

Unit 5

Acknowledging Rights

Overview

Over the last 150 years, First Peoples in BC have always asserted their inherent rights, and have continuously worked to have their rights acknowledged. Recently, particularly through court actions, and a growing awareness of Canadian governments and citizens about the injustices faced by First Peoples, there have been significant steps to legally acknowledge these rights.

It has been a slow and complicated process of achieving the recognition of Indigenous rights, with much work still to do for First Peoples to reach their goals.

In this unit students can trace the road to acknowledgement of rights following World War Two, the significance of Section 35 of the Constitution Act, and key court cases that led to greater changes.

Essential Understandings

- Indigenous Peoples of Canada hold inherent rights as the First Peoples of the land.
- First Peoples in BC have worked for more than 150 years to have their Indigenous Rights and Human Rights upheld.
- Today First Peoples are beginning to have their Indigenous and Human Rights recognized and acknowledged.

Guiding Questions

- What have been some turning points in the acknowledgement of First Peoples Indigenous and Human Rights?
- How have First Peoples used the courts to achieve acknowledgements of their rights?
- What can the acknowledgement of rights for First Peoples mean for change now and in the future?

Learning Goals Focus

While many or all the First Peoples Principles of Learning and BC Learning Standards may be relevant, the following are suggested as a focus in this Theme Unit.

First Peoples Principles of Learning

Learning involves recognizing the consequences of one's actions.

Examining past decisions contributes to making ethical decisions and taking responsibility for one's actions.

Learning Standards

Content Learning Standards

BC First Peoples 12

- Provincial and federal government policies and practices that have affected, and continue to affect, the responses of B.C. First Peoples to colonialism
- Resistance of B.C. First Peoples to colonialism
- Contemporary challenges facing B.C. First Peoples, including legacies of colonialism

Social Justice 12

- Processes, methods, and approaches individuals, groups, and institutions use to promote social justice
- Governmental and non-governmental organizations in issues of social justice and injustice

Law Studies 12

- The Constitution of Canada and the Canadian Charter of Rights and Freedoms

Contemporary Indigenous Studies 12

- Responses to inequities in the relationships of Indigenous peoples with governments in Canada and around the world

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Required Resources

This is an overview of the required resources for the activities in each Investigation. Additional optional sources are mentioned in the activities.

Investigation 1

- Line Master 5-1 page 183, *First Nations Right to Vote in BC, 1949*
- Line Master 5-2 page 184, *Indian Act Revisions, 1951*
- Line Master 5-3 page 185, *Calder v. BC, 1973*
- Line Master 5-4 page 186, *Section 35, Constitution Act, 1982*
- Line Master 5-5 page 187, *Bill C-31 Gender Equity, 1985*
- Line Master 5-6 page 188, *Delgamuukw v. BC, 1997*
- Line Master 5-7 page 189, *Learning Stations Response Sheet*
- Line Master 5-8 page 190, *Acknowledging Rights Timeline*
- Line Master 5-9 page 191, *Acknowledging Rights Timeline: Key*
- *BC First Nations Land, Title, and Governance* (FNESC/FNSA 2019)

Investigation 2

- Line Master 5-10 page 192, *Analysing the Indian Act*
- Line Master 5-11 page 193, *Indian Act: Anti-Potlatch Laws*
- Line Master 5-12 page 194, *Federal and Provincial Election Acts*
- *What is a Status Card?* CBC News, 2018. 2:14 min. <https://youtu.be/3uP9b3FFz9s>
- "Conspiracy of Legislation: The Suppression of Indian Rights in Canada." Chief Joe Mathias and Gary R. Yabsley. *BC Studies*, No 89, Spring 1991, pages 34-40, <https://tinyurl.com/fnesc711>
- Indian Act, <https://laws-lois.justice.gc.ca/eng/acts/i-5/>

Investigation 3

- Line Master 5-13 page 195, and page 196 *First Nations Rights in 1948?*
- Line Master 5-14 page 197, *Examining the Universal Declaration of Human Rights*
- Universal Declaration of Human Rights
 - Poster highlighting the major human rights: <https://tinyurl.com/fnesc914>
 - Full text at the United Nations page. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Investigation 4

- Line Master 5-15 page 198, *The Courts of Canada and British Columbia*
- Line Master 5-16 page 199, *Regina vs. White and Bob [1965]*
- Line Master 5-3 page 185, *Calder v. BC, 1973*
- Line Master 5-4 page 186, *Section 35, Constitution Act, 1982*

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Investigation 5

- Line Master 5-17 page 200, *Landmark Court Case Research*
- Line Master 5-18 page 201, *Indigenous Rights Landmark Court Case Summaries*
- Supreme Court of Canada cases involving Indigenous peoples. Simon Fraser Library. <https://tinyurl.com/fnesc215>
- Truth and Reconciliation Summary Report. https://web.archive.org/web/20200717145159/http://www.trc.ca/assets/pdf/Executive_Summary_English_Web.pdf

Investigation 6

- Line Master 5-5, page 187, *Gender Equity: Bill C-31, 1985*
- Gender equity:
 - Canadian Women's Foundation. "Gender equality: Our progress is at risk." <https://canadianwomen.org/the-facts/>
 - UN Women. Concepts and definitions. <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>
- Gender discrimination:
 - National Association of Japanese Canadians. Gender Discrimination in Canada. <http://najc.ca/human-rights-guide/gender-discrimination-in-canada/>
 - Canadian Women's Foundation. Gender equality: Our progress is at risk. <https://canadianwomen.org/the-facts/>
- Global News. Canadian women are on track to reach gender equality in 164 years, experts say. <https://globalnews.ca/news/6637117/>
- "Marginalization of Aboriginal Women. Indigenous Foundations website: https://indigenousfoundations.arts.ubc.ca/marginalization_of_aboriginal_women/
- Bill C-31. *Canadian Encyclopedia* article. <https://thecanadianencyclopedia.ca/en/article/bill-c-31>

Investigation 7

- Line Master 5-19 page 202, *Acknowledging Wrongs: Residential School Apologies* (2 pages)
- *The Power of Real Apologies in a Fake Apology World*. Anti-Defamation League website, 2014. <https://tinyurl.com/fnesc733>

Investigation 8

- Know Your Rights: United Nations Declaration on the Rights of Indigenous Peoples for Indigenous Adolescents. <https://fncaringsociety.com/sites/default/files/un-adolescents-guide2013.pdf>

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Overview of Investigations

These Investigations have more activities than most teachers will incorporate into their units. It is not expected that you will use all of the activities, or follow the sequence as it is described. The activities are intended to be adapted to fit the needs of your students and classroom.

The activities are intended to inspire ways that you can respectfully include relevant First Peoples' knowledge and perspectives in your course.

For more information, see Using The BC First Peoples 12 Teacher Resource Guide, page 6.

