetrating Radar (GPR) Recommended Data Collection Procedures for Locating Unmarked Graves

The following recommendations elaborate on GPR as part of Step 7 (Subsurface Remote Sensing Fieldwork) of the [CAA Remote Sensing Pathways Guide](#). We recommend that readers familiarize themselves with the Pathways Guide before reading this document.

Ground-penetrating Radar (GPR) is a form of remote sensing that is commonly used to locate unmarked burials in cemeteries. It works by sending electromagnetic (EM) waves into the ground at different frequencies. Soil layers and objects below the surface can reflect these waves, returning them to the GPR to be recorded. The time it takes returning waves to reach the GPR allows us to estimate their depth. Different soils and objects will reflect the waves differently back to the antennae, allowing for visualization of the subsurface. This document considers how to collect GPR data when searching for burials. The CAA is developing separate guidance on how to interpret probable burials in GPR results.

GPR scanning is non-invasive; it does not disturb or damage the subsurface. It is widely used in industrial contexts for the detection of buried pipes, cables, foundations and other buried infrastructure. Its use in the location of burials is a specialized application that requires a specific method and experience in identifying grave shaft reflections. When a grave is dug, the soil density and compaction may change; under good conditions, the GPR signal will reflect differently over the grave shaft. Interpreting these signals as graves takes specialist knowledge and experience; archaeologists have been working on refining the use of GPR to detect graves for many years. While GPR cannot provide 100% certainty of a burial, graves can be identified with confidence, especially in formal cemeteries given optimal soil conditions. Its application is less developed in informal or clandestine burials and certain soils (particularly clay) can make grave detection challenging. Negative results in GPR does not ensure that no graves are present; it implies further work is needed.

There are a number of considerations when undertaking a GPR survey to locate unmarked graves.

1) Planning

GPR survey can be time-consuming. We estimate that a crew of 3 technicians can conduct intensive survey (see Step 6, below) of about 500 – 1000 m² in one day,

depending on conditions. Such surveys require permissions, access, and the development of agreements on scheduling, deliverables, timelines, training and, if required, budgets. Depending on the jurisdiction, permits may also be required. Communities often require specific protocols to be followed including necessary ceremonies, timeframes, and rules about comportment and behaviour when working with ancestors.

2) Reconnaissance and Site Preparation

The area of assessment should be thoroughly investigated prior to conducting a GPR survey. The site should be mapped and its background geology assessed. Landscape features, areas of interest, potential obstacles, and survey grids should be located on the ground and incorporated within a spatial data management system (GIS), which allows the integration, analysis and visualization of multiple forms of spatial data. GPR units work best when in direct contact with the ground, and this may require the removal of low vegetation and mowing.

3) GPR Survey: Preliminary Steps

GPR surveys should begin with an assessment of the background geology by collecting line data in undisturbed areas (i.e. with no burials or other disturbances). The speed at which the radar waves travel through the ground varies with soil type, and should be established in order to convert the GPR responses into depths. If velocity cannot be measured directly, common velocities of subsurface sediments can be estimated. Most GPR user guides provide this information.

4) GPR Survey: Prospection

There are two basic forms of GPR survey: prospection and investigation. In both cases, we recommend an antenna frequency between 250 and 500 MHz. Higher frequencies are sometimes used to investigate a known burial that is very near the surface (within 50 cm), but lower frequencies are more useful for locating unmarked graves. Prospection involves roaming over a target area looking for signals in the GPR display; this can be very useful for confirming that probable graves exist within a large area. When a response indicating a target of interest, in this case a possible grave, is identified, the operator scans the area repeatedly to confirm the identification. Likely graves are then flagged and mapped. Ideally prospection data would be captured as either screen grabs from the display or stored as compilations of lines or traces. Prospection can be assisted by the use of GPS built into GPR, although the precision of such instruments are rarely smaller than ± 1 m. In this mode, the GPR can be moved across a wide area relatively quickly to assess the likelihood of graves on a landscape. Prospection is a preliminary step in the GPR survey, and should be followed by more detailed investigations.

5) GPR Survey: Investigation

GPR results are most definitive when collected in patterns as grids. Grids should be located to completely cover areas of interest. Multiple grids are usually necessary for a study location. The Working Group's collective experience, along with the existing archaeology geophysics literature, suggests that grids with data collection lines run at

25 cm intervals and with 2 cm step sizes are necessary to provide sufficient data saturation to locate burials when using frequencies between 250-500 MHz. Spacing the GPR lines evenly and close together ensures overlap between the lines and covers the full area. Burials are usually most visible in GPR when the survey crosses the grave perpendicular to its length. As the grave orientation cannot be assumed for clandestine burials, best practice is to collect lines in perpendicular directions (X and Y) across the grid to increase both the signal density and the chances of crossing the short axis of a grave. When working in a cemetery context where general orientation is known, collecting data only along the axis perpendicular to grave length may be sufficient.

This application of GPR generally uses unidirectional data collection within grids rather than Z-pattern (aka zig-zag). Unidirectional collection is especially important over long distances (+5m) to reduce signal noise from errors in odometer calibration and uneven terrain. The grid should be square or rectangular, laid out using non-metallic tape measures or other survey tools. Large metal objects on the surface, such as fences, can create noise in the GPR signal.

Wherever possible, and especially on sloping terrain, the GPR should be equipped with high-precision, real-time kinematic positioning (RTK) GPS, or such data should be collected on the grid control points (corners or axes origins). This allows data to be correctly located on the landscape, and corrected for slope, which greatly clarifies reflective patterns.

The CAA is developing further detailed guidance on technical settings, but we recommend the following general principles: use multiple stacking to reduce noise on the signal at maximum depth; apply the minimal filters necessary to visualize grave signals in the GPR (deWOW, gain, high and low band filters, background filtering of the air wave).

It is often helpful to use rectangular survey grids to avoid confusing their orientation during processing. Maximum grid sizes are debated, but we have collected data in grids as large as 50m x 50m with success. It is common to use much smaller grids to avoid obstacles and to ease processing/interpretation.

6) Data Collection Protocols

Accurate field notes are essential to avoid mistakes. While each prospection line or grid line is recorded automatically by the GPR unit, we recommend compiling an additional log of grid lines, their direction, length, and orientation as a back up. Precise and accurate data for the spatial locations of GPR lines and grids, and their relationship to one another, is essential to interpretation. GPR software compiles a composite 3D map of the reflected EM signal (amplitude maps) by combining separate GPR lines together. Errors of line orientation, length, start and end points, etc. will create errors in the GPR outputs. If photographs are appropriate, a photo log should list the subject of each image along with an identifier (such as photo file number). Field notes should be secured and copied as paper or digital back ups if appropriate, depending on how they are collected.

7) Outputs

GPR surveys should produce a final report and a series of archival files. The latter include records of each prospection line and grid as a field note log, such as shown in Figure 1.

These files represent the primary field record of any survey. The GPR lines and grids themselves should be stored securely and with identifiable file/folder names as GPR output files often have similar names. With these elements in place (field logs, site maps, GPR results), the work of identifying graves in GPR can proceed and any potential identifications can be located accurately on the landscape.

A successful field survey will allow for correct data assembly and processing, leading to accurate interpretation of the GPR results and the greatest chance of identifying possible graves.

Sketch or digital maps should be compiled locating all the surface and control point data, such as shown in Figure 2.

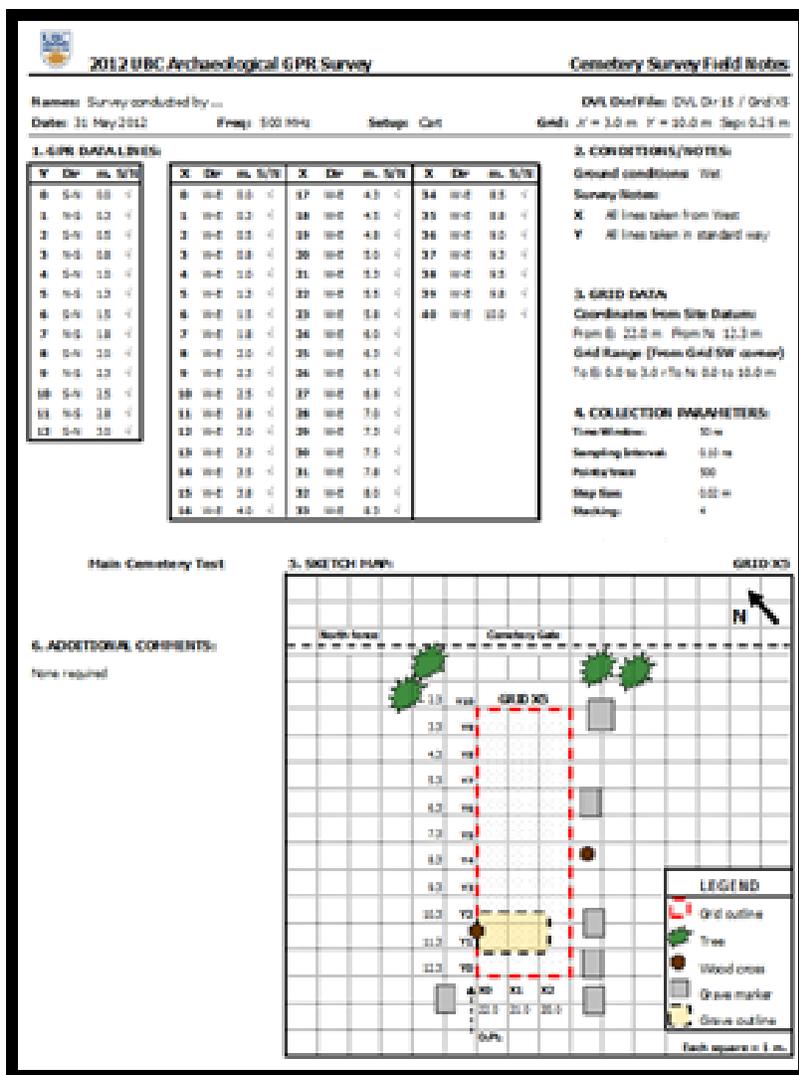


Figure 1. Example GPR Field Notes Log

EXHIBIT I-34

**Canadian Archaeological Association
Aerial/LIDAR Mapping (Sept. 16,
2021)**



Drones (Unmanned Aerial Vehicles – UAVs) Recommended Data Collection Procedures for Locating Unmarked Graves

Introduction

'Drones', also known as Unmanned Aerial Vehicles (UAVs) or RPASs (Remotely Piloted Aerial Systems), are useful for aerial mapping of Canadian 'Indian Residential School' (IRS) cemeteries and unmarked graves. Rotary-wing UAVs offer the greatest utility because they are more maneuverable in flight. This includes smaller four blade quadcopters designed for consumer use, as well as larger and more sophisticated six or eight blade machines intended for professional applications.

Lower cost UAVs are usually equipped with built-in cameras, while professional-grade machines can interchangeably mount cameras or thermal, multi-spectral and laser sensors ('Light Detection and Ranging' or LiDAR). Thermal sensors detect surface temperature differences while multi-spectral (or hyperspectral) sensors measure differential patterns of plant growth/health and soil moisture. Under the right conditions these sensors may enable detection of unmarked graves.

Aerial LiDAR systems send laser pulses downwards to measure distance to the ground. The sensor measures the time taken for millions of points of laser light to leave the UAV, strike the surface below, and then return. This three-dimensional information forms dense 'point clouds' that precisely define the surface (vegetation cover and the ground beneath). Ground surface points can be sufficiently dense to reveal low mounds or shallow depressions formed by graves. Lower cost UAVs equipped with conventional cameras can also generate useful photogrammetric output as illustrated with the examples below. This software uses the images to produce photomosaics (produced from overlapping photos) and digital elevation models (DEMs). Under certain conditions these DEMs can reveal subtle elevation changes such as those caused by graves. These geographically referenced images can be further analyzed using Geographic Information Systems (GIS) software (see the GIS document in this series).

Most UAVs are equipped with sensors that enable safe and stable flight. They are controlled through two-way radio communication between the aircraft and the ground controller. The latter is usually paired with a tablet or cell phone to provide telemetry

information and the UAV camera view. Many UAVs can also be programmed to fly in grid patterns while automatically collecting overlapping photographs (Figure 1). UAV flights require appropriate site preparation and an understanding of data precision and accuracy required to achieve the research objectives. Such mapping projects also require licensed pilots and trained crews who follow federal government regulations that are designed to protect people, property and other aircraft.

1) Planning

Flight planning is dependent on mapping objectives, site extent, vegetation cover and airspace status. Let us assume the use of a rotary-wing quadcopter equipped with a conventional camera flying in unregulated airspace. To collect imagery suitable for photogrammetric processing, the UAV should be flown along transects at a standard height and speed (Figure 1). Photographs are taken along these transects at intervals that allow standardized overlap between adjacent images. This is difficult to achieve using manual flight, but semi-autonomous flight planning software greatly improves efficiency and output quality.

Such software is installed on the tablet used in conjunction with the aircraft controller. Using an internet connection, maps (often Google Earth) provide geographic context to identify the flight area. After assigning the flight elevation, degree of image overlap and flight speed, the planning software automatically establishes flight transect lines (Figure 1). The completed plan is saved for upload to the UAV at flight initiation, whereupon it will automatically take off, complete the flight transects and return to the landing zone. However, the pilot can regain manual aircraft control at any time. The optimal flight elevation is dependent upon the image resolution sought, the coverage area, and in consideration of objects that might be hazardous to the UAV. Selecting flight elevation reflects a balance of considerations. Lower elevation flights generate high resolution images but require more photographs to achieve the required coverage. Higher elevation flights require fewer photographs, but at the expense of image resolution. Depending upon the camera used, a flight elevation of 40 metres will provide ground image resolution of about 1.5 cm per pixel, while offering a reasonable degree of flight efficiency and safety.

Electrically powered UAVs usually offer between 20 and 30 minutes of flight time per battery. Since battery life varies with air temperature, wind velocity and battery age, it is prudent to limit flights to no more than 80% of estimated battery duration. The efficiency of semi-autonomous flight planning software can enable flights over smaller areas using only one battery. For example, an area of about 1.5 hectares (15,000 m²) flown at 40 m elevation at a speed of 2.4 m/second (with 85% overlap between images) will collect about 260 images within a 15-minute flight (one battery). The resolution of such imagery will vary depending upon the camera used. The 260 images in this example flight would require about 2.18 gigabytes on the micro-SD card installed on the UAV. When mapping larger areas, semi-autonomous flight planning software can accommodate multi-battery operations.

2) Site Preparation

Vegetation cover upon the survey area may be problematic for effective aerial mapping. If it is overgrown with forest, shrubs or tall grass, photogrammetric processing will not be fully effective. Topographic mapping may require systematic vegetation removal to expose the ground surface – something that might also be required before using ground penetrating radar, electrical conductivity/resistance, or magnetometer devices. This ground preparation requires considerably more time and effort than the actual UAV mapping flight.

UAV missions require a pilot and observers. The pilot controls the aircraft, while the observers monitor the UAV and alert the pilot about approaching aircraft and other hazards. Preflight planning also includes determination of airspace status over the survey area and gaining appropriate approval if the planned flight occurs in controlled airspace. Pre-flight preparation also involves consideration of weather, wind and lighting conditions, and condition of the UAV hardware and firmware, etc. This might also include establishment of scales and reference makers with known geographic coordinates (Ground Control Points or GCPs).

3) Flying Regulations

In Canada, UAV flights are governed by regulations and licensing administered by Transport Canada. UAVs must be registered, and pilots must be licensed to a level appropriate for the airspace conditions over the survey area. This is mindful of the potential hazards associated with UAV flight.

4) Maximizing map precision and accuracy

Most UAVs are equipped with sophisticated instruments to ease flying and to reduce crash risk. This includes a Global Navigation Satellite System (GNSS), barometric altimeter, compass, collision avoidance sensors and a gimbal to reduce image motion distortion. UAVs are controlled through two-way radio communication between the aircraft and the ground controller. The controller is linked to a tablet or cell phone that provides telemetry information and the UAV camera view. Most UAVs are equipped with GNSS capable of $\pm 2-5$ m. accuracy, and with a barometric altimeter that can be affected by varying atmospheric pressure and elevation. This introduces some degree of imprecision into the output from mapping flights. Repeated test flights reveal georeferencing (X Y) results to within about 1.5 metres, but the elevation models reveal even greater variation between flights over the same area. This reflects the technical limitations of consumer-grade UAVs. For some purposes this level of accuracy might be sufficient, but if the UAV mapping output is to be integrated with other georeferenced data this imprecision might be problematic. It can be addressed in two ways: 1) use of professional grade UAVs equipped with better quality GNSS receivers capable of differential correction; or 2) establishment of Ground Control Points (GCPs) prior to the UAV flight, each with accurately determined geographic positions. The more accurate GCP coordinates can then be used to refine the photogrammetric output. In some

circumstances this will render results to accuracy within a few centimetres. This high level of precision and accuracy may be important when attempting to integrate diverse spatially registered data within GIS software.

5) Photogrammetry and data analysis using GIS

A UAV mapping flight might yield hundreds of overlapping images that can be integrated for more detailed analysis using photogrammetry software. Such software identifies common points in overlapping photographs and uses them to re-orient, warp and mosaic the images together. The output includes a large-scale aerial photograph that is geo-referenced in cartesian space. Digital Elevation Models (DEMs) derive from calculation of the elevation of common points viewed from different perspectives in the overlapping images. These XYZ points form a dense point cloud that are then interpolated to produce the DEM.

Since these maps are georeferenced, they can be uploaded into Geographic Information Systems (GIS) software to undertake further spatial analysis. They can be transformed into different cartesian grid systems, integrated with other suitably georeferenced map data (i.e. the output from GPR survey), and subjected to further analysis. For example, the DEM can be colorized to visually represent subtle relief, or subjected to contouring functions. Such digital processing and analysis offer a time-efficient means of extracting analytic meaning from the collected data.

6) Examples of UAV output

Two UAV flights are included here to illustrate the utility of conventional aerial photography. The first is a 2016 flight over the Cecilia Jeffery Residential School cemetery area near Kenora, Ontario as an informal early test of drone mapping for IRS cemetery investigation. The second is a 2021 flight over a late 19th and early 20th century cemetery at Bingwi Neyaashi Anishinaabek (BNA) First Nation near Lake Nipigon, Ontario. Permission to use the latter output was granted by BNA First Nation.

The Cecilia Jeffery Residential School first opened at Shoal Lake, Ontario (1902–1929), whereupon it was moved to Round Lake near Kenora (1929–1974). Three burial places are reported near Round Lake (Figure 2). The burials at the oldest location were exhumed in 1952 to permit road construction and were reburied in a new cemetery area south of Round Lake. The oldest of the two cemeteries south of Round Lake is within a narrow strip of forested land, with the most recent within a nearby rectangular fenced clearing that is currently overgrown with tall grass (Figure 2). While the ground surface is obscured by vegetation, the UAV flight generates a much higher image resolution map than the conventional satellite image and permits better detection and interpretation of surface conditions. For example, a detail of the UAV imagery reveals a few white-painted wood crosses protruding from the tall grass within the most recent cemetery. With careful removal of this vegetation, other cemetery details might become apparent.

The oldest known cemetery at BNA First Nation likely dates to the late 1800s, prior to the 1950s eviction of the community from leased land containing their reserve to make

way for a provincial park. The community requested mapping in the spring of 2021 and granted permission for the output to be used here. Since the community's recent reclamation of their reserve lands, the historic cemeteries have been carefully maintained within fenced clearings. While most of the wooden crosses have long decayed and disappeared, surface irregularities suggest the distribution of old graves (Figure 3). These collapsed grave shafts are hinted at with differential vegetation growth within the photo mosaic. When the digital elevation model is enhanced using colour and finely spaced contour lines (2.5 cm), these grave shafts are more readily apparent.

UAV mapping flights can yield high-resolution photographic and topographic survey maps. If accurately geo-referenced, they can be used as base maps to overlay similarly geo-referenced output from other remote sensing methods such as Ground Penetrating Radar. This facilitates exploration of how each data type supports (or challenges) the insight gained from other methods. This multiple method approach serves to strengthen and refine interpretations about the landscape and inform decisions about future investigative steps.

