

Indian Act Provisions Relating To Lands

Section

- 18(1) States that the reserves are to be held for the use and benefit of Bands and that the Governor in Council will decide whether any use of such lands is for the benefit of the Bands concerned.
- 18(2) Minister may authorize the use of reserve lands for Indian schools, the administration of Indian affairs, Indian burial grounds, Indian health projects or, with the consent of Band Council, for any other purpose for the general welfare of the Band and may take any lands in a reserve required for such purposes. (Compensation is payable to Indians entitled to possession at time of taking).
- 19 Minister may:
- authorize surveys of reserves and the preparation of plans and reports with respect thereto;
 - divide reserves into lots or other subdivisions;
 - determine the location and direct the construction of roads in a reserve.
- 20 Provides that an Indian may acquire lawful possession of a parcel of land on the reserve only by allotment from the Band Council and approval of the Minister. All transfers of property, by sale or otherwise, require approval of the Minister.
- 21 Establishes Indian Land Registry for recording of transactions respecting lands in a reserve.
- 22 States an Indian in possession of lands when they are included in a reserve and permanent improvements were made before that time is deemed to be in lawful possession of those lands when they are included.
- 23 Provides authority to pay compensation to an Indian lawfully removed from lands. It was put in to deal with a special kind of situation where land may have been used by a family for years without any formal allotment and the Band Council decides to allot the land to others. It provides some means of protection to the individual from the Council. Dispossession of an Indian in lawful possession is dealt with under section 18(2).
- 24 Provides for transfer of possessory rights of individuals to Band and/or other Band members.
- 25 Provides for transfer of land by Indians who cease to be entitled to reside on the reserve. There are about 100 such transactions a year. In rare instances, the land may revert to the Band subject to payment of compensation as determined by the Minister of Band funds.

- 26-27 Provides for the correction or cancellation of Certificates of Possession.
- 28(1) Subject to subsection (2), 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**.
- 28(2) Minister may authorize use and occupation of reserve land by permit for a one-year period or for a longer period with consent of Band Council.
- (Used for agricultural permits, utility agreements for power, telephone and other uses.)
- 29 Reserve lands are not subject to seizure under legal process.
- 30 Provides penalty for trespass on a reserve.
- 35 The Governor in Council may consent to the taking of reserve lands by authorities having powers of expropriation. Although Band consent is not required, it is our policy to make the transaction only after consultation with the Band.
- 36 Special reserves are lands which have been set apart for the use and benefit of a Band but legal title to these lands is not vested in Her Majesty. The *Indian Act* applies to special reserves as though the lands were reserves within the meaning of the Act.
- 37-41 This portion of the Act deals with surrenders and designations and their acceptance by the Governor in Council. These sections are of paramount importance and affirm the general principle in effect since the first Federal *Indian Act*, that Indian reserves cannot be alienated without the joint consent of the Minister and Band(s) for whose use and benefit the lands were set apart. There are exceptions to the general rule set out elsewhere in the Act. These sections outline procedures to be taken in order to surrender or designate lands.
- 49 Whenever an Indian is left land on a reserve whether by a will or as a result of the distribution of property on intestacy, that person is not deemed to be in lawful possession of the land until it is approved by the Minister.
- 50 A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession of land in a reserve.
- 53-60 This portion of the Act deals with the management of reserves and surrendered lands.

- 53(1) Minister or a person appointed by him for the purpose may manage or sell absolutely surrendered lands or manage, lease or carry out any other transaction affecting designated lands in accordance with the *Indian Act* and the terms of the surrender.
- 53(3) No person who is appointed pursuant to subsection 53(1) or who is an officer or servant of Her Majesty employed in the department may, except with Governor in Council approval, acquire directly or indirectly any interest in surrendered land.
- 54 Provides for the assigning of interests in surrendered or designated land with the approval of the Minister.
- 55 Establishes Surrendered and Designated Lands Register for recording of transactions on surrendered and designated land and sets out criteria for registration of specific types of instruments.
- 56 This provides that an assignment which must be registered in the Surrendered and Designated Lands Register (section 55) must be endorsed by the Minister or by an officer of the department authorized by him.
- 57 Governor in Council has authority to make regulations for issuance of licences by the Minister for cutting of timber, on surrendered lands, or with the consent of the Band Council, on reserve lands, establishing terms and conditions of licences and providing for the disposition of surrendered mines and minerals underlying lands in a reserve.
- 58(1) Provides for leasing of reserve land for agricultural purposes. Both Band land and individually held land are provided for.
- Land is uncultivated or unused.
- 58(3) Individually held land can be leased for agricultural, grazing or any purpose that is for the benefit of the person in possession without the land being designated.
- 58(4) Disposition of grass, timber, non-metallic substances, (sand, gravel, etc.)
- 59 With the consent of the Band Council, the Minister may reduce or adjust the amount payable to Her Majesty and/or the rate of interest for a transaction affecting absolutely surrendered lands, designated lands or other reserve lands.
- The Minister, with Band Council consent, may also reduce or adjust the amount payable to the Band by an Indian for a loan made from Band funds.
- 60(1) Provides for the Governor in Council to authorize Bands to assume the right to exercise such control and management over lands in a

reserve occupied by that Band as the Governor in Council considers desirable.

- 60(2) Provides for withdrawal of this authority at any time by Governor in Council.
- 87 Exempts Indian and Band interests in land and personal property from taxation.
- 89 Exempts real and personal property of an Indian or Band from seizure, charge, pledge, mortgage, attachment, levy, distress or execution in favour or at the instance of any person other than an Indian or a Band. Goods purchased under conditional sale agreement are not included in this exemption.
- 91 This is designed to protect Indian grave houses, carved grave poles, totem poles, carved house posts and any painted or carved rocks on reserves from indiscriminate removal or destruction. The most frequent requests come from the National Museum or Provincial or other archaeologists to carry on digging, or to remove or restore totem poles. The procedure is to refer such requests to the Band Council and, if it approves, consent is usually given. These arrangements have been made under delegated authority unless there are some unusual circumstances. Care has been taken when outside groups are involved to bring the National Museum into the picture. Some of the ancient burial mounds are not on reserves and in such circumstances the applicable provincial law, if any, would apply.
- 93 This provides a penalty for anyone removing minerals, clay, soil, stone, sand, gravel, timber or any trees or hay from a reserve without permission. It is aimed at both the Indian and non-Indian. Sand, gravel and timber, even though it is located on land held by an individual, is still subject to the Band interest and may only be sold with the consent of the Band Council and issue of a permit authorized by the Minister or by someone delegated this authority.