1. Indigenous Rights
 - a. Learning Stations: The Road to Rights
 - b. Indigenous Rights and Title
 - c. Rights Denied
 - d. Impacts on Local First Peoples Communities
2. Rights and the Indian Act
 - a. Analysing the Indian Act
 - b. What is a Status Card?
 - c. Critical Reading: A Conspiracy of Legislation
 - d. Indian Act Today
3. Post-World War Two Advances
 - a. The Universal Declaration of Human Rights, 1948
 - b. The Right to Vote, The Right to Citizenship
4. Turning Points
 - a. Accessing the Courts
 - b. Early Court Cases
 - c. Section 35, Constitution Act
5. Landmark Court Cases
6. Recognizing Gender Rights
 - a. What is Gender Equality?
 - b. What is Gender Discrimination?
 - c. Discrimination of Indigenous Women
 - d. Recognizing Gender Rights for First Nations Women
 - e. Moving Forward
7. Acknowledging Wrongs
 - a. What is an Apology?
 - b. Assessing Indian Residential School Apologies
 - c. More Apologies Needed
 - d. So What?
8. United Nations Declaration of the Rights of Indigenous People
 - a. What Does UNDRIP Say?
 - b. UNDRIP in British Columbia
 - c. Questioning UNDRIP
 - d. UNDRIP in Action?
9. Give Back, Carry Forward
 - a. What Did You Learn?
 - b. Documenting Learning

Investigation 1 Indigenous Rights


Use these activities to assess and build students' understandings of how First Peoples rights have been denied, and to introduce the theme of Acknowledging Rights.


Questions for inquiry

- What are inherent Indigenous Rights?
- How have they been denied?

Formative Assessment Strategy

Observe students' responses to the learning stations to assess their background knowledge to the key events in this unit.

 Line Master 5-7, page 189, *Learning Stations Response Sheet*

 Line Master 5-8, page 190, *Acknowledging Rights Timeline*

a. Learning Stations: The Road to Rights

One way to introduce the unit is to use learning stations. Students can examine various documents to overview important developments that have led to acknowledgements of Indigenous Rights in BC and Canada.

- Use the documents on Line Masters 4-1 to 4-6. Use one document for each station. The topics for each station are:
 - First Nations Right to Vote in BC, 1949
 - Indian Act Revisions, 1951
 - Calder v. BC, 1973
 - Section 35, Constitution Act, 1982
 - Bill C-31 Gender Equity, 1985
 - Delgamuukw v. BC, 1997
- You may want to have students respond using the response sheets on Line Master 5-7, page 189. Alternatively, they could respond in their notebooks or you could write your own questions for them to respond to at each station. The response sheet asks students to:
 - Tell something about the document they found that was
 - Surprising
 - Interesting
 - Troubling
 - Give two questions they have about the document or topics.
- Students could also use the blank timeline on Line Master 5-8, page 190. As they move through the stations, they can add the topic to the timeline.
- When students have rotated through some or all of the stations, they can debrief in their groups and with the whole class. Ask questions such as:
 - What theme or big idea do all of these stations have in common?
 - How do the documents reflect changes in the relationships between First Nations, governments, and other Canadians over time?
 - What were the most surprising, interesting and troubling things you learned about?
- Students can share some of the questions they thought of. Discuss how these questions can help guide students' study of the unit.

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b. Indigenous Rights and Title

Introduce and review the concepts of rights and Indigenous Rights.

- To introduce and review the concept of rights, you may want to use some activities from *BC First Nations Land, Title, and Governance*. See Unit 5, Recognizing Indigenous Rights and Title: Treaties and Alternatives.
 - Unit 5, Activity 1-1. Indigenous Rights and Title. Pages 157 to 159. The activities included are:
 - What Are Rights?
 - What Are Your Rights?
 - Evaluating the Importance of Rights
 - Indigenous Rights and Title.
 - Unit 5, Activity 2-2, Indigenous Rights and Title, pages 166-167. The activities are:
 - What is Title?
 - What are Indigenous Rights and Title?
- Acknowledging Rights Timeline. Use the timeline on Line Master 5-8, page 190 and Line Master 5-9, page 191 to record and track some of the key advancements in the acknowledgment of Indigenous Rights in BC.



BC First Nations Land, Title, and Governance

c. Rights Denied

First Peoples have been denied rights on a number of fronts, including human rights, Indigenous Rights, specific rights of Land and Title, and for some, Treaty Rights.

- Have students brainstorm ways that First Peoples' rights have been denied in the past, and those that still are denied in the present. If they used the learning stations activity, they can begin with the rights discussed in those documents.
- Working in pairs or small groups, students can classify the rights into groups that make sense to them.
- Students can share the categories they found. Discuss how some rights may be basic human rights, while others are specific to First Nations, Inuit and Métis.

d. Impacts on Local First Peoples Communities

Ask students to consider ways that the denial of human and Indigenous rights may have impacted local First Peoples communities in the past and still may impact them today.

- Students who are from a First Nation or other Indigenous community may have examples of the impacts from their own experiences or family stories that they are willing to share.
- Depending on their previous studies in the course, students can recall examples they have encountered or learned about.
- Students may find some media sources that give examples of local impacts.
- Students can think of questions they have about how the denial of rights have impacted local communities. This could be developed as a K-W-L activity.

Investigation 2 Rights and the Indian Act

One of the major agents of the loss of rights for First Nations is the Indian Act. Students can examine aspects of the Indian Act in terms of human and Indigenous rights, how they have changed over time, and those that are still in place.

Question for Inquiry

- How has the Indian Act discriminated against First Nations by restricting their Rights?

a. Analysing the Indian Act

Students can examine some sample sections of the Indian Act as it appeared at specific points in history to learn how the Indian Act impacted (and impacts) the rights of First Nations over time.

- **Sentence Frames:** You could begin a discussion about the Indian Act by having students complete sentence frames relating to the topic. For example:
 - This Indian Act is _____
 - The Indian Act is not _____
 - The Indian Act is responsible for _____
 - The Indian Act makes me feel _____
- Students can examine excerpts from past versions of the Indian Act and also other discriminatory acts to find evidence of discrimination and violations of rights. Using one or more of these Line Masters, students can highlight sections that show evidence of discrimination and violations of human and Indigenous Rights.
 - Line Master 5-10, page 192, *Analysing the Indian Act*.
 - This infographic gives the introduction to the Indian Act, some selected sections of the Act, and a discussion of how the Act protects First Nations in some ways.
 - Line Master 5-11, page 193, *Indian Act: Anti-Potlatch Laws*
 - Two different versions of the laws banning potlatches, from 1884 and 1927.
 - Line Master 5-12, page 194, *Federal and Provincial Election Acts*.
 - The Indian Act wasn't the only legislation to discriminate against First Peoples. This document gives sections from Election Acts of Canada and BC.
- Have students suggest reasons governments might have had for making specific laws. Ask, why were these laws applied to First Nations, and not other Canadians? For example, why do you think officials made laws to keep "Indians" out of pool halls?

Formative Assessment Strategy

Use the Sentence Frames activity to assess students' knowledge about the Indian Act.



Line Master 5-10, page 192, *Analysing the Indian Act*

Line Master 5-11, page 193, *Indian Act: Anti-Potlatch Laws*

Line Master 5-12, page 194, *Federal and Provincial Election Acts*

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b. What is a Status Card?

Students can make connections between Indian status cards and discrimination.