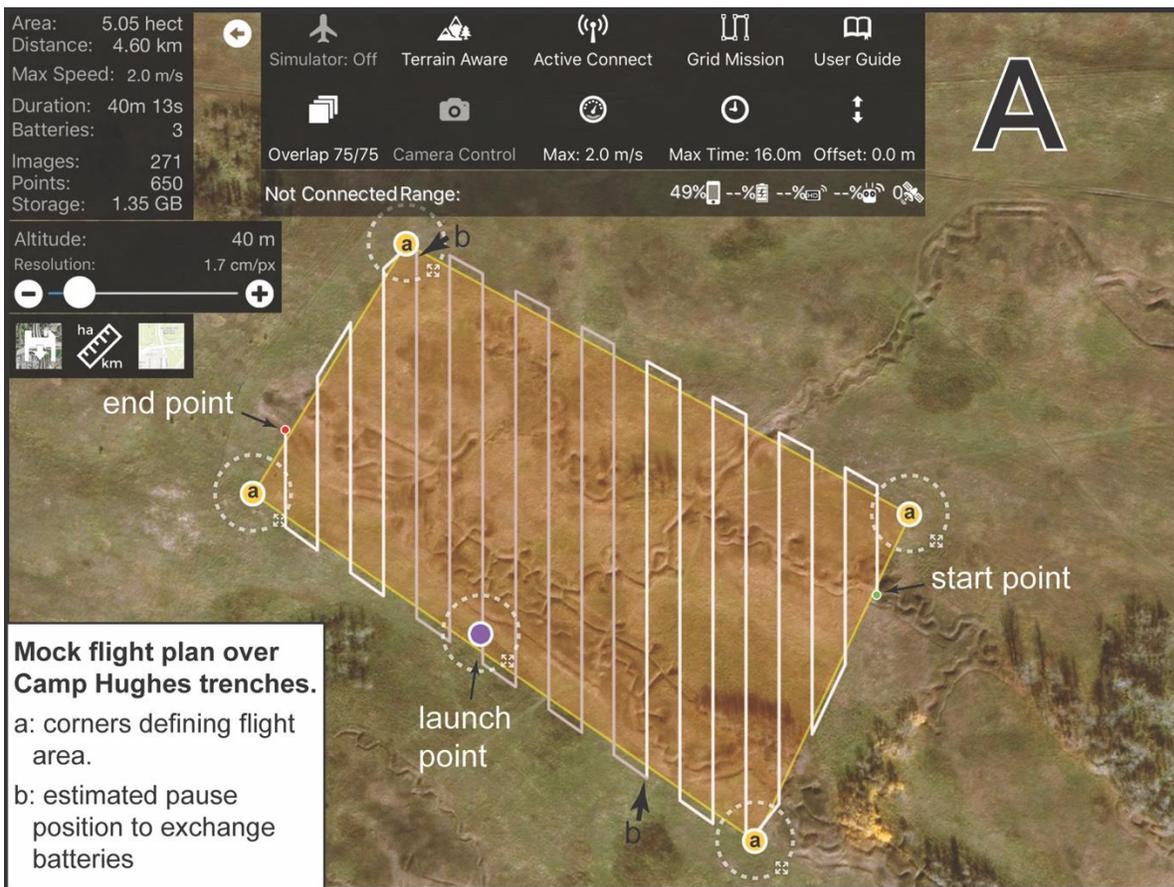


Figure 1. Mock semi-autonomous UAV flight plan over former military training trenches at Camp Hughes, Manitoba. The flight parameters are selected during planning and are saved for later execution. Once launched, the UAV will follow these flight lines at the specified elevation and speed, automatically taking pictures to achieve the desired image overlap.

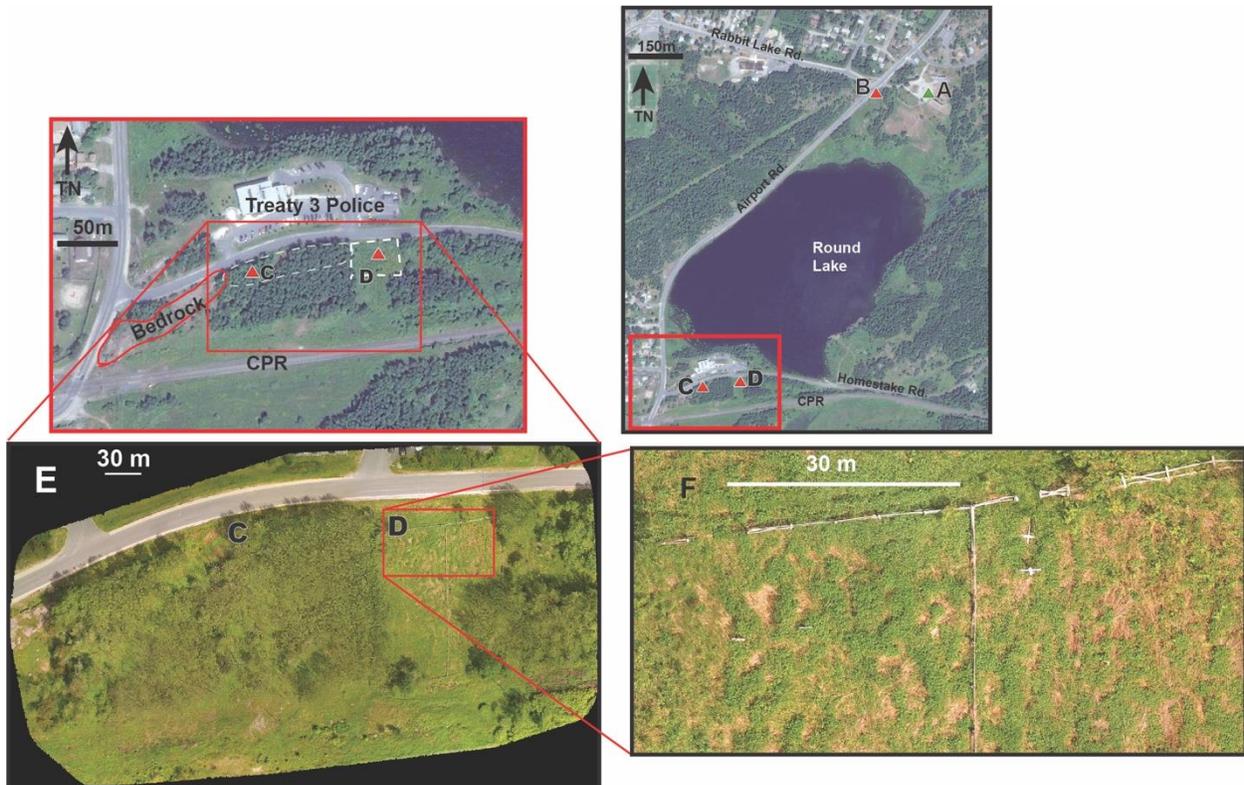


Figure 2. Aerial documentation of the cemeteries reported at Cecilia Jeffery IRS in Kenora, Ontario. The upper two images are Google Earth satellite images, with modest image resolution that becomes increasingly blurry as one zooms in. The lower two images derive from a UAV flight at 40 m elevation. While the ground detail is obscured by vegetation, the much higher image resolution allows detection of ground features of analytic interest.

- A** Cecilia Jeffery IRS (approx.)
- B** Six graves exhumed in ca. 1952
- C** Old Cemetery
- D** New Cemetery

The two most recent burial areas at Cecilia Jeffery IRS are located at the south end of Round Lake. The oldest is within a deciduous woodlot at the west end of the UAV photomosaic image (**E**). Detail photo **F** illustrates a portion of the most recent cemetery within a fence and marked with a few crosses that protrude through the tall grass.

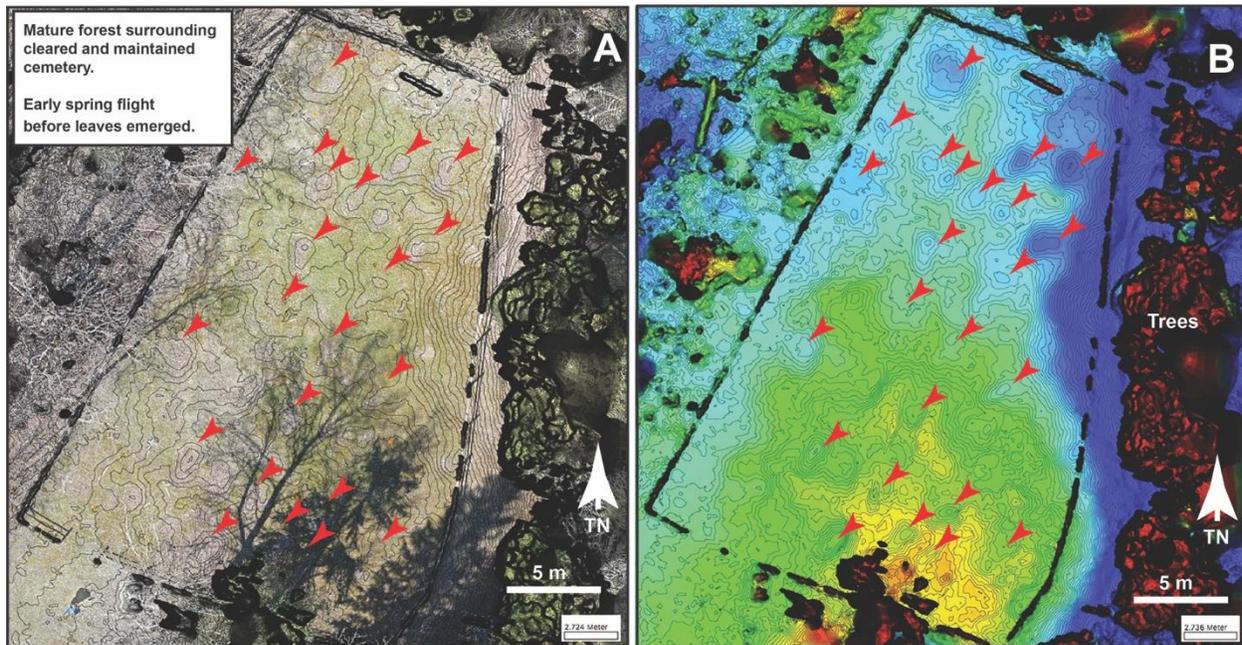


Figure 3. UAV photogrammetric output of a historic cemetery at Bingwi Neyaashi Anishinaabek First Nation (Sand Point FN), Lake Nipigon, Ontario (with permission of BNA FN). This cemetery lay abandoned for over 50 years after the community was evicted to make way for a provincial park. It is now maintained with regular grass cutting, making grave depressions visible even though most of the wood crosses have disintegrated. Image A is the photomosaic overlaid with contour lines deriving from image analysis within GIS software. Image B is the elevation model with the 'heat map' colorized to emphasize the relief change of interest across the surface of the cemetery area. Blue represents low areas while yellow/orange defines high areas. Extreme highs and lows are uniformly shaded red or blue respectively. GIS software is used to generate finely spaced contour lines to emphasize subtle ground undulations that represent collapsed graves for which the wood grave markers have long disappeared.

Authors:

Scott Hamilton with input from the CAA Working Group on Unmarked Graves.

Acknowledgements:

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EXHIBIT I-35

Canadian Archaeological Association *Resistivity Survey* (Dec. 13, 2021)



Resistivity Survey

Recommended Data Collection Procedures for Locating Unmarked Graves

Introduction

Electrical resistivity techniques have long been used in archaeological and forensic contexts. Like other geophysical methods, this technique can produce both maps and profiles of an archaeological site, highlighting possible features or structures. It measures the ability of the Earth's near-surface to resist an electrical current moving through it.

A wide variety of instruments are available with different ways of surveying, however, the core principles remain the same. The method works by sending electric current, generated from a battery, into the ground via metal electrodes. The computer/meter measures the voltage between any two electrodes and then calculates the resistance in Ω m between these two electrodes. Once a measurement has been made from many electrodes, the specialist interprets the shape, character, and depth of any observed anomalies and determines whether or not they could be related to possible archaeological features. For example, metal objects conduct electricity well and can produce low resistivity values if they are large enough. Characteristics such as ground composition, porosity, fluid saturation, and fluid chemistry also affect resistivity. In other words, the technique will register changes in subsurface deposits based on how resistive or non-resistive they are to the passage of electrical current.

Resistivity surveys have been used to locate graves in cemeteries. Why is resistivity a useful technique for locating unmarked graves? This technique is very good at identifying voids (which have high resistivity due to the presence of air) as well as changes in sediment compaction and moisture levels (increasing or decreasing

resistance respectively). It is also well suited for high clay/conductive soils (environments that GPR often finds challenging). In cemeteries, some authors have found that high resistivity values denote grave shafts, while low resistivity values within graves may indicate metal (such as coffin plates or hardware). It is clear that graves may be represented by many different characteristics in resistivity data, so it is important to adapt the search and interpretation methods accordingly. In the following document, we present some key points to consider in resistivity surveys.

Like the other techniques presented by the *CAA Working Group on Unmarked Graves* (<https://canadianarchaeology.com/caa/resources-indigenous-communities-considering-investigating-unmarked-graves>), it is important to remember that resistivity surveys locate changes in the physical properties of the subsurface that could be related to cultural and natural disturbance events (**not the objects themselves**). Therefore, interpreting this type of data requires caution, discretion and expertise.

1) Planning

There are two main types of resistivity survey: (1) area survey that maps a large area with a focus on a particular depth range and (2) electrical resistivity tomography (ERT) that images a vertical transect through the earth along a profile (Figures 1 and 2). Both methods have advantages / disadvantages and the cost / time required can be different. In Europe, resistivity area surveying is quite popular and conducted with a rotating two- or four- metal electrode cart system with fixed electrode widths. Such devices cover larger areas quickly but largely produce area maps and have limited ability to document variation in subsurface properties across a range of depths (Figures 2 and 3). Conversely, ERT systems take longer and are more stationary. They require the operator to place a line or grid of metal electrodes and allow the computer to calculate the ground resistance over a period of time. Once those calculations are done, these electrodes are removed from the ground and planted at the next survey location (this can be done in a grid with consistent intervals). While relatively slow, ERT can produce both maps of sites, and also detailed profiles of the subsurface, with variable depths/resolutions depending on the electrode spacing (Figures 1 and 3). Both techniques have been shown to be able to identify graves under reasonable conditions.



Figure 1. Geophysical survey in progress. Profiling ERT equipment pictured in the foreground with IRIS Syscal Junior Switch-48 resistivity meter, marine battery, metal electrodes and cable. 48 electrodes were spaced 0.5 m apart spanning a profile of 23.5 m. Six 23.5 m profiles, spaced 1 m apart, were collected at a known cemetery. Dipole-dipole and Wenner electrode arrays were used to collect the resistivity profiles. In the background are different GPR systems. Image taken as part of a project in southern Ontario (<https://doi.org/10.1007/s41636-020-00251-7>).



Figure 2. Geophysical survey in progress. The Geoscan RM15 configured in twin probe array. Two pairs of probes are used. The first “mobile” pair are attached to the frame and are moved systematically across a survey area to take measurements. The second “remote” pair, which record the background resistance, are out of picture at the end of the 30 m orange cable. The beam holding the two probes at the bottom of the frame can be modified to take up to 9 probes, allowing vertical profile measurements and the production of pseudo-sections.

When planning for a resistivity survey, it is important to remember that the depth and resolution of the data collected is determined by the spacing of the electrodes. The more widely spaced the electrodes, the deeper the electric current can propagate through the subsurface. However, widely spaced electrodes result in lower spatial resolution. The maximum data resolution is directly equivalent to the minimum electrode spacing. For ERT surveys, widely spaced electrodes also result in more area being covered per line (perhaps decreasing the time necessary to survey a site). Additionally, there are different electrode configurations (which electrodes are sending and receiving the current) that will result in different types of data collected. As a result of all these factors, many authors recommend shorter electrode spacing (~25 cm) to get as clear and detailed a profile/map of potential graves and grave shafts as possible. Regardless

of this variation in data collection, how you design your survey will depend largely on the equipment you have available.

It is also important to remember that resistivity is helpful in cases where other geophysical techniques (such as GPR) fail. Notably, resistivity is a reliable technique in high clay/saline environments and in areas with lots of obstructions and vegetation (*environments that typically prohibit GPR*). However, the technique is not effective in dry environments (where GPR excels). While resistivity will not replace GPR as the 'go-to' technique for locating graves (given its extensive setup and operating time), it remains a great addition to unmarked grave projects and an important technique in certain environments.

2) Data Collection Protocols

Data collecting protocols will vary significantly depending on the methodology and instrument used. In ERT surveys (Figure 3), electrode placement and how current is transmitted between them has a significant impact on the resolution and sensitivity of the data collected. Common electrode configurations/geometries include Wenner, Schlumberger, pole-dipole, dipole-dipole, pole-pole, and gradient, all of which can be used for ERT/ profiling (Figure 4). Interested readers can learn about the different configurations using this open source link ([Surveys — GPG 0.0.1 documentation \(geosci.xyz\)](#)). Dipole-dipole is used extensively for shallow geophysical work, such as archaeology. Area survey systems (Figure 2) on the other hand often have limited profiling capabilities, and thus have limited options for electrode configuration. Which configuration you use is determined by: the location and characteristics of your target, field/environmental constraints on laying electrodes, and the practical limitations of your specific equipment. If you are borrowing resistivity equipment from geophysics departments in North America, the equipment will likely be ERT/ profiling equipment.

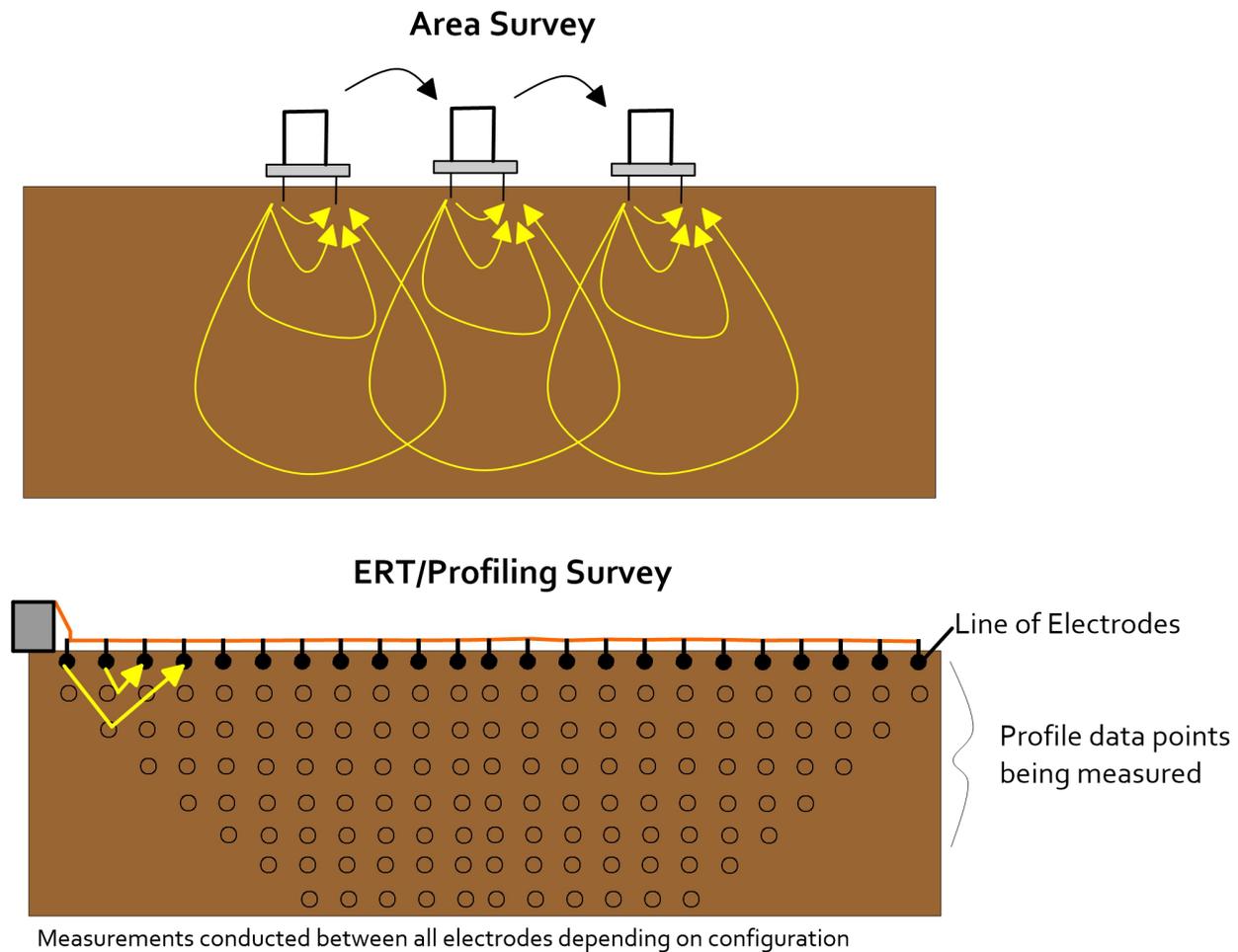


Figure 3. Schematic diagram of how both area surveys and ERT survey the subsurface. *Top:* Area surveys (also see Figure 2) send and receive electrical current from a fixed frame. Repeated measurements are taken by physically moving the frame to a new location to record the new data points. *Bottom:* Profiling surveys (also see Figure 1) send and receive electrical current from many electrodes that are manually placed along the ground's surface. The resistivity meter will send electrical current in various patterns between the electrodes to record a profile with many data points (o). This diagram shows the initial readings of a dipole-dipole ERT survey. To collect another profile, the entire system has to be removed and replaced at a new location. Figure by Liam Wadsworth.

