

FOCUS



This section will help you understand

- a. the major terms of the Indian Act and their effects
- b. how the Act has been changed over its history.

A Controversial Act

In 1876, the Canadian government passed the Indian Act. Throughout its history, the Act has sparked controversy. Though meant as a temporary measure, it has been changed many times and still affects the lives of Aboriginal peoples today.

In 1876, the Indian Act defined who was an “Indian” under the law and outlined what “Indians” could and could not do. It was a clear statement of the federal government’s policy to act as guardians over Aboriginal peoples, giving them “protection” but with the ultimate goal of assimilating them. As Duncan Campbell Scott, Deputy Superintendent of Indian Affairs from 1913 to 1932 stated: “The happiest future for the Indian race is absorption into the general population, and this is the object of the policy of our government. The great forces of intermarriage and education will finally overcome the lingering traces of native custom and tradition.”

Agents of the Department of Indian Affairs enforced the Act for most of its history and had almost dictatorial control over many aspects of Aboriginal peoples’ lives.

This section focuses on Indian status and the right to vote. In the following sections you will see how the Indian Act was used in banning traditional practices of Aboriginal peoples, controlling their education, governing their reserve lands, and restricting their political actions.

Indian Status and Enfranchisement

Under the Indian Act, “Indians” did not have the full rights of Canadian citizens. For example, they did not have the right to vote. The federal government expected Aboriginal peoples to eventually give up their status and become full citizens. To this end, it introduced a policy of **enfranchisement**. In one sense, enfranchisement means gaining the right to vote, but it also became a term that

referred to giving up or losing Indian status since the only way “Indians” could gain the right to vote was if they gave up their status.

Status Indians considered “of good character” who voluntarily gave up their Indian status were given individual ownership of a plot of land on a reserve, the right to buy and consume alcohol, and the right to vote. Very few Aboriginal people, however, wanted to give up their status (from 1876 to 1918, only 102 Indians were enfranchised). To many, it meant giving up their identity.

For a brief time in the 1920s, the federal government tried to enfranchise Indian veterans of World War I against their will. Any Indians who received university degrees also automatically had to give up their status, as did any woman who married a non-Aboriginal man. The over 3000 Aboriginal soldiers who fought with the Canadian forces during World War II were also expected to enfranchise. When they returned from the war, however, they did not receive the right to vote or own land, and they were not paid veteran’s pension. It was not until 1960 that Registered Indians received the right to vote in Canadian elections without having to give up their status.



Figure 15-1 Aboriginal veterans of World War I. The federal government tried to enfranchise the veterans against their will after the war.

CaseStudy



WOMEN WIN BATTLE AGAINST DISCRIMINATION IN THE INDIAN ACT

Amongst the controversial issues surrounding the Indian Act, one major flashpoint was women's rights. Under the Indian Act, if an Aboriginal woman married a Non-Status Indian or non-Aboriginal man, she lost her Indian status. Her children also had no rights to status. On the other hand, an Aboriginal man kept his status no matter whom he married. The Indian Act determined status through **patrilineal** lines (through the father's family), even though some First Nations such as the Mohawks and Haida traditionally defined their family lineage through **matrilineal** lines.

For years, Aboriginal women raised their voices against this discrimination in the Act. In 1938 Mary Two-Axe Earley, a Mohawk woman born on the Kahnawake Reserve in Quebec, married a non-Aboriginal man. She automatically lost her Indian status and no longer had the right to go back and live on the reserve as long as she remained married. In 1966, the band refused to allow another woman who had lost her status to be buried on the reserve with her people. This event sparked Two-Axe Earley to found Equal Rights for Indian Women, an organization that protested for the rights of Aboriginal women.

The battle became more heated in the 1970s when it hit the courts. Jeanette Courbiere, an Ojibwa woman from Manitoulin Island, lost her status when she married a non-Aboriginal man, David Lavell in 1970. She decided to take her case to court, but lost. The following year, she won in an appeal to the federal court. Not all Aboriginal bands supported her cause or recognized the decisions of the Canadian courts. They saw the court decision as interference in their affairs and appealed to the Supreme Court of Canada. The Supreme Court ruled, by a slim majority, that the Indian Act did not discriminate against Jeanette Lavell because it treated all Indian women in the same way.

The key battle was won in 1981. Sandra Lovelace, a Maliseet from the Tobique Reserve in New Brunswick, took her complaint beyond the Canadian courts to the Human Rights Committee of the United Nations. The Committee ruled that the Indian Act violated human rights. The Indian Act, however, was not officially changed until 1985. Mary Two-Axe Earley was the first Aboriginal woman to have her status restored.

People who had lost status through enfranchisement or by obtaining a university degree also regained their status. Since 1985, over 100 000 people have won back their status. Bands were given the right to determine their own membership. As a result, not all Status or Registered Indians belong to a band today.

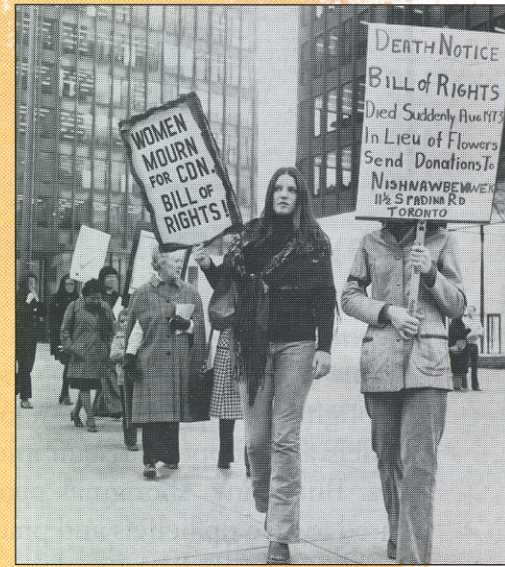


Figure 15-2 The National Action Committee on the Status of Women declared October 22, 1973 a national day of mourning for the Canadian Bill of Rights to draw attention to the Supreme Court of Canada's decision in the Lavell case.



Figure 15-3 Mary Two-Axe Earley was recognized with an Aboriginal Achievement Award in 1996 for her work in women's rights.

RECONNECT



1. What specific evidence is there that the Indian Act is being slowly changed and improved?
2. In your opinion, should the Indian Act be repealed?