- Ask students: what is an Indian status card? Who can and cannot have a status card?
- Students can begin examining misconceptions and aspects of discrimination linked to Indian status cards by viewing the video *What is a Status Card?* CBC News, 2018. 2:14 min. <https://youtu.be/3uP9b3FFz9s>
 - As a class discuss some of the misconceptions mentioned in the video and how these misconceptions may impact individuals with status cards.
- Optional resources:
 - *The Truth Behind the Indigenous Tax Exemption*. The Tyee, 2019. 4:02 min. <https://youtu.be/JFgftoW0-5o>.
 - *Using an Indian Status Identity*. Montreal Gazette, 2015. 2:05 min. https://youtu.be/Nl_85Gt4GCQ
 - An example of how one Indigenous woman feels when she uses her status card.
 - Anishnaabe History Status Cards. Chris Waite, 2020. 12:05 min. https://www.youtube.com/watch?v=2qqexE5y8_U
 - Note: Teachers may want to be aware there is an image of a condom package near the beginning of the video.

c. Critical Reading: A Conspiracy of Legislation

Students can explore in more depth the story of the loss of Indigenous Rights through the Indian Act and other legislation by studying an academic article published in 1991: "Conspiracy of Legislation: The Suppression of Indian Rights in Canada" by Chief Joe Mathias and Gary R. Yabsley. *BC Studies*, No 89, Spring 1991, pages 34-40. It is online at <https://tinyurl.com/fnesc711>.

- This article identifies the major ways that the Indian Act and other legislation infringed on the rights and freedoms of First Nations, giving the relevant clauses from the various versions of the Indian Act. It includes an appendix that lists significant federal and provincial legislation that restricted or restricts and denies rights of First Nations.
- Before the students study it, discuss the context of the article, which was written in 1991. For example, it was fairly soon after the adoption of the Constitution Act of 1982, and before many of the landmark court cases had taken place. Although the authors use the term First Nations, it wasn't as widely adopted as it is today, and Indian was still commonly used.
- Students can reflect on what they have learned from this reading. Ask questions such as:
 - What are 2 or 3 new things you learned from this article?
 - What main arguments are the authors making?
 - What evidence do the authors give for saying the legislation was a conspiracy?
 - What changes have occurred since this article was written? Think of some questions you could ask to find out what has changed and what hasn't changed for First Nations under the Indian Act.

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d. Indian Act Today

What are some differences for First Nations under the Indian Act today?

- Students can examine the current Indian Act (1985) to see how it discriminates and violates Indigenous Rights today.
 - The Indian Act is online at: <https://laws-lois.justice.gc.ca/eng/acts/i-5/>
- Students can examine sections of the act and decide whether or not they infringe on the rights of First Nations or protect their rights.
 - This could lead to a debate on why some people want the Indian Act gone and why some people say First Nations still need it to protect what little they have left.
- Students can read an article and listen to a radio interview, “Author calls the Indian Act a post-confederation assimilation tool.” CBC Radio, Unreserved interviewed Bob Joseph. <https://tinyurl.com/fnesc212>
- Ask students to reflect on what they have learned about the Indian Act by using the 3-Way Summary strategy. Students can work individually or in groups to respond to the topic of the Indian Act by writing three summaries of different lengths:
 - 75-100 words
 - 30-50 words
 - 10-15 words

Formative Assessment Strategy

Use the 3-Way Summary strategy to assess students' growth in understanding the impacts of the Indian Act.

Investigation 3 Post-World War Two Advances

Students can investigate some of major steps that led to the passing of the Canadian Constitution and the Charter of Rights and Freedoms, and assess how they impacted First Peoples.

Questions for inquiry

- How did the signing of the Universal Declaration of Human Rights help to bring about changes in First Peoples rights in Canada?

a. The Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights grew out of the aftermath of World War Two. Students can investigate the context of its creation, and ways that Canada did and did not implement it.

- Explain that the Universal Declaration of Human Rights was signed by all members of the United Nations in 1948. Ask students why that date was significant. (Followed major world events including World War Two, Holocaust, atom bomb.) Discuss how the horrors of the war could have motivated governments to create the declaration.
- In addition, there was also a recognition of injustices facing Indigenous soldiers returning from war. Indigenous people had fought in the war beside non-Indigenous people on an equal footing, but after the war, they went back to being discriminated against. (See, for example, the first article on Line Master 5-13 part 1, page 195.)
- Students can learn about the specific rights outlined in the declaration. They can refer to this poster highlighting the major

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human rights. <https://tinyurl.com/fnesc914>, or read the full text at the United Nations page. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

- Draw students' attention to these two Articles, which relate to the next activity:
 - Article 6: Everyone has the right to recognition everywhere as a person before the law.
 - Article 26, regarding education, particularly part 3: "Parents have a prior right to choose the kind of education that shall be given to their children."
- Students can examine some of the rights in terms of whether or not First Nations (that is, people with Status under the Indian Act) enjoyed them at the time of the Declaration in 1948. Have students examine the clippings from the *Native Voice* on Line Master 5-13 part 1, page 195, and part 2, page 196, *First Nations Rights in 1948?* They date from 1947 to 1950.
 - The *Native Voice* was the newspaper of the Native Brotherhood of BC. If students aren't familiar with the Native Brotherhood or the *Native Voice*, you may want to give some background. See Unit 9, Investigation 2d, page 293 for more information.
- Students can read the clippings to find evidence of violations of the Declaration of Human Rights experienced by First Nations at the time it was passed. They can use Line Master 5-14, page 197, *Examining the Universal Declaration of Human Rights* for pertinent Articles from the Declaration.
Suggested responses:
Clipping 1: Article 6; Clipping 2, Article 1; Clipping 3: Article 26(3); Clipping 4: Article 25(1)
- Optional resources for this topic:
 - Facing History website. An in-depth unit on the Universal Declaration of Human Rights. <https://www.facinghistory.org/resource-library/universal-declaration-human-rights>
 - Text: Simplified Version of the Universal Declaration of Human Rights. SD 23 Central Okanagan website. <https://bit.ly/2QraGpu>
 - Video: *What are the universal human rights?* Ted-Ed, 2015. 4:46 min. An animated explanation of the basics of the UN Universal Declaration of Human Rights. <https://youtu.be/nDgIVseTkuE>.



Line Master 5-13 part 1, page 195, and part 2, page 196, *First Nations Rights in 1948?*

Line Master 5-14, page 197, *Examining the Universal Declaration of Human Rights*

b. The Right to Vote, The Right to Citizenship

The right to vote is a key part of the Universal Declaration of Human Rights, yet it was denied to many segments of the Canadian population in the first half of the twentieth century. Another fundamental right, the right to citizenship, was also denied. Status First Nations were not legally considered citizens of Canada until 1956.

Students can work in groups to research one of these topics and develop a lesson to teach another group about it. As they are doing their research, ask students to find out why some First Nations opposed being given the federal vote, or were opposed to becoming Canadian citizens.

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- The Right to Vote for First Nations under the Indian Act came in steps: 1949 for the provincial vote and 1960 for the federal vote.
- The Canadian Citizenship Act came into effect in 1947, but it did not include Status First Nations. In 1956, “An Act to Amend the Canadian Citizenship Act” was passed to give First Nations under the Indian Act Canadian citizenship.

Investigation 4 Turning Points

Students examine major turning points in the recognition of rights in BC: two early court cases and the Constitution Act (1982) that brought about the beginning of the recognition of Indigenous Rights and Title.