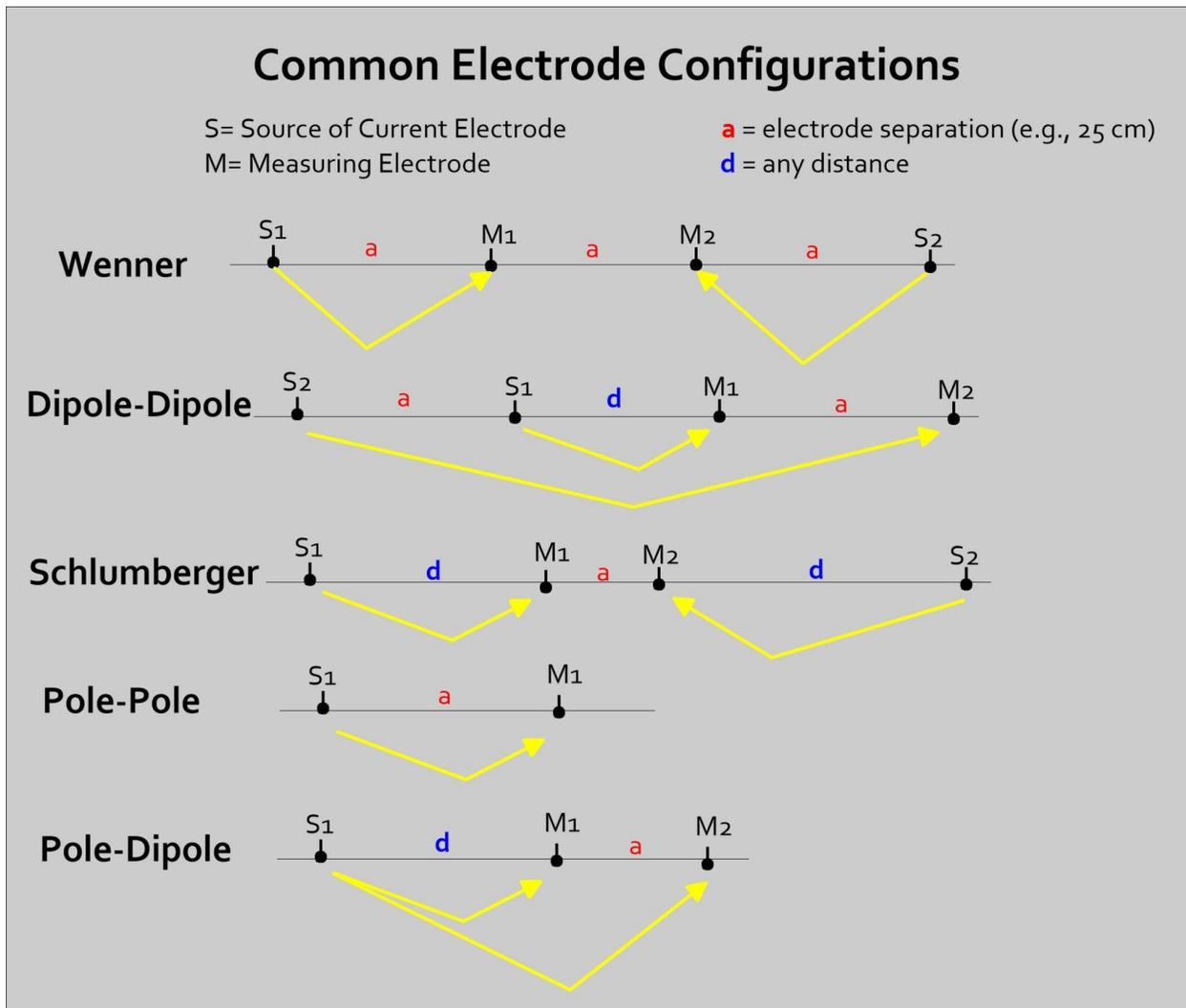


Figure 4. Common electrode arrays/configurations. Yellow lines denote the electrical current that transmits between a source and measurement electrode. The different patterns produce different types of resistivity surveys, some are better for profiling. Diagram remade from the open source textbook, Geophysics for Practicing Geoscientists (<https://gpg.geosci.xyz/>).

For ERT surveys, multiple electrodes are set up in an equidistant straight line across the ground. Often these are centered above the area or feature of interest. Depending on how many electrodes you have available, it is best to space them at either 25 cm (ideal) or 50 cm (acceptable) intervals. Each of these electrodes is connected to a cable that connects to the resistivity meter. The meter is pre-programmed with different electrode arrays that run resistivity tests between the electrodes. It's important that the cables, electrodes, and meter are not touched or changed until it has finished its calculations. You may need to improve the initial contact resistance between the electrode and the ground by moistening the insertion point around your electrodes with water. You can

also collect 3-D resistivity data by spacing electrodes in a grid pattern, or collecting individual resistivity lines in a grid pattern. This is done much the same way you collect individual profiles. After you collect an individual line, you must manually move each electrode a certain distance to the next profile. This is a time-consuming process, and again it is best to limit the space between your profiles. In an ideal world, if you spaced each electrode 25 cm apart, and each profile 25 cm apart, you would collect very high resolution data that could be used to identify potential graves. However, given that often it's only possible to get a few profiles done in a day, you may wish to increase this distance to 50 cm or a meter (this will of course result in worse resolution and possibly miss graves).

For area surveys, grids are established over the area of investigation in much the same way as for GPR survey. For the Geoscan RM15 two pairs of probes are used, usually configured in a twin probe array. The first “mobile” pair of probes are attached to a frame and are moved systematically across a survey area (Figure 2). Also connected to the frame (by a 30m cable) is a second “remote” pair of probes that are left in a stationary position to record background resistance. Data points are collected by inserting probes into the ground at regular points along transects marked by tapes. To identify graves, we recommend taking readings every 25 cm along traverses spaced 25 cm apart. Transects can be walked bi-directionally (e.g back and forth) as long as the instrument is left in the same orientation. This shortens the time needed to survey, though it is still relatively slow compared to other techniques. We estimate that it takes approximately 2 hours to survey a 20m by 20m area at this resolution. This process can be speeded up by connecting more probes to the mobile frame, though the resulting instrument is often clumsy to use and only works in ideal field conditions.

Whether ERT or area surveys are carried out, once all of your data is collected, it is time to process the data so it can be interpreted by specialists.

3) Data processing, interpretation and presentation

Once the resistivity survey is completed, the data needs to be processed in computer software that generates plots and profiles for interpretation and presentation (Figure 5). File outputs are often xyz files in ASCII format. Like other geophysical techniques, data processing is usually undertaken to reduce noise and improve interpretability. Data can be presented and processed in 1-D, 2-D or 3D forms. To transform resistivity data into 2-D profiles (and then plot into 3-D grids), the data must undergo a process called *inversion*. Most commercially available inversion software (such as Res2DInv) will automatically calculate the best resistivity model possible for the electrode configuration

with minimum user input. Once this is done, processed resistivity data can be gridded and visualized in different software options such as Surfer or a GIS.

Resistivity survey data is often difficult to interpret. While more robust than other forms of geophysical data, it is often more challenging to interpret than GPR data. As a result, interpretations should be made by trained professionals, and step-by-step explanations of the different processes and logic models applied to the data should be outlined. For example, grave shafts/pits may have low resistance when their pores are filled with fluid and sediments are less compacted. However, if the structure of the grave is intact, or a coffin is present, graves may appear as highly resistant because of void space. In reality, there are different markers for a grave in resistivity data, therefore (as always) it is best to include additional (and different) remote sensing data and community information to inform interpretations.

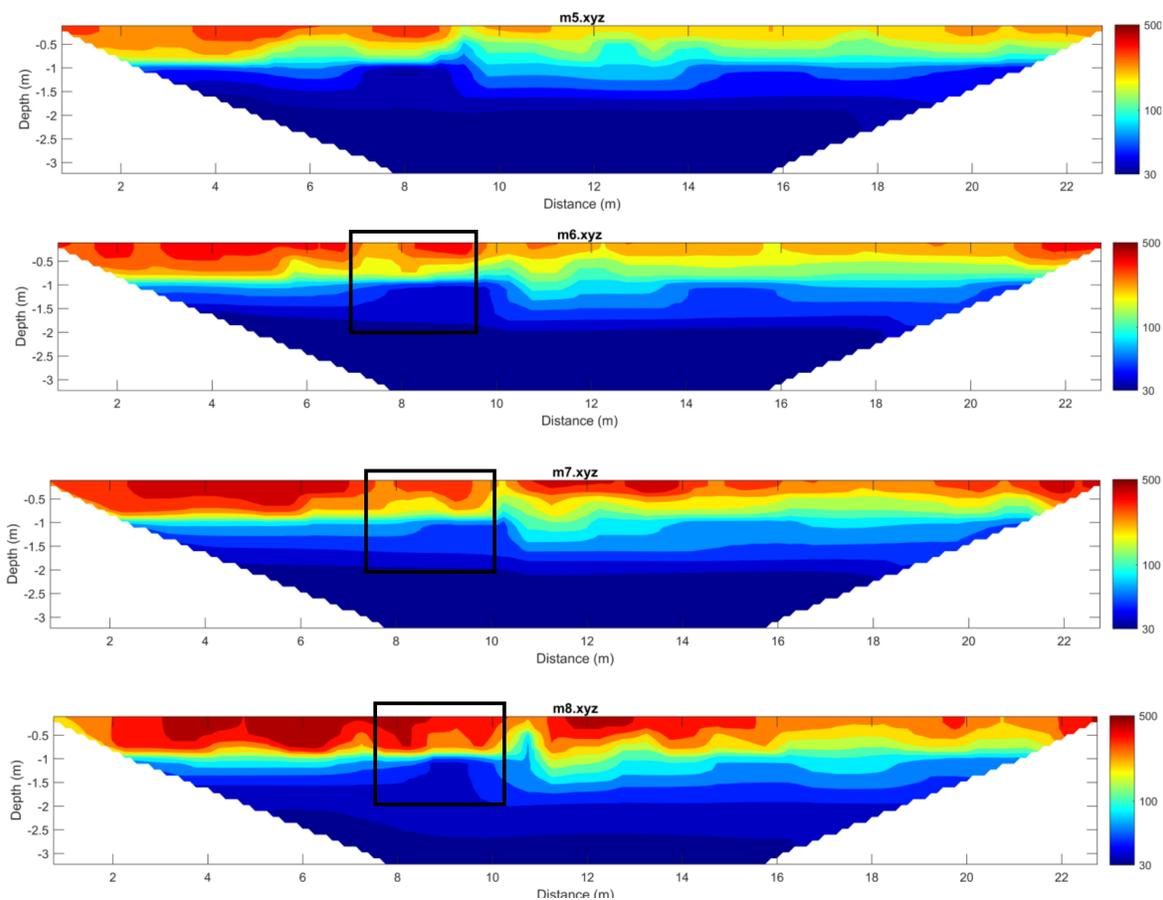


Figure 5: Four 24 m resistivity (ERT) profiles spaced one meter apart following inversion. Highlighted is an identified grave in the profile spanning 2 m (or 3 profiles) that shows a range of Ω m values and a rectangular shape. This specific feature was also surveyed with GPR and the

two datasets both suggested a grave was located at this location. This figure was taken from Wadsworth et al. 2020: <https://doi.org/10.1007/s41636-020-00251-7>).

The final report should include:

- Copies of unprocessed raw data should be included with the report for archiving.
- A brief site description indicating underlying soil types and geology, ground conditions and vegetation, description of built architecture, previous disturbance including previous archaeological investigations and known underground services that might impact the results.
- Photographs, if appropriate, of each survey area showing the ground conditions.
- The survey methodology should provide a description of the instrumentation used and indicate the line and electrode separation, electrode configuration, sampling interval, and the resulting effective spatial resolution achieved.
- A map showing the location of survey grids in relation to other features at the site.
- All location maps must be geo-referenced and annotated with the geographic coordinate system and projection used in order that the location of the grids can be re-established by a third party.
- Plots of minimally processed or raw data should be included prior to or in comparison with the presentation of final processed (and/or inversion) plots.
- All data processing steps should be described in full and their effects on the data highlighted.
- Anomalies resulting from data collection errors that cannot be removed through data processing should be described and distinguished from other responses.
- The interpretation should distinguish anthropogenic from natural features identified in the data.
- Depth estimates of features should be included with inversion ERT data.
- Colour Scales should be appropriate and highly visible. Plots should include a north arrow, range bar including appropriate values and units, and be presented in and include an appropriate scale for interpretation.

- Interpreted plans indicating all features of interest should be included alongside the data plots.
- Anomalies of interest should be identified with a unique identifier on the plots, and described in full to indicate shape and signal amplitude. This might best be achieved in a table rather than a long descriptive narrative.

Authors:

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Acknowledgements:

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EXHIBIT I-36

Canadian Archaeological Association *Magnetometer* (Aug. 5, 2021)



Canadian Archaeological Association
Association canadienne d'archéologie

Magnetometer

Recommended Data Collection Procedures for Locating Unmarked Graves

Introduction

While Ground Penetrating Radar (GPR) is one of the most common and reliable remote sensing techniques for locating unmarked graves, communities should be aware that there are numerous other approaches available. This is important, as there are circumstances where GPR survey does not work, such as areas with unsuitable soil types that prevent radar penetration, or areas with heavy vegetation that prevents the radar antenna contacting the ground. In instances such as these, we need to look for alternative approaches. Furthermore, even where GPR does work, it is considered best practice to apply multiple techniques to remote sensing projects, as each provides its own distinct data set that can offer different insights on features of interest and help confirm the presence of a grave, thereby improving confidence in the results. The following provides a brief overview of *magnetometer survey*, one of the most commonly used remote sensing techniques in archaeology. It is intended as a brief overview to provide communities with enough information to work with remote sensing specialists to achieve the results they want and need.

Magnetometer survey is one of several magnetic geophysical techniques that measure differences in the Earth's magnetic field and/or differences in the magnetic properties of the ground. These differences can occur for numerous reasons, including instances where the ground is disturbed, as is the case when a grave is dug and refilled. This is because topsoil (the layer of earth closest to the surface) usually has slightly higher magnetic properties than the underlying subsoil, as it contains more and different forms of iron minerals. When a grave is dug and refilled, the topsoil and subsoil are often mixed together, and as a result the soil in the grave shaft has different magnetic properties than the surrounding area. These differences are tiny and we need specialized instruments to detect them (Figure 1). Metal detectors are not appropriate for this type of survey as they are not sensitive enough and usually only penetrate to a maximum depth of 30cm.



Figure 1. Magnetometer survey for 3 unmarked European graves in Mercy Bay, NWT. Instrument: Geoscan FM256 fluxgate gradiometer.

Identifying graves through magnetometer survey, like any remote sensing approach, is challenging. The potential success of a magnetometer survey will depend on a number of factors. The most important is the degree to which the fill of the grave differs from the surrounding subsoil. Usually, the difference is very small, so sometimes identifying the grave is impossible and other approaches are needed. Pieces of iron in the grave, such as coffin nails or hardware, might be detectable in relatively shallow graves, but it is usually impossible to distinguish these from other pieces of buried metal that commonly litter the ground. Magnetometer survey will therefore, in most instances, be used as a supplemental survey technique to ground-penetrating radar (GPR) to improve confidence in the results.

Magnetometer survey will also play an important role in situating the results of GPR, particularly in instances where large areas need surveying. This is because magnetometer survey is one of the fastest geophysics approaches available, which allows for large areas to be surveyed quickly. Magnetometer surveys can identify buildings and other features that are remembered by survivors or identified in archival records but may no longer exist above ground. Locating where these buildings and features are in the landscape will be invaluable in helping to guide GPR investigations to areas of greatest potential.

Like most geophysical techniques, magnetometer survey does not disturb the ground. Indeed, most magnetometers are carried above the ground and are passive, meaning that they simply measure tiny changes in the Earth's magnetic field rather than emitting energy into the ground to measure a response.

1) Planning

Not all soils or locations are suitable for magnetometer survey (e.g. igneous geology or urban environments). Furthermore, areas of 19th or 20th century habitation, such as

residential schools, are often strewn with ferrous waste (nails and other small pieces of iron from old buildings and refuse dumps) that seriously impede magnetic survey. The area that you wish to survey should be investigated prior to conducting a magnetometer survey to assess the likelihood of success and to establish the best survey methodology. This can be achieved by examining historical borehole logs and water well records, or conducting a small pilot project that surveys a small area of the site to determine if the local conditions are likely to yield positive results. This can save both time and money and avoid disappointment. Additional time and expense can be saved if potential burial areas are identified through survivor testimony and archival research prior to the survey. Many magnetometers must be held extremely still and require uninterrupted data collection along survey lines that must remain straight. Even small obstacles, such as small bushes, can seriously impede the survey and add considerable time and expense. It may be necessary to prepare the survey area to remove low vegetation and long grass. Areas close to fence lines, parking lots, buildings and other sources of metal are not suitable for magnetometer survey.

Mapping the survey area and the management of the resulting spatial data is a critical aspect of any remote sensing project. The survey area(s), areas of high potential, obstacles and other landscape features should all be identified on the ground, mapped and added to a data management system (see the GIS document in this series). There are many mapping tools available, depending on the location of the work. These include high-precision GNSS/GPS, total station theodolites, handheld low-precision GPS, or even chain and compass from known landmarks. Surveyors should use the greatest precision available. GNSS/GPS and total station theodolites are the most accurate and have the advantage that most are used with computer mapping software, allowing the automatic recording and description of survey points. Chain and compass and/or hand tapes are slower, require thorough note taking, and may have repeatability issues if completed by inexperienced personnel. They may, however, be the only option as tree canopy can block GPS signals and dense undergrowth can inhibit total station survey. Regardless of the approach, the survey should be accurate enough to allow communities to relocate the position of any identified graves or other features of interest after the survey is complete. You may wish to consider marking the corners of the survey grids with plastic (not metal) tent pegs to aid in relocating grids and features identified within them, in the future.

While magnetometer survey is one of the faster ground-based remote sensing techniques, it is still time consuming. The number of individuals needed to complete a survey will depend on the instrumentation used and the site conditions, including ground cover and other obstacles. Some instruments take readings more rapidly, while others might have multiple sensors, which can double or quadruple the speed of the survey. Fluxgate gradiometry is often a preferred method in archaeology, as it allows for rapid, high density data acquisition and many of the commercially available instruments allow for a set up with multiple sensors. Generally speaking, magnetometer surveys are most efficient when done by three people, though some instruments allow for fewer individuals. We estimate that a crew of three technicians can conduct a mapping survey of about 3000 – 6000m² in one day, depending on conditions and instrument used. Such surveys require permissions, access, and the development of agreements on scheduling,

deliverables, timelines, training and, if required, budgets. Communities often require specific protocols to be followed including necessary ceremonies, timeframes, and rules about comportment and behaviour when working with ancestors.

There are a variety of magnetometers available on the market, most of which are aimed at the environmental or engineering sectors, rather than archaeology. It is important, therefore, to choose an instrument that is suitable for grave detection. The most important factors to consider are sensitivity and speed of the instrument. Instruments that are capable of rapid, high density data acquisition to a minimum of 0.1nT are essential for grave detection. The most common magnetometers used in archaeology are fluxgate gradiometers and alkali-vapour magnetometers (more common in Europe). Other instruments are also suitable but may be slower or more difficult to handle. Much will depend on what is locally available, but should provide the target specifications outlined above.

2) Data Collection Protocols

The recommended methodology for data acquisition will differ depending on the goals of the survey. Archaeologists often differentiate between two types of survey methodology: *reconnaissance survey* and *mapping survey*. Reconnaissance survey is where a large area is surveyed at lower resolution to identify the general location of a large target of interest (e.g. a cemetery). Mapping surveys are used to cover smaller areas at higher resolution to map the distribution and number of individual features (e.g. graves) within them. Reconnaissance surveys often precede a mapping survey and have the potential to save both time and money by helping to pinpoint areas of interest quickly and efficiently over a large area. Any area of interest identified in the reconnaissance survey can be further investigated through a higher resolution mapping survey to provide greater detail. However, reconnaissance surveys, due to their lower resolution, can miss small, ephemeral features such as graves that are difficult to locate. Given the higher speed of magnetometer survey compared to other remote sensing techniques, communities may wish to forgo reconnaissance survey and consider investigating the entire area with a higher resolution mapping survey, once they have established that the approach is applicable.

While many magnetometer instruments can be configured to allow data collection with an integrated GPS, most are not accurate enough to provide the resolution necessary to identify graves. It is also harder to keep track of where you have surveyed with a GPS system, leading to inconsistent data densities, and in some cases, for areas to be missed entirely. The CAA therefore recommends that all magnetometer surveys are conducted within grids. Common grid sizes for magnetometer surveys are 10 m, 20 m and 30 m squared. It is sometimes helpful to conduct surveys within rectangular shaped grids to avoid inadvertently confusing the orientation during processing. However, some instruments do not allow for this, and errors can be avoided by accurate note taking. Unless the survey area is small, grids should be established using a total station or GNSS/GPS to an accuracy of 5 cm. For small areas (e.g. 20 m x 40 m) laying the grid out with tapes should suffice.

Unlike GPR, targets of interest are best surveyed at approximately 30 degrees to their orientation (if known), as some processing functions can remove responses from buried features (particularly those that are linear) when crossed in line with their orientation. However, in practice, the alignment of features is often unknown prior to the survey. Grids are more often set up in relation to obstacles or field orientations on the ground. More importantly, as magnetometer survey is likely to be used alongside a GPR survey, it would be more expedient to use the same grid as the GPR survey, which should be set up perpendicular (90 degrees) to the orientation of the grave(s) (if known). The corners of the grids should be recorded with GNSS/GPS so that their location can be re-established, and any features of interest identified within them located.

Magnetometer survey is performed by carrying, pushing or pulling a magnetometer back and forth within grids that have been laid out over the ground. Tapes and ropes are used to guide the operator in this process and to ensure the entire area is covered.

The following survey criteria are recommended:

Reconnaissance Survey

- Survey grids should be laid out with a total station theodolite or GNSS/GPS
- Grid corners should be located with a GNSS/GPS to within 5 cm accuracy.
- A minimum point sample density of 0.5m x 0.25 m is recommended (e.g. readings recorded every 0.25 m along traverses spaced 0.5 m apart).
- Data collection within grids using either zig zag (bi-directional) or parallel (unidirectional) traverses is recommended over GPS enabled data acquisition.

Mapping Survey

- Grids should be laid out with a total station theodolite or GNSS/GPS
- Data collection within grids using parallel traverses is recommended to reduce collection errors such as traverse striping and staggering.
- Minimum traverse spacing of 25cm with inline sample density of 12.5 cm or less (e.g. 6.25cm).

3) Data processing, interpretation and presentation

Once the survey is completed the survey data needs to be processed in computer software to generate plots for interpretation and presentation. The plots look very much like air photographs taken from above (Figure 2). Processing magnetometer data can require numerous steps as the Earth's magnetic field is constantly changing, resulting in numerous natural effects in the data that need filtering out. Data collection inconsistencies are also common due to the sensitivity of the instruments. It is important that the processing steps are done in the correct order as each filter will affect subsequent steps.

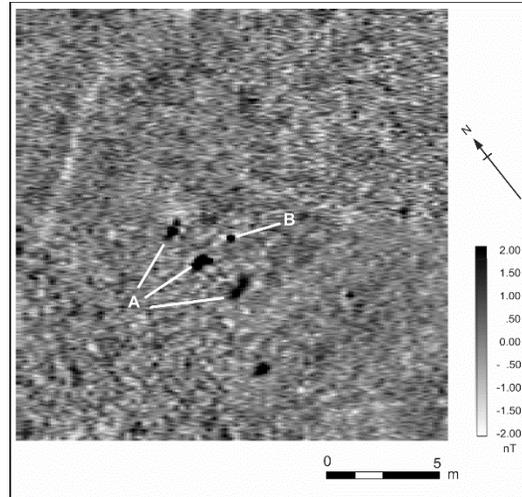


Figure 2. Example of gradiometer results showing the location of 3 unmarked graves of 19th century European sailors (A) in Mercy Bay, NWT. The results also identified what is believed to be the foundation of the original grave marker (B).

Data processing should follow the sequence of steps recommended by the instrument manufacturer and software used. These might include, but are not limited to: 1) a review of the raw data, 2) clipping data to remove noise spikes that affect statistical calculations of subsequent processing steps, 3) neutralising major responses (e.g. fence lines and services), removal of data collection defects (e.g. traverse stripping or staggered data), iron spike removal to remove responses of near-surface metal (caution is needed as iron coffin fixtures and nails may be the only indicator of the presence of a burial), final enhancement of data plots including smoothing and interpolation (Figure 3).

Magnetometer survey data can be difficult to interpret and should be done by trained individuals. For example, the shape and size of the magnetic response that results from a buried feature or object may look completely different to its actual form. A small iron object such as a nail results in a positive and negative magnetic response which is observed in the data as a black and white image, the shape of which depends on the orientation of the object (Figure 4) but none of which look anything like a nail. The size of the nail's magnetic response will also be much larger than the nail itself and might measure up to one metre on the plot. Buried services, in particular metal pipes, or fences running along property boundaries can produce enormous responses that appear many meters wide, "washing out" any of the subtle detail that might be produced by graves in those areas, and rendering the survey useless.

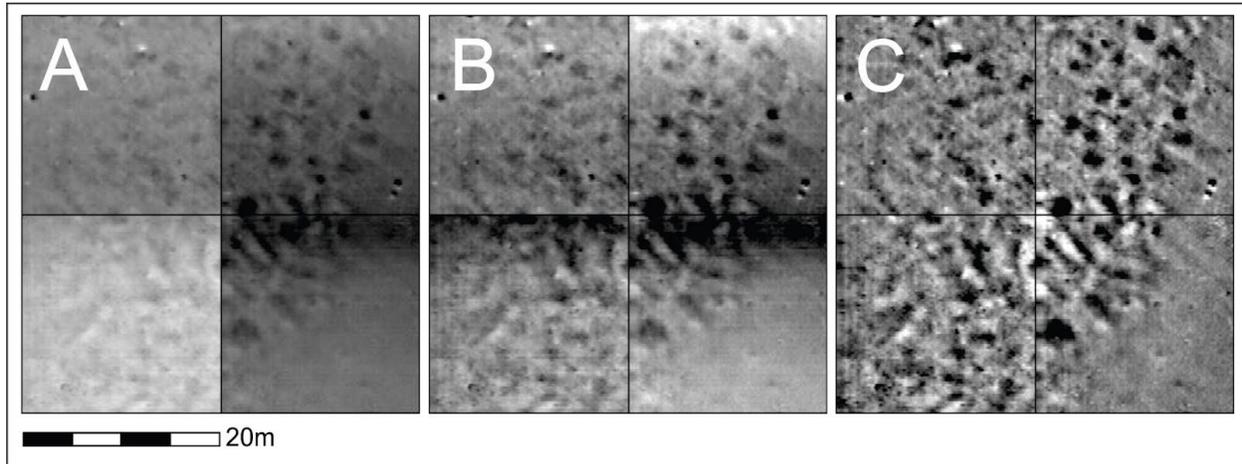


Figure 3. Example showing how some of the processing functions change and enhance the data plots to aid interpretation (Note: Processing terminology may differ between software). A: Raw results showing mismatch of responses between and across grids due diurnal variation (natural changes to the Earth's magnetic field during the day). B: Results after Zero Mean Grid function applied to help match grid data and C: Final results after “Zero Mean Traverse” and “clipping” applied to remove slope effects in data and to enhance the contrast of features of interest.

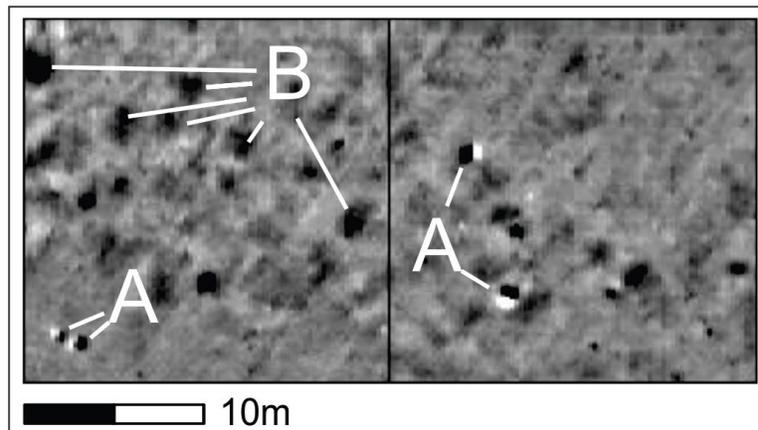


Figure 4. Example of gradiometer results with responses resulting from small iron objects buried in the soil. Note that while they are likely less than 10cm in size, they appear over 1m wide in the plot, almost as large as the archaeological pits (B) which were the focus of the survey.

Interpretation of geophysics results also inevitably includes different levels of confidence. For example, an archaeologist might assign a 70% confidence level that graves exist in a location, depending on how clear the results are. This is where having other sources of evidence, such as other remote sensing techniques or survivor testimony is beneficial, as multiple lines of evidence that all point in the same direction will provide more certainty. The survey report should make a clear distinction between different levels of confidence including inferences based on scientifically demonstrable criteria from those arising from informed speculation based on prior experience.

4) Presentation

The final report should include:

- Copies of unprocessed raw data should be included with the report for archiving.
- A brief site description indicating underlying soil types and geology, ground conditions and vegetation, description of built architecture, previous disturbance including previous archaeological investigations and known underground services that might impact the results.
- Photographs, if appropriate, of each survey area showing the ground conditions.
- The survey methodology should provide a description of the instrumentation used and indicate the traverse line separation/direction, inline sampling interval and the resulting effective spatial resolution achieved.
- A map showing the location of survey grids in relation to other features at the site.
- All location maps must be geo-referenced and annotated with the geographic coordinate system and projection used in order that the location of the grids can be re-established by a third party.
- Plots of minimally processed data should be included prior to the presentation of more fully processed plots.
- All data processing steps should be described in full and their effects on the data highlighted.
- Anomalies resulting from data collection errors that cannot be removed through data processing should be described and distinguished from other responses.
- The interpretation should distinguish anthropogenic from other causes of magnetic enhancement.
- Separation of negative and positive magnetic features and areas of statistically different activity should be described where appropriate.
- Estimate of the depths of features should be calculated (e.g. through half-width rule.)
- Grey scale plots are generally recommended over false colour maps, due to their ability to differentiate subtle detail. False color should only be used in instances where delineation of features of interest might benefit from highlighting through

colour. All plots should include a north arrow, range bar including appropriate values and units, and be presented in and include an appropriate scale for interpretation.

- Interpreted plans indicating all features of interest should be included alongside the data plots.
- Anomalies of interest should be identified with a unique identifier on the plots, and described in full to indicate shape, polarity and signal amplitude. This might best be achieved in a table rather than a long descriptive narrative.

Authors:

Edward Eastaugh on behalf of the CAA Working Group on Unmarked Graves.

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EXHIBIT I-37

**William TD Wadsworth et al,
“Integrating Remote Sensing and
Indigenous Archaeology to Locate
Unmarked Graves” (2021)**

Integrating Remote Sensing and Indigenous Archaeology to Locate Unmarked Graves

A Case Study from Northern Alberta, Canada

William T. D. Wadsworth , Kisha Supernant, Ave Dersch, and the Chipewyan Prairie First Nation

ABSTRACT

Archaeologists have long been called on to use geophysical techniques to locate unmarked graves in both archaeological and forensic contexts. Although these techniques—primarily ground-penetrating radar (GPR)—have demonstrated efficacy in this application, there are fewer examples of studies driven by Indigenous community needs. In North America, the location of ancestors and burial grounds is a priority for most Indigenous communities. We argue that when these Indigenous voices are equitably included in research design, the practice of remote sensing changes and more meaningful collaborations ensue. Drawing on Indigenous archaeology and heart-centered practices, we argue that remote-sensing survey methodologies, and the subsequent narratives produced, need to change. These approaches change both researchers' and Indigenous communities' relationships to the work and allow for the inclusion of Indigenous Knowledge (IK) in interpretation. In this article, we discuss this underexplored research trajectory, explain how it relates to modern GPR surveys for unmarked graves, and present the results from a survey conducted at the request of the Chipewyan Prairie First Nation. Although local in nature, we discuss potential benefits and challenges of Indigenous remote sensing collaborations, and we engage larger conversations happening in Indigenous communities around the ways these methods can contribute to reconciliation and decolonization.

Keywords: Indigenous archaeology, GPR, remote sensing, community-driven, collaboration, decolonization, unmarked graves, Dene, Alberta, Canada

Les archéologues ont longtemps été appelés à utiliser des techniques géophysiques pour localiser des sépultures non marquées dans des contextes archéologiques et médico-légaux. Bien que l'efficacité de ces techniques, comme le géoradar (GPR) ait été démontrée, les exemples d'application de techniques géophysiques pour répondre aux besoins des communautés autochtones sont plus rares. En Amérique du Nord, le lieu de repos d'ancêtres et les lieux de sépulture sont une priorité pour la plupart des communautés autochtones. Nous affirmons que lorsque les voix autochtones sont incluses de manière équitable dans la conception d'un projet de recherche, l'usage et l'expérience de la télédétection changent et des collaborations plus significatives s'ensuivent. En nous inspirant de l'archéologie autochtone (*Indigenous archaeology*) et des pratiques centrées sur le cœur (*heart-centered practices*) nous affirmons que la pratique de la télédétection ainsi que les interprétations qui en résultent doivent changer. Ces approches modifient le rapport qu'entretiennent les chercheurs et les communautés autochtones avec la recherche et permettent l'intégration des savoirs autochtones dans les interprétations (*Indigenous Knowledge*). Dans cet article, nous discutons du potentiel de cette approche, de son lien avec les relevés GPR modernes pour les sépultures non marquées, et présentons les résultats d'une enquête menée à la demande de la Première Nation Chipewyan Prairie (Chipewyan Prairie First Nation). Bien qu'une enquête de nature locale, nous discutons des avantages et des défis potentiels de projets de collaboration avec les autochtones utilisant la télédétection, et nous engageons les conversations plus étendues des communautés autochtones sur la façon dont ces méthodes peuvent contribuer à la réconciliation et à la décolonisation.

Mots clés: archéologie autochtone, géoradar, télédétection, archéologie communautaire, collaboration, décolonisation, sépultures non marquées, Dénés, Alberta, Canada

Long regarded as cost-effective and time-efficient solutions for archaeology (e.g., Conyers 2013; Schmidt et al. 2015), remote sensing offers a possible solution to aid both Indigenous communities and archaeologists in the protection of heritage (Wadsworth 2020). Both groups appreciate the technique's

non- or minimally invasive impacts to cultural sites and their ability to expedite archaeological timelines (Gonzalez 2016; Johnson and Haley 2006; Supernant 2018). Despite these obvious benefits, only a few archaeologists practicing Indigenous archaeology have incorporated geophysics into their research programs (but see

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Gonzalez 2016), and conversely, only a small number of archaeologists who specialize in remote sensing apply their techniques within community-based or public archaeology models (e.g., Henry et al. 2017). The use of remote sensing for public archaeology, however, broadly differs from its potential application to Indigenous archaeology. Indigenous archaeologies require changes to the design, process, and interpretation of archaeological results (Atalay 2012; Lyons 2013; Supernant and Warrick 2014; Tuhiwai-Smith 2012), including remote sensing. Reorienting remote sensing under an Indigenous archaeology paradigm serves to not only bridge the gap between Indigenous communities and archaeologists but also contribute to the decolonization of archaeological practice.

In this article, we focus on a specific, culturally sensitive application of community-driven geophysics to locate Indigenous unmarked graves in Canada's subarctic. Through our partnership with the Chipewyan Prairie First Nation, we demonstrate the utility of incorporating Indigenous archaeology principles and Indigenous Knowledge (IK)-informed strategies to the design, implementation, and interpretation of a GPR unmarked grave survey. We then discuss how input from the community changed survey strategies, and we consider the potential benefits and limitations of our approach in contributing to Indigenous-oriented archaeological remote sensing.

INDIGENOUS CRITIQUES OF ARCHAEOLOGICAL PRACTICE

Indigenous critiques of archaeology as a destructive and extractive discipline (Tuhiwai-Smith 2012) are finally being heard by some archaeologists (Atalay 2012; Colwell 2016; Nicholas and Andrews 1997; Nicholas and Markey 2015; Silliman 2008; Supernant 2018). Although some early authors had acknowledged Indigenous concerns about representation and voice, it was not until the late 1990s that the concerns of descendant communities became a significant focus (Nicholas and Andrews 1997). Indigenous archaeology takes many forms, but at its heart, it is archaeology "done by, with, and for Indigenous peoples" (Nicholas and Andrew 1997:3; see also Martinez 2014; Nicholas 2008). Although still not the dominant form of archaeology today, Indigenous archaeology in its many forms is a growing force across the discipline (e.g., Colwell 2016; Gonzalez 2016; Silliman 2008; Supernant et al. 2020).

Recently, archaeologists have begun to address critiques of the field's colonialism by generating community-based and collaborative practice models (Atalay 2012; Colwell 2016; Lyons 2013; Silliman 2008). Although community-based and collaborative archaeologies are applied in various contexts globally, they are a core methodological component of Indigenous archaeology, and much of the literature on community-based archaeologies (especially in North America) has emerged from partnerships between Indigenous communities and archaeologists (Atalay 2012; Colwell 2016; Colwell-Chanthaphonh and Ferguson 2008; Silliman 2008). Following decolonized practices, Indigenous communities should be involved partners and initiators of archaeological research projects wherever possible. This results in research problems and designs that are different from projects that are initiated solely by archaeologists who are not members of the community (Atalay

2012; Colwell 2016; Tuhiwai-Smith 2012). When work is conducted in ways that address community needs, more holistic questions are asked and different kinds of information are obtained. The results are more meaningful to the individuals, families, and communities closely connected to their history, and investigations may parallel personal journeys of identity for community members (Lyons 2013). Indigenous archaeology projects are grounded in respect, and they often use low-impact approaches that recognize and incorporate Indigenous Knowledge and community perspectives of the past (Gonzalez 2016; Supernant 2018; Zimmerman 2005). In many cases, non- or minimally destructive field methods are preferred by Indigenous communities (Gonzalez 2016; Supernant 2018).