Questions for Inquiry

- Why was the enactment of Section 35 of the Constitution Act a turning point for the rights of First Peoples in Canada?
- Why did so many court cases seeking Indigenous Rights follow the passing of Section 35?
- Why is court action necessary for First Peoples to achieve acknowledgement of their rights?

a. Accessing the Courts

Review or teach about the impact of the Indian Act’s restrictions on pursuing issues of Indigenous claims in the courts.


- Students can refer to the section of the Indian Act relating to the restrictions imposed by Section 141 on Line Master 5-10, page 192.
- See Unit 9, Investigation 2c, page 292, for suggestion for activities on this topic.
- Discuss how this policy infringed on the human rights of Indigenous people.
- Review how this policy ended with the 1951 revision of the Indian Act.

b. Early Court Cases

Background: The law banning First Nations from taking their claims to court had consequences in addition to infringing on First Nations’ rights and freedoms. There was little knowledge about Indigenous rights in public forums like the courts from the 1930s to the 1960s. Not only was the general public ignorant, but judges had little legal understanding of the issues when First Nations began to assert their rights in courts.

Students can learn about two early court cases that challenged the infringement of Indigenous rights. One focussed on treaty rights, the other on Indigenous (Aboriginal) Rights and Title.

- Ensure that students understand the different levels of courts that would hear cases involving Indigenous Rights and Title.
 - Use Line Master 5-15, page 198, *The Courts of Canada and British Columbia*, to learn about the different levels of appeal in Canadian court systems in the past and the present.

 Line Master 5-15, page 198, *The Courts of Canada and British Columbia*


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- Students can create a graphic that explains the relationships between the various courts in the BC and Canadian judicial systems.
- Students can portray the journey through the courts followed by the First Nations in one of these cases orally, in an oral narrative, or in graphic format, such as a graphic novel or infographic.

R. vs. White and Bob [1965]

This was the first case to recognize the Douglas Treaties as treaties under Canadian law. Two Snuneymuxw men were fined for hunting deer out of season. They appealed, claiming a treaty right to hunt based on the Douglas Treaty signed in 1854. It was appealed through to the Supreme Court of Canada, which agreed with lower courts that the Douglas Treaty was indeed a treaty. Hunting rights in the treaty superseded the Indian Act and provincial game laws.

- Students can read the story of the White and Bob case on Line Master 5-8, page 190, *Regina vs White and Bob*
- The judgement of the BC Court of Appeal in 1964 can be found at the Canadian Legal Information Institute website. <https://www.canlii.org/en/bc/bcca/doc/1964/1964canlii452/1964canlii452.html>
- Students may be interested to learn about Clifford White's grandson who grew up listening to the oral history of the court case in his family and community. It inspired him to become a lawyer. See "The First Nations Connection," *Canadian Lawyer* 2007, <https://www.canadianlawyermag.com/news/general/the-first-nations-connection/267212>

 Line Master 5-8, page 190, *Regina vs White and Bob*

Cross-curricular connections:
Careers

Unit Connections:
Unit 2, Story. Connect with Oral Traditions and family oral histories

Calder v BC [1973]

The Nisga'a, under the leadership of Frank Calder, sued the province for recognition of their Aboriginal title to their "ancient tribal territory." Lower courts denied the existence of Aboriginal Title, but the Supreme Court of Canada ruled that Aboriginal title did exist when the Royal Proclamation of 1763 was made. However, the court was split on whether or not the Nisga'a still had title to their lands. But this was the first time the courts had acknowledged that Aboriginal title existed outside of colonial laws.

- Students can research the story of the Calder case to find out why it was a turning point in the recognition of Indigenous Rights and Title.
- Students can refer to Line Master 5-3, page 185 for an outline of the case.
- Students will find plenty of references to the Calder Case in books and online. Here are some suggested references to start with:
 - Indigenous Foundations website: https://indigenousfoundations.arts.ubc.ca/calder_case/
 - Indigenous Corporate Training website: <https://www.ictinc.ca/blog/calder-case>
 - Canadian Encyclopedia: <https://www.thecanadianencyclopedia.ca/en/article/calder-case>
- Discuss how a case that is lost can be considered a victory. (If a court case raises important issues, it can have an impact that brings about other reforms.)
 - Explain that as a result of the Calder case, the federal government developed a new process for dealing with land claims.


 Line Master 5-3, page 185, *Calder v. BC, 1973*

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c. Section 35, Constitution Act

Students can investigate the meaning and purpose of Section 35 of the Constitution Act, and suggest its implications for First Peoples.

- Assess students' prior knowledge about the Canadian Constitution, The Charter of Rights and Freedoms, and Section 35. One possible strategy is to display the main text of Section 35 without mentioning its source, and discuss students' understandings:
"The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."
Ask questions such as:
 - Where does this statement come from?
 - What is its significance?
 - How does it relate to the Canadian Charter of Rights and Freedoms?
- Discuss or have students identify the principal sections of the Canadian Constitution Act. (Part I: Canadian Charter of Rights and Freedoms; Part II, Rights of the Aboriginal Peoples of Canada; Part III, Equalization and Regional Disparities; part V, Procedure for Amending Constitution of Canada; Part VII, General.) The text of the Constitution Act can be found at <https://caid.ca/ConstAct010208.pdf>.
- The Fight for Section 35. Students can find out the story of how Indigenous Rights and Title came to be included in the constitution. (When original drafts included little reference for Indigenous Canadians, protests and actions such as the Constitution Express helped bring about its inclusion.)
 - Students can read or review the information on Line Master 5-4, page 186, *Section 35, Constitution Act, 1982*.
 - See Indigenous Foundations website, UBC, "Constitution Act, 1982 Section 35" https://indigenousfoundations.arts.ubc.ca/constitution_act_1982_section_35/
 - See the documentary, *The Road Forward*. View the section from 1 h 2m to 1 h 18min. This section highlights the leadership of George Manuel and specifically, the organization around the Constitution Express in 1981. https://www.nfb.ca/film/road_forward/
 - For more about this video, see Unit 9, Taking Action, page 288.

 Line Master 5-4, page 186, *Section 35, Constitution Act, 1982*

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Investigation 5 Landmark Court Cases


Many of the landmark court cases taken to the Supreme Court of Canada that helped to define Indigenous Rights originated in BC.

Question for Inquiry

- Why have so many landmark court cases originated in British Columbia?


Students can research one landmark court cases and present their information to the rest of the class.