At the same time as Indigenous archaeology gained momentum, an increasing number of archaeologists began to adopt geophysical and remote sensing techniques for similar reasons (e.g., Conyers 2013; Kvamme 2003). These applications are often touted as a more ethical form of archaeology given their nondestructive nature (McKinnon and Haley 2017). Despite thematic similarities and crossover potential, few researchers have engaged in both Indigenous archaeology and remote sensing, and remote sensing applications at times have echoed or enhanced the extractive/colonial nature of the discipline. Remote sensing is often used to limit the amount of time spent on a site while *extracting* the most amount of data, and these projects are often significantly shorter than excavations (Johnson and Haley 2006:43–44). For example, "multi-instrument" surveys have become commonplace in archaeological geophysics to maximize data collection, solidify interpretations, and limit time/resource constraints. Although some government bodies regulate the practice of archaeological geophysics more stringently, there remain many regions (such as in Canada) where heritage acts and legislation enable the "fly-in/fly-out" nature of remote sensing by not having as extensive licensing, permit, or consultation requirements as other forms of archaeology (Province of Alberta 2013; Province of British Columbia 1998; Wadsworth 2020:29).

Indigenous archaeological sites remain a common target for geophysical surveys. Despite investigating these sites with more ethical methods than traditional archaeology, not changing remote sensing methodologies to incorporate decolonized practices can be a "move to innocence" by researchers (Tuck and Yang 2012:19–20). Although the nondestructive aspect of the research is positive, it does not change the fact that many projects and their results remain outside the purview and control of the Indigenous communities they affect. This issue is even more egregious when government policies deny communities access to information about their ancestors and sacred places. Although the circumstances presented here do not encompass the entirety of archaeological remote sensing, due to the variety of geographic and legal contexts in which archaeological geophysicists work, we wish to draw attention to a problem and an opportunity. Remote sensing can perpetuate similar issues critiqued of archaeology, such as projecting Western objectives onto Indigenous pasts and extracting data for "science." But practitioners of archaeological remote sensing can also advocate for Indigenous objectives and community access to and ownership of cultural heritage data, when possible. To seize this opportunity, archaeological projects should incorporate these nondestructive techniques within community-driven/collaborative methodologies that seek to uphold Indigenous sovereignty and address community objectives.

COLLABORATIVE/COMMUNITY-DRIVEN FRAMEWORKS AND REMOTE SENSING

Archaeology that involves public outreach and communicating interpretations to the “public” is often deemed “public archaeology” (Atalay 2012), and archaeological geophysics is increasingly applied within these settings (e.g., Henry et al. 2017; Horsley et al. 2014). Although public archaeology requires community consultation, permission, and engagement with residents on or adjacent to archaeological sites, it does not necessarily mean that these individuals are always included as stakeholders (Wright 2015), and their knowledge may go underrecognized in interpretation. Indigenous and collaborative archaeologies differ principally from—and in many ways expand on—public archaeologies because they ask questions about research relevance, audience, and benefits to the associated or descendant community (Atalay 2012:2, 44, 237). They also center Indigenous ways of knowing by recognizing settler colonialism, privilege, and power dynamics in ways that public archaeology does not (Atalay 2006; Supernant 2018). On Indigenous archaeology projects, research objectives and methods are often determined by communities rather than the archaeologist, and communities have stronger voices (Atalay 2012; Colwell 2016; Supernant et al. 2020). This article integrates principles of heart-centered archaeological practice (Lyons and Supernant 2020; Supernant et al. 2020), an approach that foregrounds these personal relationships, community needs and respect, knowledge transparency, and interdisciplinarity to accomplish partner community goals (Supernant et al. 2020).

When Indigenous peoples have been included on archaeology projects, they have often been relegated to roles as local informants or field assistants employed to provide manual labor, give access to areas, and assist in the location of archaeological sites (Colwell 2016; Nicholas and Markey 2015). Listening to Indigenous communities about their needs and objectives, as well as respecting their knowledge and historical narratives as equal to science, has only recently been discussed (Atalay 2012; Nicholas and Markey 2015). Although some authors have preferred “traditional knowledge” to describe Indigenous peoples’ knowledge of their environment, landscape, and culture, we prefer the term “Indigenous Knowledge” (IK). The term “traditional knowledge” suggests that the knowledge is somehow static, when in practice, it is dynamic and ever evolving. Specifically, “traditional” does not recognize the diverse traditional and contemporary knowledge systems that exist in Indigenous epistemologies, relegating “useful” knowledge to the past. Following Stevenson (1996), this article uses “Indigenous Knowledge” to encompass traditional/nontraditional and ecological/nonecological (social, cultural, and spiritual) knowledges, recognizing the usefulness of different epistemologies under a more inclusive term. We prefer this term because it is more empowering for communities and less contentious (Stevenson 1996). Despite some contestation over the use of IK within archaeology, we see value in critical multivocality and the beneficial co-creation of knowledge between communities and researchers (Colwell 2016; Ferguson et al. 2015; Nicholas and Markey 2015).

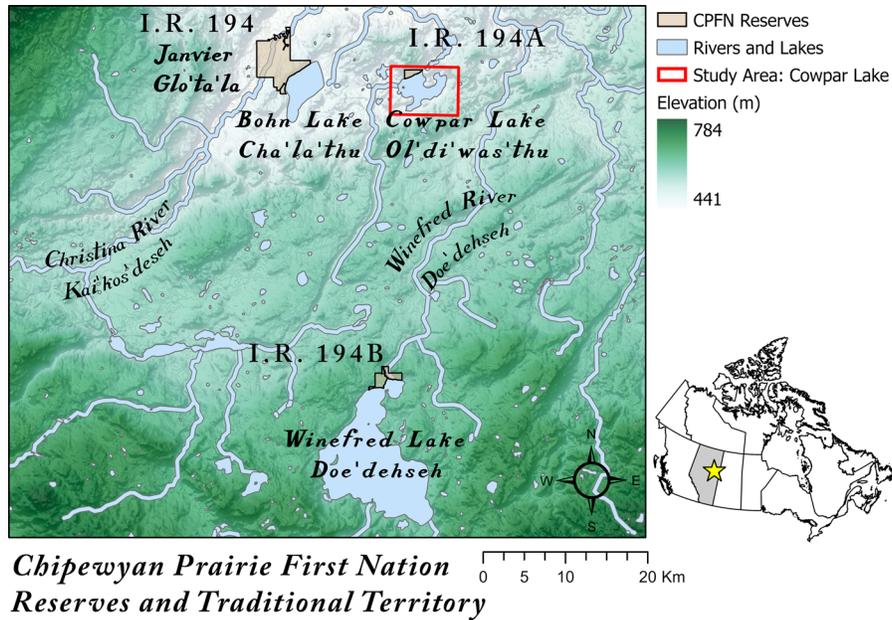
In archaeological remote sensing, “multistage” methodologies (carrying out geophysical surveys at different scales throughout the research process) have been shown to drastically improve the

way archaeologists approach sites and the questions they ask (Henry 2011; Henry et al. 2014; Horsley et al. 2014). Researchers who use these methodologies, however, are still approaching archaeological questions from a geophysical or archaeological worldview. Collaborative and community-driven frameworks allow us to integrate IK and remote sensing together throughout the entire research process, as is the case with multistage remote sensing. Indigenous communities drive this research, bring their own questions and personal relationships to sites, and control the outcomes of projects and the data produced. Actively including community members creates a dialogue between fields where geophysical, archaeological, and Indigenous Knowledges can interact. It is here that both researchers and communities derive mutual benefit from the noninvasive production of knowledge. The combination of geophysics and Indigenous archaeology offers an avenue to change methodological design, process, and interpretation of heritage resources. These fundamental changes invert how these fields have interacted in the past, and Indigenous Knowledge is no longer used to supplement archaeological survey. Instead, archaeological remote sensing is used to supplement and aid Indigenous Knowledge and community goals. Moreover, working within this interdiscursivity allows for greater anthropological insights to be generated (in line with the recent anthropological turn within geophysics; e.g., Conyers 2010; Horsley et al. 2014; McKinnon and Haley 2017; Thompson et al. 2011). Although the utility of this emerging combination has yet to be fully realized, we illustrate below how community-driven approaches and decolonization theory can—in our experience—be applied to the most requested survey by Indigenous communities: the unmarked grave survey.

GPR AND UNMARKED GRAVES: PAST AND FUTURE CONTEXTS

Archaeologists have used ground-penetrating radar (GPR) to investigate unmarked grave contexts since its earliest adoption in archaeology (Conyers 2012, 2013; Gaffney et al. 2015; Goodman and Piro 2013). Detailed explanations of how GPR operates are available elsewhere (e.g., Conyers 2013; Goodman and Piro 2013), but it is important to mention that GPR differs from other geophysical techniques because it attempts to record and discriminate the size, shape, and derived depth of reflections created by subsurface objects. Using processing software, GPR data can be analyzed as reflection profiles, top-down amplitude maps/time-slices, or 3D volumes (Goodman and Piro 2013). Generally speaking, when the same graves can be clearly located in multiple types of GPR analysis (i.e., profile and amplitude data), it is taken as a sign of high confidence in grave interpretation (Conyers 2012; Gaffney et al. 2015; Wadsworth et al. 2020). Today, GPR is widely recognized as one of the most consistent techniques for unmarked grave investigations (Conyers 2012; Gaffney et al. 2015; Wadsworth et al. 2020).

Historic cemeteries have received a great deal of attention by North American archaeologists and GPR professionals (Conyers 2012). When the criteria for a “grave-shaped” GPR reflection is reflexively examined, it is clear that these are based on a priori assumptions about burial culture, physical character, size, inclusions, and associations to other graves. In settler-associated cemeteries, these assumptions may not always be simple, but they are fairly intuitive, with variance largely being based on religion,



**Chipewyan Prairie First Nation
Reserves and Traditional Territory**

FIGURE 1. A portion of the Chipewyan Prairie First Nation's traditional territory in northeastern Alberta (★ on the map of Canada), with place names mentioned in text. Created in ArcGIS Pro. See Data Availability Statement.

ethnicity, class, and event (e.g., Conyers 2012; Ruffell et al. 2009). These graves typically follow a rough template of up to 6 ft. (~1.8 m) deep and are 1–2 m in length. They often have limited grave inclusions, are organized into loose rows, and typically consist of coffin burials. In some cases, the stacking of coffins and presence of mass graves within cemeteries have also been recorded (Conyers 2012).

It is important to note that non-European cemeteries (or those of their descendants) appear to be far less investigated in the published literature. This is likely due to two factors: (1) the majority of the development and application of geophysical and remote sensing technologies has been concentrated in Europe (Schmidt et al. 2015), and (2) surveys with these minority communities are often treated with a necessary higher degree of sensitivity and confidentiality. When these burial grounds are investigated and are allowed to be published, however, a priori assumptions of burial practices and the historic cemetery template are less applicable (e.g., Conyers 2012:147–150; Wadsworth et al. 2020). More specifically, Indigenous burial grounds are often linked to larger cultural landscapes, and they involve more anthropological issues beyond pure identification, including why these cemeteries are there, how/why they are unmarked, what the imminent risks are, and what their potential role is in land claims. The typical assumptions are further confounded by variables that differentially affected these communities and further changed the nature of their burial grounds (for example, the long history of systemic oppression, racism, epidemics, warfare, and starvation policies that decimated Indigenous communities during the 1800s; Daschuk 2013). Although it is a challenging pursuit, the location of ancestors and burial grounds is a priority for most Indigenous communities (Supernant 2018), and Indigenous archaeology approaches afford a much-needed sensitivity to this research that changes how these techniques are applied. At the request of the Chipewyan Prairie First Nation (CPFNF), an opportunity was

presented to apply these principles to an unmarked grave survey at the Cowpar Lake Burial Ground, an unregistered cemetery known only through Indigenous Knowledge.

STUDY AREA: CHIPEWYAN PRAIRIE FIRST NATION

Cultural and Historical Context

Chipewyan Prairie (Glo'ta'la) is an Athabaskan speaking, Déné'suline (or "Chipewyan," a term derived from Cree) community situated in northeastern Alberta, Canada (Figure 1). Members have close relations living in Garson Lake and La Loche, Saskatchewan, and they are part of what Jarvenpa (1980:43–44) described as the *kesyehot'ine*—"Poplar House People." The originating clans of Chipewyan Prairie (Bunion of Rabbits, Sagista, Chicken Neck, Old Man, and Porcupine Foot) derived their livelihood and identity from lands radiating outward from Winefred Lake (Doe'dehseh), Christina Lake (Ol'di'zan'thu), Christina River (Kai'kos'deseh), Cowpar Lake (Ol'di'was'thu), and Bohn Lake (Cha'la'thu). Today, CPFNF members are signatories to the historic Treaty No. 8, with three reserves set aside for their use, including I. R. 194 Janvier (120 km south of Fort McMurray, Alberta), I. R. 194A Cowper Lake, and I. R. 194B Winefred Lake.

Since the time of contact with settler populations, Déné'suline, like many Indigenous groups in Canada, have suffered dramatic population declines as a result of pandemics caused by infectious diseases such as influenza and tuberculosis. One such pandemic, the Spanish Flu of 1918–1919, reached deep into Chipewyan Prairie territory when it affected families living at Cowpar Lake. After succumbing to what was believed to have been the flu, approximately 14 Déné'suline were buried with much care in a

sandy jack-pine area (*guni thaze*) overlooking Cowpar Lake. One elder believed that all of the individuals died over winter and that in spring they were buried all at once. They were buried in a manner that combined both Roman Catholic and local burial practices, with some graves surrounded by round cobbles and others having the remnants of white wooden crosses laying on them. It is believed that the white wooden crosses (which currently are almost disintegrated) were added about 35 years ago.

Research Problem

One hundred years later, many of the people of Chipewyan Prairie reside in Janvier and have seasonal cabins at Cowpar Lake, at Winefred Lake, and on their traplines. Prompted by challenges with addictions, Chipewyan Prairie began the construction of healing cabins on the shore of Cowpar Lake. In anticipation of increased off-highway vehicle traffic in the area, CPFN leadership decided that the Cowpar Lake Burial Ground, with few visible surface remains, should be fenced off to ensure that the graves were not impacted unintentionally. Known primarily through IK, there was limited recorded information available about the burials. Consequently, leadership feared that constructing the fence without knowing the extent of the burial ground could potentially impact the graves. Before construction, they sought reassurance that the fence they built would encircle all of the graves.

The GPR survey was conducted in order to delineate the graves and inform fence construction diameters. This was not the first time that the authors (Wadsworth and Supernant) had conducted an unmarked grave survey at the request of an Indigenous community. In fact, part of the reason this opportunity arose was due to the completion of similar projects that resulted in positive outcomes, which led to the researchers becoming known among some Indigenous networks. Prior to this project, only one of us (Dersch) had strong relationships with the members of the Chipewyan Prairie First Nation. Per Dersch's suggestion, the University of Alberta team was invited by the community to conduct geophysical surveys of the gravesites at Cowpar Lake.

Geographical Context

CPFN's traditional territory falls within the Athabasca Oil Sands region of Alberta, a well-known area with a long history of resource extraction (Conly et al. 2002). The sandy near-surface deposits (which make this area viable for oil extraction) also permit geophysical/GPR research (Conyers 2013; Goodman and Piro 2013).

The Cowpar Lake Burial Ground is situated on a raised sandy area above the lake's shore (Figure 2). A small clearing surrounded by open pine forest, the area is accessible via a maintained dirt road that crosses small wetlands. The area was very flat and had limited obstructions aside from small sapling trees that were either pushed aside or cut down by community members. Many large pieces of old wooden grave markers were found distributed across the site. In some areas, slight surface depressions corresponded to these marker fragments.

Research Context

It is well known that unmarked grave investigations should strive to incorporate multiple techniques when possible to increase confidence in the geophysical results (Gaffney et al. 2015). Given the

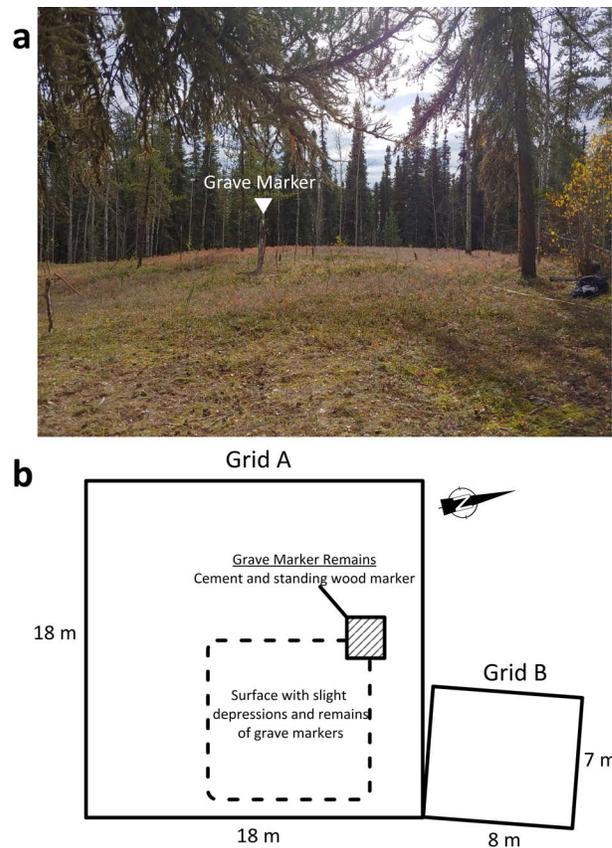


FIGURE 2. (a) Photo of the survey area. Part of one grave marker still stands, with many wood pieces scattered around it. Slight surface depressions / vegetation changes are visible as one walks across the burial ground (photo by William T. D. Wadsworth). (b) Diagram of the survey grids. Grid A was 18 × 18 m, and Grid B was 8 × 7 m. Only one obstruction was present—the cement/wood remains of one grave marker. Although the surface was flat, there were slight depressions in the eastern portion of the grid.

nature of CPFN's needs and time constraints, however, this was not realistic. This study focused on a ground-penetrating radar survey that sought to (1) identify/characterize the burials and (2) delineate their extent so that CPFN could construct a protective fence.

This is not the first time that geophysical techniques have been used to address archaeological questions in northern Canada (e.g., Landry et al. 2019), and this is also not the first study to undertake an unmarked grave survey with Dene communities (e.g., Moorman 2003). The latter research project was a community initiative and used IK to determine burial ground locations and interment information. These researchers also found IK useful in the absence of historical information.

It is our privilege, with the permission of and in collaboration with Chipewyan Prairie First Nation's leadership, to share the results of the following survey in the hopes that it will help to connect communities and archaeologists in the advancement of Indigenous issues.

SURVEY SPECIFICS

This project was driven by the Chipewyan Prairie First Nation, and it sought to complete the community's objective of locating the graves and protecting the burial ground. It was funded solely by the Nation, with in-kind support from the Institute of Prairie and Indigenous Archaeology / University of Alberta. As a result, the impetus of the project, the location of the cemetery, and the cause of the burials, along with their expected characteristics, were made known to researchers only through IK and personal relationships with community members.

CPFN determined the survey location from IK, and community members took the research team to the location along Cowpar Lake. The survey design decisions that typically guide an unmarked grave survey were also primarily drawn from IK and community members' participation. At the survey site, community members and an elder were asked about the nature of the graves at the burial ground. Questions asked revolved around depth, material composition, grave structure, orientation, date and circumstance of death, and identity of the graves. Despite the fact that most Chipewyan Prairie members were Roman Catholic, IK suggested that the burials had been done in a more local style—approximately 3 ft. (~0.9 m) deep and oriented toward Cowpar Lake. Community members did not think that coffins had been used.

GPR settings and grid/survey orientation were determined based on the information provided by community members, and rectangular grids / survey transects were placed in order to bisect the expected graves perpendicularly (Figure 2). The entire area that the community requested was surveyed as part of two grids; Grid A (18 × 18 m) was centered over the burial area, and Grid B (7 × 8 m; offset to avoid two large trees and other obstructions) was an expansion of the survey to confirm that no graves had been missed. A GSSI-SIR 3000 controller with a 400 MHz center frequency analog antenna and distance-measuring survey wheel was used to conduct the survey. Survey transects were conducted unidirectionally over both grids, and transects were spaced in 25 cm intervals to maintain a resolution that was high enough to detect the same grave in multiple profiles. Readings were logged at a rate of 50 scans/m, samples were set to 1,024, and 3 gain points were set automatically at the beginning of the survey and consistently used throughout the project. As there was prior knowledge of burial practices by community members, two-way travel time (TWTT) was set to record up to 60 ns (a conservative estimate) in order to capture graves less than 6 ft. (~1.8 m) deep.

During the survey, the community members wished to know where the graves were “on the fly.” Although this is not always possible given the processing time needed to extract useful information from GPR data, it was possible during the CPFN survey. The sandy matrix allowed for the easy identification of most graves in-field because there was little background noise and the grave reflections were very clear. A councilor for CPFN began to demarcate the graves as we conducted the survey. Graves were marked at the “head” and “feet.”

When working with Indigenous communities, we prefer, when possible, to use free or cost-effective processing software so that if communities ever need to replicate the results, the cost is reduced. To process the data, we used a free suite of

programs—GPR Viewer (2016) and GPR Process (2010), developed by Dr. Lawrence Conyers and Jeffrey Lucius. TWTT was converted to depth using hyperbola fitting estimation in GPR Viewer, which determined the dielectric permittivity to be about 11 (appropriate for mixed dry sand/silt soils; Conyers 2013). The reflection profiles were time zeroed, and a basic background removal filter was applied. These profiles were then “sliced” into 3 ns time slices using GPR Process. To visualize the data, Golden Software's Surfer 19 was used to construct the amplitude maps (despite the fact that this particular software is not free, the XYZ data produced by this workflow can be visualized using other open-source programs). As previously described, graves were first identified in profile and then compared to amplitude maps before we made our final conclusions. Following the analysis, a confidential technical report and data archive were prepared for CPFN. Because the survey was on reserve land (consequently, under federal jurisdiction), no additional reporting or permitting was required beyond the requirements set by the CPFN.

RESULTS

The IK-informed survey at Cowpar Lake was successful at locating the unmarked graves (Figures 3 and 4). There were many surface reflections from tree roots and small rocks, but these did not obscure grave identification. Many GPR reflections displayed the “grave-shaped” hyperbola character of shroud burials or wood coffins (Figure 3; Conyers 2012:130–136). Furthermore, most grave shaft reflections were found at a consistent depth of 70–90 cm (approximately 3 ft. deep). Many of these graves were found to be consistent with slight surface depressions and visually noted vegetation changes observed by community members and researchers. In the profiles, six possible grave-shaped hyperbolae were recorded. Either these were not represented in adjacent profiles, or their shape/character was deemed questionable. Twelve grave-shaped reflections were found to meet the IK parameters/assumptions set at the start of the survey, many appearing in a number of profiles often spanning 1–2 m. These identified graves were represented in both reflection profiles and amplitude maps, adding confidence to their interpretation (Figure 4). Although we suggest that the other reflections may also be graves, these 12 were most convincing in their identification. It is also worth noting that this number was also roughly how many graves the community expected to be in the burial ground based on IK.

With regard to the “on the fly” mapping of graves, this process helped to include the community in a way that was meaningful, given that remote sensing data can be very technical. Although not a complete picture of the final survey results, this in-field marking strategy was later shown to be fairly accurate, and it made a great difference for the community members, who could see the research in action (Figure 5). It was also beneficial to the research project because it facilitated the sharing of IK and co-created ideas about the burial ground as it began to emerge.

The in-field identification allowed for community members to have a rough estimate about the resources needed to protect the burial ground, and interpretations were later confirmed with the visualization of the GPR data and creation of amplitude maps. The boundaries of the Cowpar Lake Burial Ground were delineated, and they included all possible associated reflections. The graves were largely concentrated in one part of the survey area and

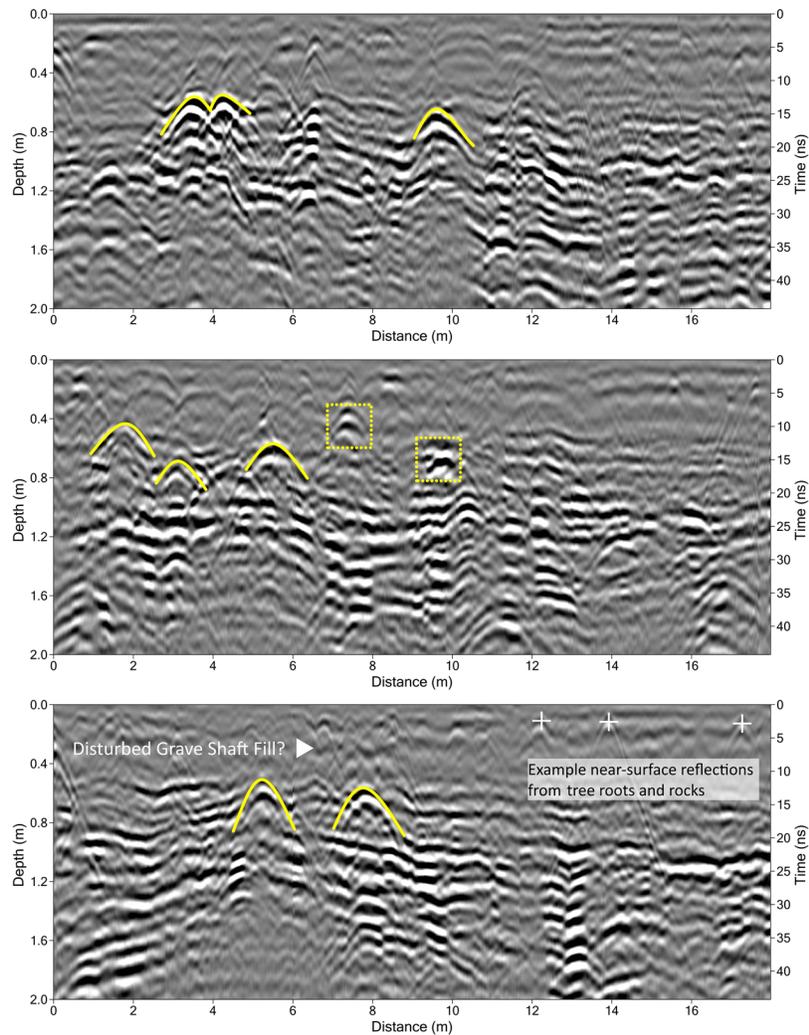


FIGURE 3. Annotated GPR profiles from different parts of the Cowpar Lake Burial Ground. The yellow annotations indicate the grave-shaped radar reflections resulting from either wooden coffin or shroud burials. The dotted lines indicate possible grave reflections, but they had characteristics that cast doubt, such as variance in shape or depth. Disturbed soil is seen above some of the hyperbolae, possibly representing the grave fill. Surface reflections from tree roots and rocks were found across the survey, and some of these are identified on the bottom reflection profile (+). The GPR reflection profiles shown here were visualized in GPR Viewer (2016).

oriented in rough rows—which makes sense given the Roman Catholic influence in the area. Because the grid was surrounded by trees, expansion of the survey was only possible to the north. A small grid (7 × 8 m) was surveyed, but no additional graves were identified. Consequently, it was concluded that the GPR survey had delimited the boundaries of the burial ground. If protective measures were to be taken, it was recommended that a minimum area of 14 × 14 m, centered on the identified grave reflections, should be fenced so as not to disturb the burials (Figure 4c).

There were some clear grave-shaped reflections that only occurred in a few profiles (around or less than a meter). Typically, these would have been classified as possible graves. Consultation with community members, however, revealed that it was their wish to interpret these as the possible graves of deceased children (Figure 5). Out of the 12 graves identified in both profiles and

amplitude maps, up to six befitted this interpretation. It is important to note that other reflections originally identified as possible graves may also represent this category. The size, shape, and orientation of these reflections, however, were different from the other graves, which cast doubt.

DISCUSSION

It has been almost two decades since Kvamme (2003) published the seminal article “Geophysical Surveys as Landscape Archaeology,” in which he described how geophysical data could be used to generate more meaningful anthropological landscape interpretations. Since then, researchers have continued to grapple with how best to apply remote sensing to anthropological resources (e.g., Conyers 2010; Horsley et al. 2014; McKinnon and

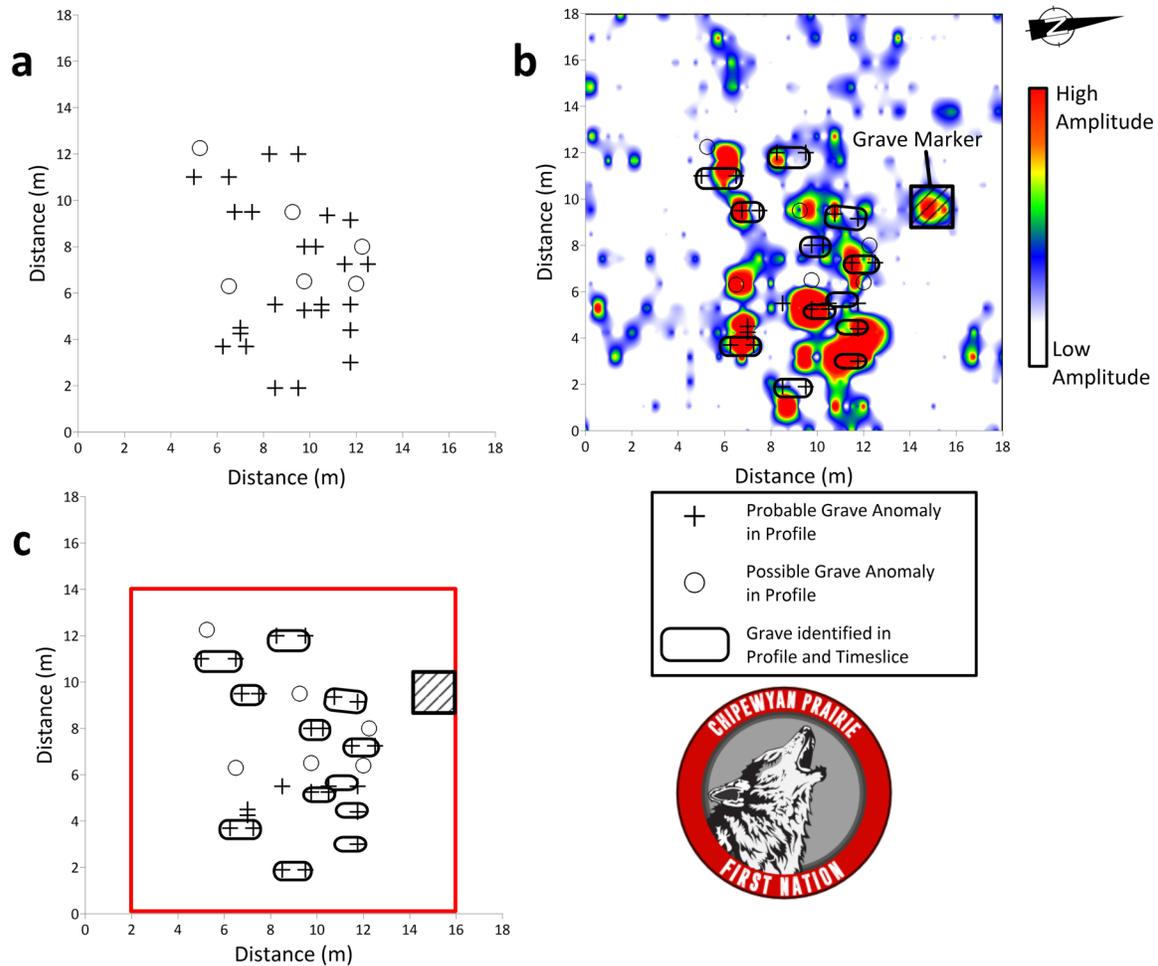


FIGURE 4. (a) Post map of “head” and “feet” of graves identified in GPR profiles. Circles denote possible grave-shaped reflections, and black crosses denote probable grave-shaped reflections; (b) GPR profile interpretations overlaid on 3 ns thick amplitude map at 80–90 cm deep (approximately 3 ft.); (c) Identified graves as a post map with shapes interpreted from the profiles and amplitude map. A minimum fence boundary of 14 × 14 m was recommended by the researchers (shown in red). The GPR amplitude maps shown here were created in GPR Process (2010) and visualized in Surfer (19.2.213).

Haley 2017; Thompson et al. 2011). Although great strides have been made in these respects, efforts have largely concentrated on the American Southeast and generally not included community perspectives (see McKinnon and Haley 2017). These studies represent a form of anthropology that differs from what has been presented here.

Incorporating the voices and goals from Indigenous communities departs from the anthropological objectives typically sought by archaeologists (as cited above). Instead, conversations shift to who ancestors were, what their stories were, and how they fit within the landscape, in turn impacting modern political goals and narratives (Lyons 2013). As such, methodologies need to change to better address these reoriented goals. We propose that integrating Indigenous community-driven archaeology practices into remote sensing is a possible solution to creating a more heart-centered archaeological remote sensing. In turn, this will provide a more ethical mechanism with which to effect change with, by, and for Indigenous communities in both

anthropological and current political contexts (Nicholas and Andrews 1997; Supernant et al. 2020). With this small study with CPFN, the inclusion of Indigenous Knowledge and community perspectives changed the impetus for conducting the research to one that would accomplish a community goal. This modification in research relationships ultimately dictated this study’s methods and the interpretation of its results. Because of these efforts, the Cowpar Lake Burial Ground will be protected from future disturbance. Good rapport was built between the community and the University of Alberta researchers both during and following the survey, and the team has been invited back to search for additional archaeological sites of great interest to the community.

Although we have yet to fully interrogate the effects of Indigenous archaeology principles on archaeological geophysics research; this study has offered a positive opportunity to highlight the benefits, challenges, and potential for future refinement of such a methodology. Discussed here are the benefits and challenges we identified.

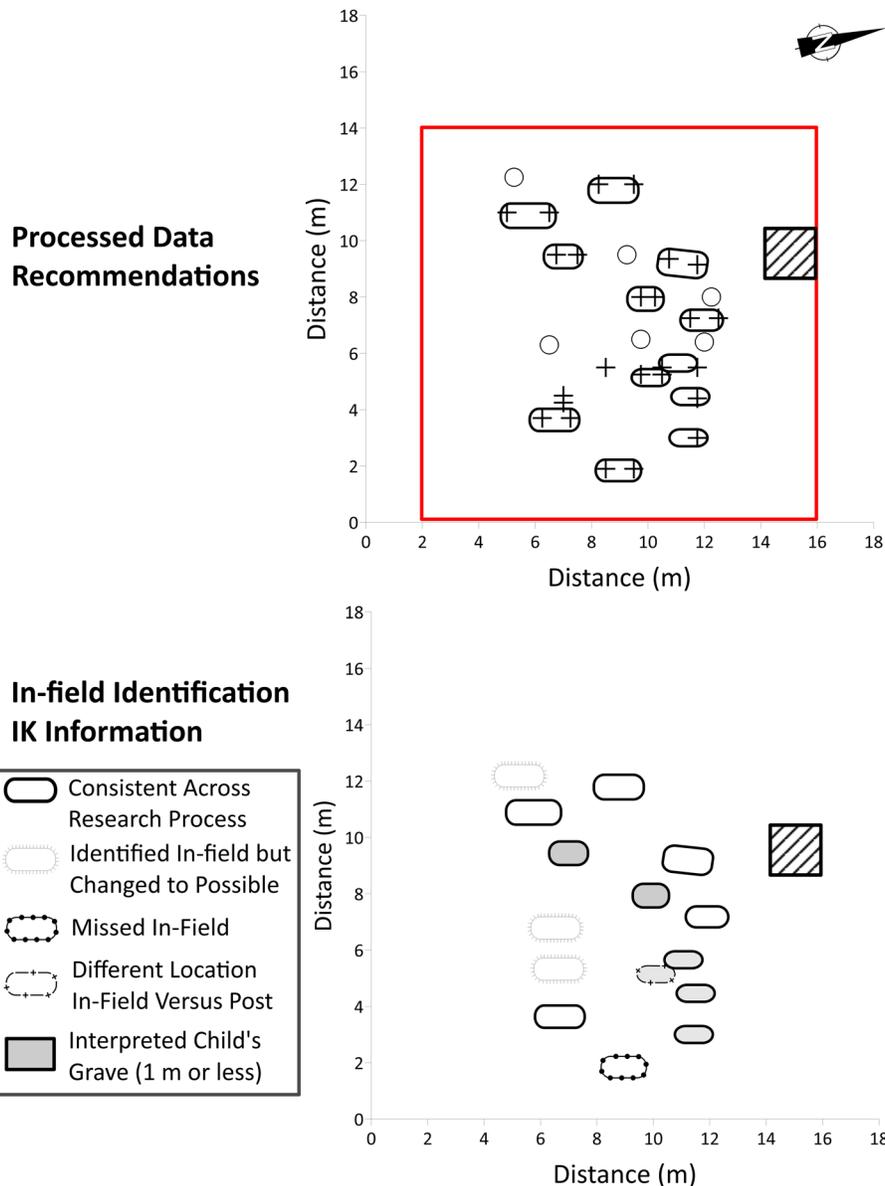


FIGURE 5. Comparison between post-processing data recommendations and in-field identification of unmarked graves. Although the processed data is deemed the most “accurate” in terms of technique, the addition of Indigenous Knowledge changed how the burial ground was interpreted. Although the integration of these datasets did not change the overall burial ground layout, it did slightly change the location of specific graves and their identities. Following the community’s wishes, child versus adult graves were identified.

Benefit 1: Nondestructive

Indigenous communities desire noninvasive alternatives to traditional archaeological techniques, and to this end, remote sensing offers cost-effective, time-efficient, and nondestructive results. CPFN’s traditional territory is situated within a heavily extracted portion of Alberta. Consequently, community members desired a solution that was far less invasive than traditional excavation (which would have never been acceptable given the sensitive context). Moreover, building off of the large body of literature on GPR unmarked grave surveys, geophysical techniques can be

applied in Indigenous communities to help them locate their ancestors. This context leads to a more reflexive and anthropological setting than the typical unmarked grave survey, and new questions emerge.

Benefit 2: Co-creating Knowledge

Indigenous Knowledge can and should inform remote sensing and archaeological surveys when taking place at the request of communities—especially in the absence of historical information, as was the case at the Cowpar Lake Burial Ground. In this study, IK

directed the survey's impetus, physical characteristics (i.e., location of the burial ground, orientation, and depth of the graves), design/process (e.g., the inclusion of ceremony), and interpretation (e.g., head/feet, identification of adults versus children, purpose of the burial ground). It is important to mention that this application did not compromise the analytical methods of the GPR survey or its results. Instead, this combination created a more theoretically interpretive space for participants to co-create knowledge. Although knowledge co-creation is frequently discussed in Indigenous archaeology (Ferguson et al. 2015; Nicholas and Markey 2015), this is not the case for archaeological remote sensing. By engaging with the theoretical distance (interdiscursivity) between fields through active community participation, new knowledges can be co-created (Ferguson et al. 2015). Braiding knowledges in this way allows for archaeological remote sensing to better contribute meaningful insights for both Indigenous and anthropological communities (Atalay 2012:173–174; Kimmerer 2013; Wadsworth 2020:49–52). This collaboration between fields and listening to and incorporating Indigenous goals shapes and defines community-driven projects, relationships, and results.