- Discuss why there were still court cases about Indigenous Rights and Title after Section 35 of the Constitution Act was enacted.
 - Students can refer to Backgrounder 12, Reconciliation and Indigenous Rights and Title, page 247 of *BC First Nations Land, Title, and Governance*.
 - Possible response: Section 35 recognized and affirmed Indigenous and treaty rights but did not define them. Further court cases helped to define and acknowledge the rights.
- Students can work in groups to research one of the cases, then share their findings with the class using a group presentation or jigsaw strategy.
- These are some of the major Supreme Court of Canada cases involving Indigenous Rights:
 - *Guerin v The Queen* [1984]
 - *R v Sparrow* [1990]
 - *R v Van Der Peet* [1996]
 - *R v Gladstone* [1996]
 - *Delgamuukw v BC* [1997]
 - *R. v. Gladue* [1999]
 - *Haida Nation v BC* [2004]
 - *Tsilhqot'in Nation v BC* [2014]
- Discuss how to interpret the names of court cases. Ask, how do you know who took whom to court? (The appellant or group bringing the case is the first name; the respondent or group being taken to court is the second name.)
 - Explain that landmark cases are usually referred to by the first name in the list of appellants. For example, the official name of the case usually referred to as *Delgamuukw* is "*Delgamuukw, also known as Earl Muldoe, suing on his own behalf and on behalf of all the members of the Houses of Delgamuukw and Haaxw v. Her Majesty The Queen in Right of the Province of British Columbia and The Attorney General of Canada*".
 - Ask students to explain what "R" stands for. (Regina or Rex – referring to the Queen or King, head of state of Canada).
- Students can conduct their research using online and other sources. They can use the graphic organizer on Line Master 5-17, page 200, *Landmark Court Case Research* to help guide their research.
- Discuss types of information they can find out about the case. Suggest questions such as:
 - What was the fundamental issue the appellants were trying to prove?

 Line Master 5-17, page 200, *Landmark Court Case Research*

Unit 5 Acknowledging Rights

- What precedent did it set for future court cases?
- How did it help to acknowledge Indigenous Rights?
- Students will find many sources of information about these cases, but they may need some assistance in dealing with the legal terminology, or the large volume of materials, such as in the court transcripts.
 - A good site to begin their research is the Simon Fraser Library website that lists most of the Supreme Court of Canada cases involving Indigenous Peoples. See <https://tinyurl.com/fnesc215>
 - Other sources:
 - Indigenous Foundations. <https://indigenousfoundations.arts.ubc.ca>
 - Centre for First Nations Governance. A Brief History of Our Right to Self-Governance, Pre-Contact to Present. <https://tinyurl.com/fnesc930>
 - "About Indigenous Rights and Title." Two World Views in Law, Union of BC Indian Chiefs website, <https://tinyurl.com/fnesc935>
- When students have completed their research they can report back to the class. Students can use Line Master 5-18, page 201, *Indigenous Rights Landmark Court Case Summaries* to summarize the important information about each case.
- Discuss why these cases are described as landmark cases. Discuss how landmark court cases build on previous cases.

 Line Master 5-18, page 201, *Indigenous Rights Landmark Court Case Summaries*

Investigation 6 Recognizing Gender Rights

The Indian Act embedded discrimination against women by enforcing a loss of status for women who married non-Indigenous men. Students can learn about the discriminatory policies, and how these rights came to be recognized and corrected.

Please Note: Some of the topics and resources may trigger strong reactions and emotions from students. Using any of these activities requires a sensitive understanding of your students' ability to deal with the material.

Questions for Inquiry

- How did/does the Indian Act impact First Nations gender rights?
- What are the impacts of gender discrimination on Indigenous women?

a. What is Gender Equality?

Divide students into groups and ask: What is gender equality? Each group can create their own definition of gender equality that they can share out with the class.

- Have students find out some definitions of gender equality from online sources (see below for examples). They can work individually or in groups and share their findings with the rest of the class.
 - Canadian Women's Foundation. "Gender equality: Our progress is at risk." <https://canadianwomen.org/the-facts/>
 - UN Women. Concepts and definitions. <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>

Unit 5 Acknowledging Rights

- Have students refer back to their original group definition of gender equality to add to or edit it with the new information they gained through their online search.
- Ask students: Are there laws in Canada against gender discrimination?
- Inform students that Section 15 Equality Rights, in Canada's Charter of Rights and Freedoms states, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

See Canadian Charter of Rights and Freedom. <https://www.canada.ca/en/canadian-heritage/services/download-order-charter-bill.html>

b. What is Gender Discrimination?

- Either in the same grouping as before or in new groupings ask students to define gender discrimination and to provide a few examples of gender inequalities (i.e., gender stereotypes, gender wage gaps, gender-based violence, and imbalance of women in leadership roles both professional and political).
- For further information on gender discrimination students can view the following sites:
 - National Association of Japanese Canadians. Gender Discrimination in Canada. <http://najc.ca/human-rights-guide/gender-discrimination-in-canada/>
 - Canadian Women's Foundation. Gender equality: Our progress is at risk. <https://canadianwomen.org/the-facts/>
- Watch the following video with students and discuss some of the impacts gender discrimination, biases, and stereotypes have on women in Canada.
 - Global News. Canadian women are on track to reach gender equality in 164 years, experts say. 4:57. <https://globalnews.ca/news/6637117/women-gender-equality/>.

c. Discrimination of Indigenous Women

Students explore how Indigenous women have been specifically discriminated against by examining the impacts of colonization through the creation of the Indian Act (i.e., creation of bands, band lists and Indian status) on First Nations traditional matriarchy, leadership, inheritance, and identity.

- For an overview of many aspects of the impacts of colonization on Indigenous women, students can read and discuss the article, "Marginalization of Aboriginal Women" on the Indigenous Foundations website: https://indigenousfoundations.arts.ubc.ca/marginalization_of_aboriginal_women/
- Ask students what they know about what the Indian Act said in relation to women and their rights. Review or introduce some of these resources:
 - Line Master 5-5, page 187, *Gender Equity: Bill C-31, 1985*.
 - View or recall the video *What is a Status Card?* CBC News, 2018. 2:14 min. <https://youtu.be/3uP9b3FFz9s>. (See Investigation 2b above) Highlight the example provided in the video of when a status women could have lost her status rights (status women marrying a non-status men).

Unit 5 Acknowledging Rights

- An additional source is the article "Women and the Indian Act" in *The Canadian Encyclopedia*. <https://www.thecanadianencyclopedia.ca/en/article/women-and-the-indian-act>
- Ask students: What are some of the implications of losing Indian status rights if you were a woman who married outside of your community?
- Inform students that up until 1985, under the Indian Act status women lost their status rights when they married non-status men, while status men who married non-status women kept their status rights. As a class examine the following questions:
 - How might the laws of the Indian Act impact status and non-status women?
 - What impact would this have on the children of women who lost their status rights?
 - What impacts would this have on children of women who gained status rights?

d. Recognizing Gender Rights for First Nations Women

Students can find out about the leadership of a number of women who helped bring about the recognition of gender rights under the Indian Act.

- Students can work in groups to research one of the women, then share their findings with the class. Discuss how these women and their associated court cases helped move towards the passage of Bill-C-31
 - Mary Two-Axe Earley
 - Yvonne Bédard
 - Jeannette Corbiere Lavell
 - Sandra Lovelace Nicholas
- Students can then find out about the changes brought about by the passing of Bill C-31 in 1985. The Canadian Encyclopedia article on Bill C-31 provides information about the implications of Bill C-31 and a variety of useful links to several court cases <https://thecanadianencyclopedia.ca/en/article/bill-c-31>
 - Discuss the consequences of Bill C-31. What did it accomplish, and what did it not accomplish?
 - Have students find evidence of ongoing gender discrimination in the Indian Act after the passing of Bill C-31. (For example, while a woman may have been able to regain her Status, her children and grandchildren were not.)
- Follow this with a study of the case brought by Sharon McIvor in 2007. Students can find out how the McIvor case helped to further ensure gender rights under the Indian Act.
 - An article on the McIvor Case (Bill C-3): The Canadian Encyclopedia <https://thecanadianencyclopedia.ca/en/article/mcivor-case>
 - YouTube video: *Making a significant step toward eliminating sex-based discrimination in the Indian Act*, APTN News (4:29). This is an interview with Sharon McIvor discussing the implementation of the final provisions of Bill C-3. <https://www.youtube.com/watch?v=1UW3eAT6Z7k>
- Students can create a poster or infographic that traces the journey of the recognition of gender rights under the Indian Act.

Unit 5 Acknowledging Rights

e. Moving Forward

"Gender equality does not exist in a vacuum; it exists within broader systems of oppression. It not only affects womxn because of their gender but it also fits within other systems of disadvantage that disproportionately affect minority identities. These systems of oppression overlap and their effects are compounded."

- Ask students to react to the above statement, found in the article "5 Reasons Why Canadians Should (Still) Care About Gender Equality." (CanWaCH: Canadian Partnership for Women and Children's Health.) <https://www.canwach.ca/article/5-reasons-why-canadians-should-still-care-about-gender-equality>
 - Note re the usage of "womxn" as stated on the website: "The use of womxn is inclusive to all individuals who identify as female including but not limited to genderfluid, genderqueer, gender non-conforming, non-binary and trans individuals."
- Students can explore ways Indigenous People are resisting gender discrimination today. See below for some examples of online sources students can refer to.
 - Katie Hyslop, reporter for *The Tyee*. 'I See My Sisters Hurting Down Here All the Time': Indigenous Women in the Downtown Eastside Speak Out. <https://thetyee.ca/News/2019/04/03/Indigenous-Women-DTES-Speak-Out/>
 - Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside: <https://dewc.ca/resources/redwomenrising>
 - Moose Hide Campaign: <https://moosehidecampaign.ca/>
- As a summary of this Investigation, have students reflect on their learning by reflecting on one or more of these topics:
 - Examples of Indian Act gender discrimination
 - Some of the impacts the Indian Act had on First Nations women's traditional roles of power
 - Ways in which Indigenous women resist gender discrimination (both past and present)

Formative Assessment Strategy

Use students' reflections on these questions to assess their growth in understanding about changes in gender rights for First Peoples.

Investigation 7 Acknowledging Wrongs

At the same time as steps were being taken to acknowledge Indigenous Rights, governments, churches and others institutions acknowledged some of the wrongs of the past through formal and public apologies. (This also happened to the Chinese, Japanese, South-East Asians and other groups.)

This Investigation guides students to analyse and assess some of the apologies.

Questions for inquiry

- What makes a good apology?
- Is an apology enough?

a. What is an Apology?


- Ask students, “What is an apology?” Discuss different meanings for an apology suggested by students.
- Ask students to brainstorm what makes a good apology. What are some important criteria for what students would consider is a good apology. You may want to use the Think-Pair-Share learning strategy, or share in a class discussion.
- Next ask students what makes a poor apology. Share out to the class in the same way.
- This resource suggests some classroom activities for analysing apologies: *The Power of Real Apologies in a Fake Apology World*. Anti-Defamation League website, 2014. <https://tinyurl.com/fnesc733>

b. Assessing Indian Residential Schools Apologies

Many groups who participated in or contributed to the Indian Residential Schools system have made public apologies. These include the Prime Minister of Canada, other politicians, some churches, and the RCMP.

In this activity students analyse several official apologies and rate them according to criteria developed by the class.

- Students can use the apologies provided on Line Master 5-19, page 202, *Residential School Apologies*.
- Students can engage with the apologies, using the following strategies to guide apology analysis. This could be done as a class, or in groups. Students could benefit from modelling one apology analysis prior to doing independent work.
 - Make note of date, organization making the apology and the organization’s involvement in Indian Residential Schools.
 - Highlight words, phrases, or sentences that fit the criteria of a good apology.
 - Highlight words, phrases, or sentences that fit the criteria of a poor apology.
 - Consider these questions to analyze the apologies:
 - Is the apology specific? Where?
 - Is the apology vague? Where?
 - Is the apology complete? Why or why not?

 Line Master 5-19,
page 202, *Residential
School Apologies*

Indian Residential Schools

For more background and activities discussing Indian Residential Schools, see the FNEsc series of Teacher Resource Guides, *Indian Residential Schools and Reconciliation*.
<http://www.fnesc.ca/irsr/>

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- What is the tone?
- What is missing? What should have been said?
- Work with the class to develop a scale for assessing the apologies. Decide as a group what criteria to use.
- Have students give a 'final mark' for each apology on the scale. Ensure students can defend their mark using text evidence.
- Students can use their scale to assess other apologies.
 - The *Truth and Reconciliation Summary Report* includes all the apologies and statements concerning residential schools made by parties to the Indian Residential Schools Settlement Agreement, and by others who played direct roles in the residential school system.
 - Full text of the apologies can be found in Appendix 4 of the Truth and Reconciliation Summary Report (pg 376- 395) and span from 1986 - 2015. Access online at https://web.archive.org/web/20200717145159/http://www.trc.ca/assets/pdf/Executive_Summary_English_Web.pdf
- Students can watch and listen to two official apologies by Canadian politicians, using these videos. Students can analyze and compare the apologies and assess them using their scale.
 - Stephen Harper's Official Apology (2008)
 - Access online here: <https://www.youtube.com/watch?v=aQjnbK6d3oQ>
 - Jack Layton's Official Apology (2008)
 - Access online here: <https://www.youtube.com/watch?v=AVAxVhnqTaw>

c. More Apologies Needed

Students can explore other issues where apologies have been given, or need to be given.

- Newfoundland and Labrador Residential School Survivors. Students can investigate the reasons why Newfoundland and Labrador Residential School Survivors were not included in the 2008 Apology or the Indian Residential School Settlement. Some resources include:
 - "Harper apology leaves Labrador's former students in cold: Innu, Inuit" CBC 2008. <https://www.cbc.ca/news/canada/newfoundland-labrador/harper-apology-leaves-labrador-s-former-students-in-cold-innu-inuit-1.736799>.
 - Tearful Justin Trudeau apologizes to N.L. residential school survivors." CBC, 2017. Linked at <https://tinyurl.com/fnesc719>. For a transcript of the apology, see *Maclean's* magazine, November 24, 2017, linked at <https://tinyurl.com/fnesc720>.
- Investigate current proceedings and apologies for other issues of concern, such as Indian Day School survivors and Sixties Scoop settlements.

d. So What?

Students can consider the impact and consequences of the official apologies for Indian Residential Schools and other cases.

- Survivor reactions. Students can engage with Survivor reactions to apologies. Note: Survivors of Residential Schools have diverse opinions and feelings regarding both the settlement and the apologies. It is

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important to respect the spectrum of reaction to these apologies.