Benefit 3: Empowering Communities

The basis of collaborative research is its application to real-world decision making (Atalay 2012; Raygorodetsky and Chetkiewicz 2017). In a practical and political sense, a new Indigenous archaeology context for remote sensing allows for communities' needs to be better addressed. Trust is built through the active inclusion of community concerns, community control over the data produced, and survey designs that focus on community objectives. Furthermore, following the survey, researchers and communities are involved in these active partnerships that affect modern change. Building trust and relationships at the local level (e.g., re-marking graves and protecting cemeteries) allows for archaeologists to contribute to grander reconciliation and decolonization pursuits with their community partners—for example, protecting Indigenous sovereignty and land claims, mitigating environmental and cultural destruction, and contributing to national searches for Indigenous adults and children (Martindale 2014; Supernant 2018).

Challenge 1: Variable Data Quality

The case study with Chipewyan Prairie First Nation is notable because the data proved to be of exceptionally clear quality. The isolated nature of the burial ground and the sandy matrix provided easy identification of the graves where GPR profile data appropriately matched amplitude maps created and the slight surface depressions/vegetation changes and features. However, this is far from the norm with remote sensing techniques, as the quality and result of data collection depend on technological and environmental constraints, especially with unmarked grave detection (Conyers 2013; Gaffney et al. 2015; Wadsworth et al. 2020). This is why reproducing geophysical results in different environments has always been a challenge, and single instrument surveys are not typically recommended, even though it worked well in our case study. These constraints may also be difficult to explain to communities. This is further complicated when communities depend on the researcher to help mitigate the destruction of archaeological resources.

Challenge 2: Logistical Limitations

Although the implementation of GPR at the request of Indigenous communities is noteworthy, it would be best to incorporate additional techniques—such as magnetometry or resistivity—in the future (Gaffney et al. 2015; Henry 2011; Schmidt et al. 2015). In the case of the Cowpar Lake survey, this was not possible due to the resource and time constraints of autumn fieldwork, as well as the fact that additional techniques were not requested by the community. This reiterates another important point. Indigenous communities are actively involved in the betterment of their nations, and timelines for the completion of archaeological projects may not always be generous, limiting the amount of exploratory research possible (Wadsworth 2020). Instead, projects typically fall back on reliable techniques that communities understand and request, such as GPR. Additionally, many Indigenous communities live in remote locations, making it difficult and expensive to transport large quantities of equipment. In the case of CPFN, the positive result of the survey led to the building of trust, and there was a discussion over the potential of employing different techniques at Cowpar Lake and other important sites in the future.

Challenge 3: Ethical Complexities

Both heritage professionals and community members are concerned with the intellectual and material property rights associated with archaeological and remote sensing studies. This touches on the extractive history of the discipline and the publishing of data about communities without their consent. In the past, the misuse or misinterpretation of negative archaeological data by government bodies has also had a direct impact on communities (Martindale 2014). Uncorroborated remote sensing results, which have higher potential for both false positive and negative results, can also be problematic, an issue that should be considered when designing research. With community-driven approaches, potential negative impacts of surveys are mitigated because communities are in control of the data. In Canada, when a survey is conducted on reserve land, there are no provincial or federal laws regulating archaeological reporting, and the archaeologist is only accountable to the Nation. Consequently, the Indigenous nation is in control of the management and distribution of survey results. For example, data generated from this project were given to CPFN for curation, which regulates access to the results. However, we recognize that control of data is a complicated issue given that many archaeologists need to publish research results to satisfy occupation and reporting criteria.

Challenge 4: Conflicting Agendas

As an extension of Challenge 3, we see difficulty in applying a combination of geophysical methods and Indigenous archaeological principles to consultant archaeology. Despite great work that has shown the usefulness of these techniques to cultural resource management (CRM; Johnson and Haley 2006), the problem lies in the need to report survey results to government bodies, whether or not they are sensitive to the community. Furthermore, in places such as Alberta, few CRM companies have relationships with Indigenous communities given that impacts on historical resources trigger little to no “duty to consult.” With limited Indigenous control over projects, CRM remains a challenging place for the incorporation of ideas established in this article. The

Timeline of the Cowpar Lake Project (2019)

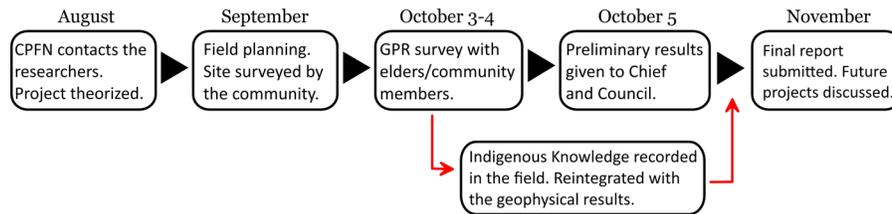


FIGURE 6. Survey timeline. Indigenous Knowledge was recorded during the survey and reintegrated with community members after preliminary GPR results were presented. This allowed for individuals to be involved in the interpretive process if they desired. Afterward, these synthesized results were formalized in a report, and the data were stored in the CPFN archives.

continued creation of Indigenous-owned CRM programs (Colwell 2016; Gonzalez 2016), however, may provide more Indigenous spaces where this alliance between fields will prove easier.

The benefits and challenges presented here are not an exhaustive list of those present when working with Indigenous communities in a community-driven context (see Supernant and Warrick 2014). Those highlighted, however, might be considered major issues with respect to the application of remote sensing techniques in Indigenous contexts, and they are topics for future research. Although the challenges identified were not resolved in the CPFN case study, their cumulative effects were lessened thanks to relationships built with CPFN through community-driven and Indigenous archaeology frameworks. Presented in Figure 6 is a schematic timeline of our project with CPFN. We recommend that researchers adopt similar methodologies while we continue to refine this approach with CPFN through future community-defined projects and objectives.

CONCLUSIONS

In this article, we highlighted an opportunity for archaeological remote sensing professionals to push beyond “moves to innocence” and reorganize research strategies. By working with and for Indigenous communities, researchers and community members can work together to better address community needs and objectives. We provided a case study of a community-driven project with the Chipewyan Prairie First Nation in which we were able to address CPFN’s concerns expediently, involve community members throughout the entire process, and report results in a timely manner. The result of this survey generated positive working relationships with CPFN community members, and future projects were planned. Fundamental to the success of the survey was the inclusion of Indigenous Knowledge and the expertise of community members. Specifically, although the GPR survey was able to identify graves at the Cowpar Lake Burial Ground, the graves’ location, character, and orientation were only learned from the incorporation of Indigenous Knowledge. Subsequently, another finding of this study has been the potential benefit of co-creating knowledge in this way, which ultimately better contributes to CPFN’s goals and repositions remote sensing to make more anthropological contributions.

To facilitate the inclusion of community-driven practices in future remote sensing surveys, we would like to highlight the following

recommendations along with some accompanying citations that have helped formulate our thinking.

- (1) **Establish relationships.** This study would not have been possible without (1) the researchers making it known to the community that they offer archaeological remote sensing services, and (2) the willingness of all parties to build long-term relationships that support capacity building in the community (Atalay 2012; Zimmerman 2005). As shown here, unmarked grave surveys provide an excellent opportunity to form relationships with communities that could continue with future research projects.
- (2) **Eliminate barriers.** Strive to make the project as free of barriers as possible: be quick to produce and return results, reduce costs (e.g., use open-source software), apply for grants, and include everyone (Nicholas and Andrews 1997; Silliman 2008).
- (3) **Incorporate all voices.** Include community members in a meaningful way at all stages of the project—specifically, design, process, interpretation, review—and include their voices in reporting. Allow individuals to participate in the collection and exploration of data. Attempt to make an inclusive space for Indigenous values, ceremony, and methods (Kimmerer 2013; Raygorodetsky and Chetkiewicz 2017) in archaeological remote sensing projects.
- (4) **Be kind, be respectful, and lead with your heart.** We need to acknowledge the past and the different lives we have lived as part of our communities. We also need to acknowledge the personal journeys of community members on an emotional level when we interact with their ancestors and these sacred spaces (Lyons 2013; Supernant et al. 2020).

Only months after the Cowpar Lake Burial Ground survey, the project team was reminded of the importance of leading with the heart. The COVID-19 pandemic has recalled the fear and loss that Chipewyan Prairie First Nation’s ancestors living at Cowpar Lake would have endured during the Spanish Flu. CPFN is proud of the resiliency of its ancestors who, despite infectious diseases and destructive colonization practices, survived and continue to tell their stories in places such as Cowpar Lake, which is steeped in sadness but also love. For the people of Chipewyan Prairie, the land has always been a cyclical representation of their past, their present, and their future. Both archaeologists and remote sensing specialists need to be respectful of this.

This study has been a testament to the transformative power of Indigenous archaeology with respect to a relatively simple geophysical question. The collaboration presented here has demonstrated the utility of Indigenous archaeology, community-driven and collaborative approaches to archaeological remote sensing, and their added potential in the protection of sites and sacred areas known through Indigenous Knowledge. When practiced in a respectful and sensitive way, the continued application of these techniques, at the request of communities, has the potential to bridge gaps between these groups and contribute to the needs of Indigenous peoples.

Acknowledgments

First and foremost, we would like to thank Chief and Council, as well as the community members and elders of the Chipewyan Prairie First Nation, for asking us to conduct this research, funding the project, and giving us their permission to disseminate the results. We would also like to thank the Baikal Archaeology Project for providing the geophysical equipment. Special thanks are given to the reviewers, as well as the editors of *Advances in Archaeological Practice* and this special issue, who improved the caliber of this article through their comments. Finally, this research would not have been possible without support from the Institute of Prairie and Indigenous Archaeology at the University of Alberta and the Social Sciences and Humanities Research Council of Canada (SSHRC).

Data Availability Statement

In accordance with the wishes of CPFN, the sensitive geophysical data analyzed in this article are not available to the general public. The digital files, however, are kept at the Chipewyan Prairie First Nation Band Office, General Delivery Chard, Alberta, Canada, TOP 1G0. The number to call in regard to these files is (780) 559-2259. Data collection occurred solely on reserve and consequently did not require a provincial archaeology permit. Geospatial data used to create the map in [Figure 1](#) are freely available under the Open Government License – Canada and can be retrieved from <http://geogratis.gc.ca/>.

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EXHIBIT I-38

Canadian Archaeological Association *Remote Sensing FAQ* (June 11, 2021)



Remote Sensing and Grave Detection

What is remote sensing?

Remote sensing is the science of obtaining information about objects or areas from a distance and includes airborne (e.g., drone or satellite) and ground-based (e.g., ground-penetrating radar) approaches. The most common techniques used in grave detection are ground-based, in a discipline known as geophysics.

How do geophysical surveys work?

Geophysical survey techniques provide a way to locate underground features, including unmarked graves, without the need to disturb the ground. They detect the distribution and strength of various physical properties of the Earth including magnetic, electrical, and electromagnetic fields. Buried objects and features will have different physical properties from the surrounding soil and it is these differences that are detected and mapped.

Do geophysical survey techniques disturb the burial?

No. In much the same way as navigational radar locates objects at a distance, archaeologists use geophysical survey techniques to see what is below the ground without needing to excavate, so there is no disturbance to the grave or surrounding area. For the most part, geophysical survey techniques do not identify the body in the grave. Rather, they measure the physical properties of the soil in the grave shaft. The presence of a coffin, if one exists, can also play an important role in grave detection.

Do I need to do a geophysical survey?

No. As the Truth and Reconciliation Commission reported in 2015, and as all survivors and their families know, there are many missing children located across the country at former Indian Residential Schools and in other school contexts. There are also missing loved ones who were sent away for medical treatment and never returned. Geophysical survey is only necessary should Indigenous communities wish to better identify the locations and distribution of unmarked graves to either protect and memorialize these areas or to conduct further investigations. This decision is entirely up to the individual communities to make without external pressure or interference.

How do you conduct a geophysical survey?

This will depend on the approach that is used. With most techniques, a grid is set up over the ground using tapes and ropes to guide the operator and to ensure the entire area is covered. Ground-based instruments are carried, pushed, or dragged back and

forth across the area in much the same way as you mow a lawn. Airborne instruments are flown on an Unmanned Aerial Vehicles (UAV), also known as drones. The areas need to be relatively clear of obstacles, including vegetation, for most approaches to work effectively or be completed in a timely manner.

What technique should be used?

This will depend on the conditions at the site. Ground-penetrating radar (GPR), the technique used at the Kamloops Indian Residential School, is the most widely used and has the most successful track record for identifying unmarked graves in cemeteries. It has decades of use by archaeologists across the globe. However, there are some conditions where this approach does not work well. Fortunately, there are many other techniques including electrical resistivity/conductivity, magnetometry, and others that have also had success in identifying unmarked graves. While one approach may be enough, the best results are often achieved when multiple techniques are used together. Establishing which approach is best should be done by a trained professional with knowledge of the specific site being surveyed in partnership with the local community.

Who should do the survey?

There are many options available for communities looking to have geophysical survey work done, particularly with GPR. Most remote sensing companies work in industry, identifying utilities or surveying buildings and highways. However, the application of GPR to cemeteries is uncommon and **requires specific training**. It is usually conducted by archaeologists or forensic scientists. The identification of graves requires specific data collection methods and interpretive knowledge. Unfortunately, we are also seeing some companies and individuals taking advantage of the tragic circumstances revealed at Kamloops Indian Residential School who do not have the appropriate experience. **Extreme caution is needed**. Communities who already have established and trusted relationships with archaeologists and/or forensic scientists should seek their advice before proceeding. The CAA advocates that Indigenous communities should be supported in developing their own remote sensing capacity to do the work of locating unmarked graves.

What are the chances of success in locating unmarked graves?

The utility of remote sensing techniques in locating unmarked graves in cemeteries is well-established. Techniques for identifying clandestine burials are less well-known and the chances of success will be different depending on local geological conditions, land use, and vegetation. It is not possible to identify grave locations or the absence of graves with 100% certainty using remote sensing, though in some cases identifications can be made with great confidence. More likely, an archaeologist will assign different levels of confidence to their results in much the same way as a weather forecaster predicts the likelihood of rain. One way to increase confidence is to use different geophysical techniques at the same location, as complementary results from different approaches can improve confidence in grave identification. The greatest degree of certainty is achieved when a survey is followed up by excavation. Note that full excavation of a potential grave location is not necessary. Excavation of the uppermost ground surface to expose the top of the grave shaft confirms the presence of a burial. However, this type of “ground truthing” does disturb the upper grave shaft, which some

communities may prefer not to do. It is important to remember that failure to identify graves with remote sensing does not mean that graves are not present. It can equally mean that the conditions were not suitable for grave detection.

How long will it take and cost?

Cost is difficult to estimate, as much will depend on who does the work, the conditions at each site, the equipment used, and the intent of the survey. Communities may only wish to establish a cemetery's general location (known as prospection) rather than map the number and distribution of graves in it (known as mapping). The former requires a less intensive survey methodology and takes less time but provides less detail. Oftentimes, it is most efficient to start with broad prospection, followed by intensive mapping. Other considerations, such as clearing vegetation to enable access for survey, need to be considered. Analyzing the data and reporting take time as well.

What are the risks?

There are no physical risks to the graves or the individuals conducting the survey. Indeed, geophysical equipment used in archaeology is less powerful than your cell phone. The main risk is the potential for triggering and re-traumatizing community members, so it is extremely important that appropriate mental health supports are in place prior to work commencing. There is also the potential for disappointment and confusion should the results be inconclusive.

Do I need a permit or permission to conduct geophysical work?

Ultimately, this question depends on where the survey site is located. Permit requirements for archaeological/geophysical surveys vary greatly between provinces and are different for federal land and Indian Reserves. It is essential to check with your provincial archaeology body and the relevant Indigenous government(s) to see if you will require a permit for the work. Often, there will be similar reporting requirements to a provincial or territorial archaeological body. Work on privately owned lands will also need the permission of the landowner.

Data agreements

It is essential that communities control if, when, and how any investigation is carried out and how any messaging regarding that work is released to the public or media. We highly recommend that robust data agreements, that uphold the principles laid out in OCAP ([The First Nations Principles of Ownership, Control, Access and Possession](#)), are put in place between communities and the individuals or companies hired to do this work. The CAA will soon have draft data agreements for communities available on our website to guide them in this process.

EXHIBIT I-39

10 Principles of Reconciliation – Truth and Reconciliation Commission

What We Have Learned

Principles of Truth and Reconciliation



Truth and
Reconciliation
Commission of Canada



What We Have Learned: Principles of Truth and Reconciliation

**The Truth and Reconciliation
Commission of Canada**

Principles of Reconciliation

The Truth and Reconciliation Commission of Canada believes that in order for Canada to flourish in the twenty-first century, reconciliation between Aboriginal and non-Aboriginal Canada must be based on the following principles.

1

The *United Nations Declaration on the Rights of Indigenous Peoples* is the framework for reconciliation at all levels and across all sectors of Canadian society.

2

First Nations, Inuit, and Métis peoples, as the original peoples of this country and as self-determining peoples, have Treaty, constitutional, and human rights that must be recognized and respected.

3

Reconciliation is a process of healing of relationships that requires public truth sharing, apology, and commemoration that acknowledge and redress past harms.

4

Reconciliation requires constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on Aboriginal peoples' education, cultures and languages, health, child welfare, the administration of justice, and economic opportunities and prosperity.

5

Reconciliation must create a more equitable and inclusive society by closing the gaps in social, health, and economic outcomes that exist between Aboriginal and non-Aboriginal Canadians.

6

All Canadians, as Treaty peoples, share responsibility for establishing and maintaining mutually respectful relationships.

7

The perspectives and understandings of Aboriginal Elders and Traditional Knowledge Keepers of the ethics, concepts, and practices of reconciliation are vital to long-term reconciliation.

8

Supporting Aboriginal peoples' cultural revitalization and integrating Indigenous knowledge systems, oral histories, laws, protocols, and connections to the land into the reconciliation process are essential.

9

Reconciliation requires political will, joint leadership, trust building, accountability, and transparency, as well as a substantial investment of resources.

10

Reconciliation requires sustained public education and dialogue, including youth engagement, about the history and legacy of residential schools, Treaties, and Aboriginal rights, as well as the historical and contemporary contributions of Aboriginal peoples to Canadian society.

The following pages outline the Commission's central conclusions about the history and legacy of residential schools and identify both the barriers to reconciliation and the opportunities for constructive action that currently exist.

EXHIBIT I-40

Truth and Reconciliation Commission – Calls to Action



Truth and
Reconciliation
Commission of Canada

Truth and Reconciliation Commission of Canada: Calls to Action



Truth and
Reconciliation
Commission of Canada

Truth and Reconciliation Commission of Canada: Calls to Action



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2015

Truth and Reconciliation Commission of Canada, 2012

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Calls to Action

In order to redress the legacy of residential schools and advance the process of Canadian reconciliation, the Truth and Reconciliation Commission makes the following calls to action.

Legacy

CHILD WELFARE

1. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:
 - i. Monitoring and assessing neglect investigations.
 - ii. Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.
 - iii. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.
 - iv. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.
 - v. Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.
2. We call upon the federal government, in collaboration with the provinces and territories, to prepare and
 - publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.
3. We call upon all levels of government to fully implement Jordan's Principle.
4. We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:
 - i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.
 - ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.
 - iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.
5. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.

EDUCATION

6. We call upon the Government of Canada to repeal Section 43 of the *Criminal Code of Canada*.
7. We call upon the federal government to develop with Aboriginal groups a joint strategy to eliminate

educational and employment gaps between Aboriginal and non-Aboriginal Canadians.

8. We call upon the federal government to eliminate the discrepancy in federal education funding for First Nations children being educated on reserves and those First Nations children being educated off reserves.
9. We call upon the federal government to prepare and publish annual reports comparing funding for the education of First Nations children on and off reserves, as well as educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.
10. We call on the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples. The new legislation would include a commitment to sufficient funding and would incorporate the following principles:
 - i. Providing sufficient funding to close identified educational achievement gaps within one generation.
 - ii. Improving education attainment levels and success rates.
 - iii. Developing culturally appropriate curricula.
 - iv. Protecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses.
 - v. Enabling parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems.
 - vi. Enabling parents to fully participate in the education of their children.
 - vii. Respecting and honouring Treaty relationships.
11. We call upon the federal government to provide adequate funding to end the backlog of First Nations students seeking a post-secondary education.
12. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate early childhood education programs for Aboriginal families.