- Terrace BC: Survivors interviewed on the day of Stephen Harper's apology:
 - Residential Schools Apology. [CFTK News, Terrace BC.] 2008. 2:48 min. <https://youtu.be/QPvomRSRzfM>
- Are Apologies Enough? Facing History website. <https://www.facinghistory.org/stolen-lives-indigenous-peoples-canada-and-indian-residential-schools/chapter-5/are-apologies-enough>
- Have students consider the question: What role do apologies play in Reconciliation? You could use a four-corners poll to get students' initial thoughts.
 - Label each corner of the room, or four areas in an outdoor space. Number them 1 to 4
 - Read out or write on the board a statement such as: "How important are official apologies in the process of reconciliation?"
 - Explain that 1 represents "not very important" and 4 represents "extremely important."
 - Give students a minute or two to consider which their response to the question, then have them move to the corner or space they decided on.
 - Students discuss the reasons for selecting that choice. If groups are large students can form groups of two or three.
 - Groups can present to the rest of the class the reasons for their choices.
 - Follow up with a discussion of the role apologies make in reconciliation.
- Ask students to give a personal response to the question, "Are apologies enough?" Ask them to use evidence from what they have learned from the unit.
 - Discuss what the question could mean. Students can suggest their interpretations.
 - Students can decide on a format for their reflection. For example, they could make a journal entry, share orally with a partner or in a group, or create a visual response.

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Investigation 8

United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted in 2007 by most countries in the UN, but Canada was not among them. Only in 2016 did Canada adopt the Declaration. In 2019 British Columbia made UNDRIP part of BC law when it passed Bill 41, Declaration on the Rights of Indigenous Peoples Act.

Questions for Inquiry

- How does UNDRIP carry forward the acknowledgement of the rights of Indigenous Peoples?
- How will implementing UNDRIP change the relationship between First Peoples and Canadian society?

a. What does UNDRIP Say?

- Students can examine the United Nations Declaration on the Rights of Indigenous Peoples to learn about its goals and some important clauses. For example, UNDRIP explains how the rights of Indigenous peoples around the world, both as individuals and as groups, are to be protected by governments.
- The publication *Know Your Rights: United Nations Declaration on the Rights of Indigenous Peoples for Indigenous Adolescents* is a useful resource for students to use. It can be found online at <https://fncaringsociety.com/sites/default/files/un-adolescents-guide2013.pdf>.

Students can read and discuss the important themes of the Declaration found on page 12 of UNDRIP for Indigenous Adolescents. The four themes are: the right to self-determination; the right to cultural identity; the right to free, prior and informed consent; and protection from discrimination.

b. UNDRIP in British Columbia

- Students can report on the passing of Bill 41, Declaration on the Rights of Indigenous Peoples Act, in the BC Legislature. They can work independently to find videos, websites and other documentation to learn what happened in the Legislature. Have students reflect on the comments of Indigenous leaders who spoke when the bill was passed.

c. Questioning UNDRIP

- Students can begin examining the issues around UNDRIP by viewing the video *How UNDRIP Changes Canada's Relationship with Indigenous Peoples*. (Centre for International Governance Innovation, 2018. 5:13 min.) <https://youtu.be/-Tq7Mnlavqs>
- Students can explore what role UNDRIP can play in British Columbia. Ask them to work in groups to develop questions about UNDRIP. You could use the K-W-L learning strategy.

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- Some questions for student to think about are:
 - What is UNDRIP?
 - What is the history of UNDRIP in Canada? For example, why did it take Canada so long to sign on?
 - What could/will it mean for BC's future?

d. UNDRIP in Action?

- Students can predict how significant UNDRIP will be in BC's future.
- Students can analyse the points of view in this CBC article: What does 'implementing UNDRIP' actually mean? <https://www.cbc.ca/news/canada/north/implementing-undrip-bc-nwt-1.5344825>
- Discuss how UNDRIP can or is being put into action. Ask, What evidence is there that it is being implemented, making a difference, or changing relationships?

Investigation 9

Give Back, Carry Forward

Students reflect on the important things they have learned in this unit, and consider how they can give back and carry their learning forward. Refer to the Major Project outline, page 51.

a. What Did You Learn?

Students can consider these questions:

- What is one new thing you learned in this unit that you would consider a gift?
- What is one thing growing out of your learning that you can take action on?
- What are some new things you learned about where you live?
- What did you learn about yourself?

b. Documenting Learning

- Students can discuss or share ideas for documenting their learning.
 - Students can begin to come up with ways that they can showcase their learning in this course, while connecting to both "giving back" and "carry forward" what they have learned.

First Nations Right to Vote in BC

Page 2

The NATIVE VOICE

March, 1949

INDIANS GRANTED B.C. VOTE

THE AMENDMENT TO "ELECTIONS ACT" MEANS TO B.C. NATIVE INDIANS:

- The right to vote at elections.
- Be a candidate in the elections.
- Preserves any rights in the past.

THE AMENDMENT DOES NOT MEAN:

- The granting of full citizenship rights such as:
 - Old Age or Mothers' Pensions
 - Social Service
 - Change in Educational or Health Policy

What Do You Say?

William Scow, President Native Brotherhood of B.C.: "It is a great step forward."

Reginald Cook, Alert Bay: "For the first time in over one hundred years, Indians will be considered adults."

Mr. Pahl, Hartley Bay: "Encouraging advancement."

Dr. G. H. Raley, Vancouver: "The Brotherhood is to be congratulated on their splendid work."

Kitty Green, Port Simpson: "I hope this leads to better education, that our children will enjoy the same educational privileges as others."

Tim Moody, North Vancouver: "This is a start to some kind of equality. What tickles me is that the youngest province in the Dominion has taken the lead, and most of our young people think it is wonderful."

White Eagle, Hatzic: "I do hope they don't mix their vote with the other people in the different ridings . . . I have always maintained as you know, that the Indians are the first citizens of Canada, and they should elect their own representative to the Dominion and Provincial parliaments."

Elleem Neel: "When I heard the news I was tickled that our people will now have the vote. It is a good beginning."

Dr. Peter R. Kelly: "This has opened the door to the way that leads to everything. I have visited the Attorney-General and the Premier. They gave the Indians of B.C. the first real chance they ever had. Mr. Attorney-General assures me he wishes to help and explained that the vote in no way jeopardizes Indian rights."

"I sometimes have felt very discouraged since my last trip to Ottawa, but now I am full of hope."

Guy Williams: "Indians now will have a very powerful weapon in their hands to back up demands for the rights of citizenship."

Ed Kelly, one of our good Indian workers: "This is a great step towards advancement—but it is going to take a few years before the majority of Indians get knowledge of the voting system. The younger ones will all vote eventually. A certain percentage of our older people will vote, and some won't, because they don't understand. But from now on the Native people will study the power of the vote and take notice."



A NEW DEAL

Editor, Native Voice:

The news of the extension of the right to vote for Indians is a pleasant surprise. I was getting ready for bed when the news came over the air last night. It was so unexpected and isn't this what we have been clamoring for the last 100 years? Clamoring for the removal of a false racial barrier? Now this may be the turning point in our long history.

We are stepping on the threshold and there is no turning back. This is a long, hard won fight. Two of our young people were excited about the news this morning—Joe Hopkins and Bob Barton; but many yet do not realize the importance of this privilege for our future welfare.

This is a new deal and something always comes out after a deck of cards is shuffled.

WILLIAM FREEMAN
Klemtu, B.C.