LANGUAGE AND CULTURE

13. We call upon the federal government to acknowledge that Aboriginal rights include Aboriginal language rights.

14. We call upon the federal government to enact an Aboriginal Languages Act that incorporates the following principles:
 - i. Aboriginal languages are a fundamental and valued element of Canadian culture and society, and there is an urgency to preserve them.
 - ii. Aboriginal language rights are reinforced by the Treaties.
 - iii. The federal government has a responsibility to provide sufficient funds for Aboriginal-language revitalization and preservation.
 - iv. The preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities.
 - v. Funding for Aboriginal language initiatives must reflect the diversity of Aboriginal languages.
15. We call upon the federal government to appoint, in consultation with Aboriginal groups, an Aboriginal Languages Commissioner. The commissioner should help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives.
16. We call upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages.
17. We call upon all levels of government to enable residential school Survivors and their families to reclaim names changed by the residential school system by waiving administrative costs for a period of five years for the name-change process and the revision of official identity documents, such as birth certificates, passports, driver's licenses, health cards, status cards, and social insurance numbers.

HEALTH

18. We call upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.
19. We call upon the federal government, in consultation with Aboriginal peoples, to establish measurable goals to identify and close the gaps in health outcomes

between Aboriginal and non-Aboriginal communities, and to publish annual progress reports and assess long-term trends. Such efforts would focus on indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.

20. In order to address the jurisdictional disputes concerning Aboriginal people who do not reside on reserves, we call upon the federal government to recognize, respect, and address the distinct health needs of the Métis, Inuit, and off-reserve Aboriginal peoples.
21. We call upon the federal government to provide sustainable funding for existing and new Aboriginal healing centres to address the physical, mental, emotional, and spiritual harms caused by residential schools, and to ensure that the funding of healing centres in Nunavut and the Northwest Territories is a priority.
22. We call upon those who can effect change within the Canadian health-care system to recognize the value of Aboriginal healing practices and use them in the treatment of Aboriginal patients in collaboration with Aboriginal healers and Elders where requested by Aboriginal patients.
23. We call upon all levels of government to:
 - i. Increase the number of Aboriginal professionals working in the health-care field.
 - ii. Ensure the retention of Aboriginal health-care providers in Aboriginal communities.
 - iii. Provide cultural competency training for all health-care professionals.
24. We call upon medical and nursing schools in Canada to require all students to take a course dealing with Aboriginal health issues, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, and Indigenous teachings and practices. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

JUSTICE

25. We call upon the federal government to establish a written policy that reaffirms the independence of the

Royal Canadian Mounted Police to investigate crimes in which the government has its own interest as a potential or real party in civil litigation.

26. We call upon the federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform to the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.
27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.
28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.
29. We call upon the parties and, in particular, the federal government, to work collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts.
30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.
31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.
32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

33. We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.
34. We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD), including:
 - i. Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD.
 - ii. Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD.
 - iii. Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community.
 - iv. Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.
35. We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.
36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.
37. We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.
38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.
39. We call upon the federal government to develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization.
40. We call on all levels of government, in collaboration with Aboriginal people, to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.
41. We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:
 - i. Investigation into missing and murdered Aboriginal women and girls.
 - ii. Links to the intergenerational legacy of residential schools.
42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.

Reconciliation

CANADIAN GOVERNMENTS AND THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE

43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.
44. We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.

ROYAL PROCLAMATION AND COVENANT OF RECONCILIATION

45. We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:

- i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*.
 - ii. Adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.
 - iii. Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
 - iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.
46. We call upon the parties to the Indian Residential Schools Settlement Agreement to develop and sign a Covenant of Reconciliation that would identify principles for working collaboratively to advance reconciliation in Canadian society, and that would include, but not be limited to:
- i. Reaffirmation of the parties' commitment to reconciliation.
 - ii. Repudiation of concepts used to justify European sovereignty over Indigenous lands and peoples, such as the Doctrine of Discovery and *terra nullius*, and the reformation of laws, governance structures, and policies within their respective institutions that continue to rely on such concepts.
 - iii. Full adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.
 - iv. Support for the renewal or establishment of Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
 - v. Enabling those excluded from the Settlement Agreement to sign onto the Covenant of Reconciliation.
 - vi. Enabling additional parties to sign onto the Covenant of Reconciliation.

47. We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.

SETTLEMENT AGREEMENT PARTIES AND THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

48. We call upon the church parties to the Settlement Agreement, and all other faith groups and interfaith social justice groups in Canada who have not already done so, to formally adopt and comply with the principles, norms, and standards of the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation. This would include, but not be limited to, the following commitments:
- i. Ensuring that their institutions, policies, programs, and practices comply with the *United Nations Declaration on the Rights of Indigenous Peoples*.
 - ii. Respecting Indigenous peoples' right to self-determination in spiritual matters, including the right to practise, develop, and teach their own spiritual and religious traditions, customs, and ceremonies, consistent with Article 12:1 of the *United Nations Declaration on the Rights of Indigenous Peoples*.
 - iii. Engaging in ongoing public dialogue and actions to support the *United Nations Declaration on the Rights of Indigenous Peoples*.
 - iv. Issuing a statement no later than March 31, 2016, from all religious denominations and faith groups, as to how they will implement the *United Nations Declaration on the Rights of Indigenous Peoples*.
49. We call upon all religious denominations and faith groups who have not already done so to repudiate concepts used to justify European sovereignty over Indigenous lands and peoples, such as the Doctrine of Discovery and *terra nullius*.

EQUITY FOR ABORIGINAL PEOPLE IN THE LEGAL SYSTEM

50. In keeping with the *United Nations Declaration on the Rights of Indigenous Peoples*, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and

understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.

51. We call upon the Government of Canada, as an obligation of its fiduciary responsibility, to develop a policy of transparency by publishing legal opinions it develops and upon which it acts or intends to act, in regard to the scope and extent of Aboriginal and Treaty rights.
52. We call upon the Government of Canada, provincial and territorial governments, and the courts to adopt the following legal principles:
 - i. Aboriginal title claims are accepted once the Aboriginal claimant has established occupation over a particular territory at a particular point in time.
 - ii. Once Aboriginal title has been established, the burden of proving any limitation on any rights arising from the existence of that title shifts to the party asserting such a limitation.

NATIONAL COUNCIL FOR RECONCILIATION

53. We call upon the Parliament of Canada, in consultation and collaboration with Aboriginal peoples, to enact legislation to establish a National Council for Reconciliation. The legislation would establish the council as an independent, national, oversight body with membership jointly appointed by the Government of Canada and national Aboriginal organizations, and consisting of Aboriginal and non-Aboriginal members. Its mandate would include, but not be limited to, the following:
 - i. Monitor, evaluate, and report annually to Parliament and the people of Canada on the Government of Canada's post-apology progress on reconciliation to ensure that government accountability for reconciling the relationship between Aboriginal peoples and the Crown is maintained in the coming years.
 - ii. Monitor, evaluate, and report to Parliament and the people of Canada on reconciliation progress across all levels and sectors of Canadian society, including the implementation of the Truth and Reconciliation Commission of Canada's Calls to Action.
 - iii. Develop and implement a multi-year National Action Plan for Reconciliation, which includes research and policy development, public education programs, and resources.

iv. Promote public dialogue, public/private partnerships, and public initiatives for reconciliation.

54. We call upon the Government of Canada to provide multi-year funding for the National Council for Reconciliation to ensure that it has the financial, human, and technical resources required to conduct its work, including the endowment of a National Reconciliation Trust to advance the cause of reconciliation.
55. We call upon all levels of government to provide annual reports or any current data requested by the National Council for Reconciliation so that it can report on the progress towards reconciliation. The reports or data would include, but not be limited to:
 - i. The number of Aboriginal children—including Métis and Inuit children—in care, compared with non-Aboriginal children, the reasons for apprehension, and the total spending on preventive and care services by child-welfare agencies.
 - ii. Comparative funding for the education of First Nations children on and off reserves.
 - iii. The educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.
 - iv. Progress on closing the gaps between Aboriginal and non-Aboriginal communities in a number of health indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.
 - v. Progress on eliminating the overrepresentation of Aboriginal children in youth custody over the next decade.
 - vi. Progress on reducing the rate of criminal victimization of Aboriginal people, including data related to homicide and family violence victimization and other crimes.
 - vii. Progress on reducing the overrepresentation of Aboriginal people in the justice and correctional systems.
56. We call upon the prime minister of Canada to formally respond to the report of the National Council for Reconciliation by issuing an annual "State of Aboriginal Peoples" report, which would outline the government's plans for advancing the cause of reconciliation.

PROFESSIONAL DEVELOPMENT AND TRAINING FOR PUBLIC SERVANTS

57. We call upon federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

CHURCH APOLOGIES AND RECONCILIATION

58. We call upon the Pope to issue an apology to Survivors, their families, and communities for the Roman Catholic Church's role in the spiritual, cultural, emotional, physical, and sexual abuse of First Nations, Inuit, and Métis children in Catholic-run residential schools. We call for that apology to be similar to the 2010 apology issued to Irish victims of abuse and to occur within one year of the issuing of this Report and to be delivered by the Pope in Canada.
59. We call upon church parties to the Settlement Agreement to develop ongoing education strategies to ensure that their respective congregations learn about their church's role in colonization, the history and legacy of residential schools, and why apologies to former residential school students, their families, and communities were necessary.
60. We call upon leaders of the church parties to the Settlement Agreement and all other faiths, in collaboration with Indigenous spiritual leaders, Survivors, schools of theology, seminaries, and other religious training centres, to develop and teach curriculum for all student clergy, and all clergy and staff who work in Aboriginal communities, on the need to respect Indigenous spirituality in its own right, the history and legacy of residential schools and the roles of the church parties in that system, the history and legacy of religious conflict in Aboriginal families and communities, and the responsibility that churches have to mitigate such conflicts and prevent spiritual violence.
61. We call upon church parties to the Settlement Agreement, in collaboration with Survivors and representatives of Aboriginal organizations, to establish permanent funding to Aboriginal people for:
- i. Community-controlled healing and reconciliation projects.

- ii. Community-controlled culture- and language-revitalization projects.
- iii. Community-controlled education and relationship-building projects.
- iv. Regional dialogues for Indigenous spiritual leaders and youth to discuss Indigenous spirituality, self-determination, and reconciliation.

EDUCATION FOR RECONCILIATION

62. We call upon the federal, provincial, and territorial governments, in consultation and collaboration with Survivors, Aboriginal peoples, and educators, to:
- i. Make age-appropriate curriculum on residential schools, Treaties, and Aboriginal peoples' historical and contemporary contributions to Canada a mandatory education requirement for Kindergarten to Grade Twelve students.
 - ii. Provide the necessary funding to post-secondary institutions to educate teachers on how to integrate Indigenous knowledge and teaching methods into classrooms.
 - iii. Provide the necessary funding to Aboriginal schools to utilize Indigenous knowledge and teaching methods in classrooms.
 - iv. Establish senior-level positions in government at the assistant deputy minister level or higher dedicated to Aboriginal content in education.
63. We call upon the Council of Ministers of Education, Canada to maintain an annual commitment to Aboriginal education issues, including:
- i. Developing and implementing Kindergarten to Grade Twelve curriculum and learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools.
 - ii. Sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history.
 - iii. Building student capacity for intercultural understanding, empathy, and mutual respect.
 - iv. Identifying teacher-training needs relating to the above.
64. We call upon all levels of government that provide public funds to denominational schools to require such schools to provide an education on comparative religious studies, which must include a segment on

Aboriginal spiritual beliefs and practices developed in collaboration with Aboriginal Elders.

65. We call upon the federal government, through the Social Sciences and Humanities Research Council, and in collaboration with Aboriginal peoples, post-secondary institutions and educators, and the National Centre for Truth and Reconciliation and its partner institutions, to establish a national research program with multi-year funding to advance understanding of reconciliation.

YOUTH PROGRAMS

66. We call upon the federal government to establish multi-year funding for community-based youth organizations to deliver programs on reconciliation, and establish a national network to share information and best practices.

MUSEUMS AND ARCHIVES

67. We call upon the federal government to provide funding to the Canadian Museums Association to undertake, in collaboration with Aboriginal peoples, a national review of museum policies and best practices to determine the level of compliance with the *United Nations Declaration on the Rights of Indigenous Peoples* and to make recommendations.
68. We call upon the federal government, in collaboration with Aboriginal peoples, and the Canadian Museums Association to mark the 150th anniversary of Canadian Confederation in 2017 by establishing a dedicated national funding program for commemoration projects on the theme of reconciliation.
69. We call upon Library and Archives Canada to:
- i. Fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joint-Orientlicher Principles*, as related to Aboriginal peoples' inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in the residential schools.
 - ii. Ensure that its record holdings related to residential schools are accessible to the public.
 - iii. Commit more resources to its public education materials and programming on residential schools.
70. We call upon the federal government to provide funding to the Canadian Association of Archivists to undertake, in collaboration with Aboriginal peoples, a national review of archival policies and best practices to:

- i. Determine the level of compliance with the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joint-Orientlicher Principles*, as related to Aboriginal peoples' inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in the residential schools.
- ii. Produce a report with recommendations for full implementation of these international mechanisms as a reconciliation framework for Canadian archives.

MISSING CHILDREN AND BURIAL INFORMATION

71. We call upon all chief coroners and provincial vital statistics agencies that have not provided to the Truth and Reconciliation Commission of Canada their records on the deaths of Aboriginal children in the care of residential school authorities to make these documents available to the National Centre for Truth and Reconciliation.
72. We call upon the federal government to allocate sufficient resources to the National Centre for Truth and Reconciliation to allow it to develop and maintain the National Residential School Student Death Register established by the Truth and Reconciliation Commission of Canada.
73. We call upon the federal government to work with churches, Aboriginal communities, and former residential school students to establish and maintain an online registry of residential school cemeteries, including, where possible, plot maps showing the location of deceased residential school children.
74. We call upon the federal government to work with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location, and to respond to families' wishes for appropriate commemoration ceremonies and markers, and reburial in home communities where requested.
75. We call upon the federal government to work with provincial, territorial, and municipal governments, churches, Aboriginal communities, former residential school students, and current landowners to develop and implement strategies and procedures for the ongoing identification, documentation, maintenance, commemoration, and protection of residential school cemeteries or other sites at which residential school children were buried. This is to include the provision of

appropriate memorial ceremonies and commemorative markers to honour the deceased children.

76. We call upon the parties engaged in the work of documenting, maintaining, commemorating, and protecting residential school cemeteries to adopt strategies in accordance with the following principles:
- i. The Aboriginal community most affected shall lead the development of such strategies.
 - ii. Information shall be sought from residential school Survivors and other Knowledge Keepers in the development of such strategies.
 - iii. Aboriginal protocols shall be respected before any potentially invasive technical inspection and investigation of a cemetery site.

NATIONAL CENTRE FOR TRUTH AND RECONCILIATION

77. We call upon provincial, territorial, municipal, and community archives to work collaboratively with the National Centre for Truth and Reconciliation to identify and collect copies of all records relevant to the history and legacy of the residential school system, and to provide these to the National Centre for Truth and Reconciliation.
78. We call upon the Government of Canada to commit to making a funding contribution of \$10 million over seven years to the National Centre for Truth and Reconciliation, plus an additional amount to assist communities to research and produce histories of their own residential school experience and their involvement in truth, healing, and reconciliation.

COMMEMORATION

79. We call upon the federal government, in collaboration with Survivors, Aboriginal organizations, and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration. This would include, but not be limited to:
- i. Amending the Historic Sites and Monuments Act to include First Nations, Inuit, and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat.
 - ii. Revising the policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values, and memory practices into Canada's national heritage and history.

- iii. Developing and implementing a national heritage plan and strategy for commemorating residential school sites, the history and legacy of residential schools, and the contributions of Aboriginal peoples to Canada's history.

80. We call upon the federal government, in collaboration with Aboriginal peoples, to establish, as a statutory holiday, a National Day for Truth and Reconciliation to honour Survivors, their families, and communities, and ensure that public commemoration of the history and legacy of residential schools remains a vital component of the reconciliation process.
81. We call upon the federal government, in collaboration with Survivors and their organizations, and other parties to the Settlement Agreement, to commission and install a publicly accessible, highly visible, Residential Schools National Monument in the city of Ottawa to honour Survivors and all the children who were lost to their families and communities.
82. We call upon provincial and territorial governments, in collaboration with Survivors and their organizations, and other parties to the Settlement Agreement, to commission and install a publicly accessible, highly visible, Residential Schools Monument in each capital city to honour Survivors and all the children who were lost to their families and communities.
83. We call upon the Canada Council for the Arts to establish, as a funding priority, a strategy for Indigenous and non-Indigenous artists to undertake collaborative projects and produce works that contribute to the reconciliation process.

MEDIA AND RECONCILIATION

84. We call upon the federal government to restore and increase funding to the CBC/Radio-Canada, to enable Canada's national public broadcaster to support reconciliation, and be properly reflective of the diverse cultures, languages, and perspectives of Aboriginal peoples, including, but not limited to:
- i. Increasing Aboriginal programming, including Aboriginal-language speakers.
 - ii. Increasing equitable access for Aboriginal peoples to jobs, leadership positions, and professional development opportunities within the organization.
 - iii. Continuing to provide dedicated news coverage and online public information resources on issues of concern to Aboriginal peoples and all Canadians,

including the history and legacy of residential schools and the reconciliation process.

85. We call upon the Aboriginal Peoples Television Network, as an independent non-profit broadcaster with programming by, for, and about Aboriginal peoples, to support reconciliation, including but not limited to:
- i. Continuing to provide leadership in programming and organizational culture that reflects the diverse cultures, languages, and perspectives of Aboriginal peoples.
 - ii. Continuing to develop media initiatives that inform and educate the Canadian public, and connect Aboriginal and non-Aboriginal Canadians.
86. We call upon Canadian journalism programs and media schools to require education for all students on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations.

SPORTS AND RECONCILIATION

87. We call upon all levels of government, in collaboration with Aboriginal peoples, sports halls of fame, and other relevant organizations, to provide public education that tells the national story of Aboriginal athletes in history.
88. We call upon all levels of government to take action to ensure long-term Aboriginal athlete development and growth, and continued support for the North American Indigenous Games, including funding to host the games and for provincial and territorial team preparation and travel.
89. We call upon the federal government to amend the Physical Activity and Sport Act to support reconciliation by ensuring that policies to promote physical activity as a fundamental element of health and well-being, reduce barriers to sports participation, increase the pursuit of excellence in sport, and build capacity in the Canadian sport system, are inclusive of Aboriginal peoples.
90. We call upon the federal government to ensure that national sports policies, programs, and initiatives are inclusive of Aboriginal peoples, including, but not limited to, establishing:
- i. In collaboration with provincial and territorial governments, stable funding for, and access to, community sports programs that reflect the diverse

cultures and traditional sporting activities of Aboriginal peoples.

- ii. An elite athlete development program for Aboriginal athletes.
 - iii. Programs for coaches, trainers, and sports officials that are culturally relevant for Aboriginal peoples.
 - iv. Anti-racism awareness and training programs.
91. We call upon the officials and host countries of international sporting events such as the Olympics, Pan Am, and Commonwealth games to ensure that Indigenous peoples' territorial protocols are respected, and local Indigenous communities are engaged in all aspects of planning and participating in such events.

BUSINESS AND RECONCILIATION

92. We call upon the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:
- i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
 - ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
 - iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism.

NEWCOMERS TO CANADA

93. We call upon the federal government, in collaboration with the national Aboriginal organizations, to revise the information kit for newcomers to Canada and its citizenship test to reflect a more inclusive history of the diverse Aboriginal peoples of Canada, including

information about the Treaties and the history of residential schools.

94. We call upon the Government of Canada to replace the Oath of Citizenship with the following:

I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada including Treaties with Indigenous Peoples, and fulfill my duties as a Canadian citizen.

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