Indian Act Revisions 1951

REVISED INDIAN ACT 1951

Sections removed from earlier versions of the Indian Act

POTLACH BAN

AGAINST THE LAW TO
GO TO COURT FOR
LAND CLAIMS

ILLEGAL TO GO INTO
POOL HALLS

ILLEGAL TO GO INTO
BEER PARLOURS

Sections still in place after 1951

Legal to drink in pubs, but
nowhere else. Illegal to be
intoxicated or have liquor
on Reserve.

Cannot vote in Federal
elections without giving up
Indigenous or treaty rights.

New Indian Legislation Takes Effect Sept. 4

New legislation affecting Canada's 136,000 Indians goes into force September 4, Citizenship Minister Harris announced in August.

The new Indian Act, first major overhaul of Indian legislation in 71 years, was passed at the last session of Parliament.

Charges of the state, the Indians now will have greater power over their own property and their own affairs, Mr. Harris said.

"The aim of the new act is to bring the Indians, by progressive steps, into a position of social, political and economic equality with other Canadians," the minister added.

Some of the changes:

The right to vote in band council elections is extended to Indian women.

Indian bands now can be authorized to have complete control over the spending of band and land revenue money.

Native Voice, August 1951, page 2

Despite Loud Protests Bill 79 Still Imperfect

John Blackmore (L. Essex West), chairman of the parliamentary committee which studied Bill 79, had said, the day before, that the Indians had had ample opportunity to make their views on the legislation known.

WE DO NOT agree with the statement of Mr. Blackmore (L., Essex West), that the Indians had ample opportunity to make their views on the legislation known—they did make their views known but the Government went right ahead and most of the Indian views have been ignored.

Some of the changes in the act may be for the better and suitable for the Indians who make their living on their reserves, tax free as farmers—but it brings great hardship to the British Columbia Indians on the coast who work in the logging camps and fishing industry. These men pay large income taxes . . . and are taxed without representation. B.C. Indians will be forced to abide by laws that are suitable for the Indians in other Provinces who live under different conditions.

Mr. Harris' intentions are presumably honourable but his successor might not be so well intended, and there are several dangerous and deadly sections in this new Act which should be revised.

Consider Section 112 whereby the Minister can, after a hearing, enfranchise a band of Indians without their consent. Until these sections are revised, Bill 79 remains, so far as we are concerned, a dangerous and imperfect Act. Why pass an Act unless it is perfect and just?

We cannot, under the circumstances, look on this imperfect bill as anything but a calamity and disaster ending the long and weary fight of those noble old Native Chiefs who sacrificed so much in their fight to win justice and freedom for the future young Native Canadians.

Native Voice, August 1951, page 4

Calder v. BC, 1973

Calder v. Attorney-General of British Columbia, 1973

The Nisga'a Nation, led by Frank Calder, sued the BC government in the BC Supreme Court. They argued that Title to their lands had never been lawfully extinguished.

BC Supreme Court 1969

Vancouver, April 1969

Justice Gould hears the case. It lasts 6 days. Many Nisga'a Elders and chiefs travel to Vancouver to witness the trial.

October 1969

Justice Gould rules against the Nisga'a. He states if they ever had Title, they lost it when BC was made a colony. He said the Royal Proclamation did not apply to BC.



BC Court of Appeal 1970

Vancouver, March 1970

Five judges of the BC Court of Appeal hear the case. They agree with the lower court, that Title was extinguished when BC became a colony.



Supreme Court of Canada

Ottawa, October 1970

The Supreme Court agrees to hear the appeal of the Nisga'a.

Ottawa, November 29 to Dec 3 1971

The seven judges of the Supreme Court of Canada hear the case.

Ottawa, January 1973

After more than a year in deliberation, the Supreme Court of Canada gives its decision. The judges do not agree on whether or not Nisga'a Title to the land had been extinguished. Four rule against the Nisga'a, and 3 rule for them.

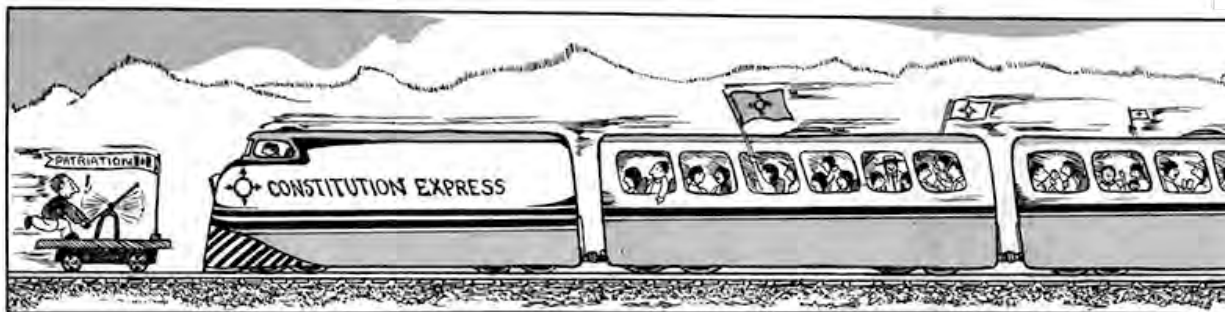
If the Nisga'a did not win their case, why is Calder v. BC so important?

Because the majority of judges – 6 out of the 7 Supreme Court judges – acknowledged that Aboriginal Rights do exist in Canadian Law.

As a result of the case, Canada started negotiating a treaty with the Nisga'a in 1976. It was another long journey, but the Nisga'a Treaty was finally signed in 1998.

Section 35, Constitution Act, 1982

Indians taking Constitution Express



Constitution Express Bulletin, UBCIC November 5, 1980.

1867: Canada is governed by the British North America Act, which forms the Canadian Constitution. It is an act of the British Parliament. Any changes have to be passed by politicians in Great Britain.

1980: The Canadian government works to patriate the Constitution (bring it home to Canada), and include a Charter of Rights and Freedoms.

But there is no mention of Indigenous Peoples and their existing rights and relationships. There is no consultation with Indigenous Peoples.

Indigenous groups organize many protests. In BC, the Union of BC Indian Chiefs organizes the Constitution Express. Two trains take First Nations to Ottawa to hold meetings and protest.

1982: The actions get results. Section 35 is added to the Constitution Act. Indigenous Rights are officially and legally recognized

About 800 B.C. Indians will leave Vancouver for Ottawa Monday on two sections of the Constitution Express in a move to delay the patriation of the British North America Act until the special status of the Indian people is reaffirmed.

One train will leave from the CP Rail station at 8 p.m. and pick up other Indians on the Calgary-Regina route. The other will go from the Canadian National station at 9:45 p.m., taking on more passengers at Jasper, Edmonton and way points.

The two trains will join at Winnipeg Wednesday night, arriving in Ottawa Friday morning with an estimated 1,000 or more protesters.

If no promises are given to the Indians in Ottawa they plan to take the Constitution Express to New York in a bid to have the United Nations intercede for them.

The Vancouver Sun, November 22, 1980, p. A10.

Section 35 of the Constitution Act

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

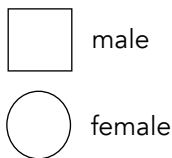
Section 35 recognizes and affirms Indigenous Rights
BUT

It does not define them.

That was left to the courts to decide.

Gender Equity: Bill C-31, 1985

Defining Indigenous Status under the Indian Act



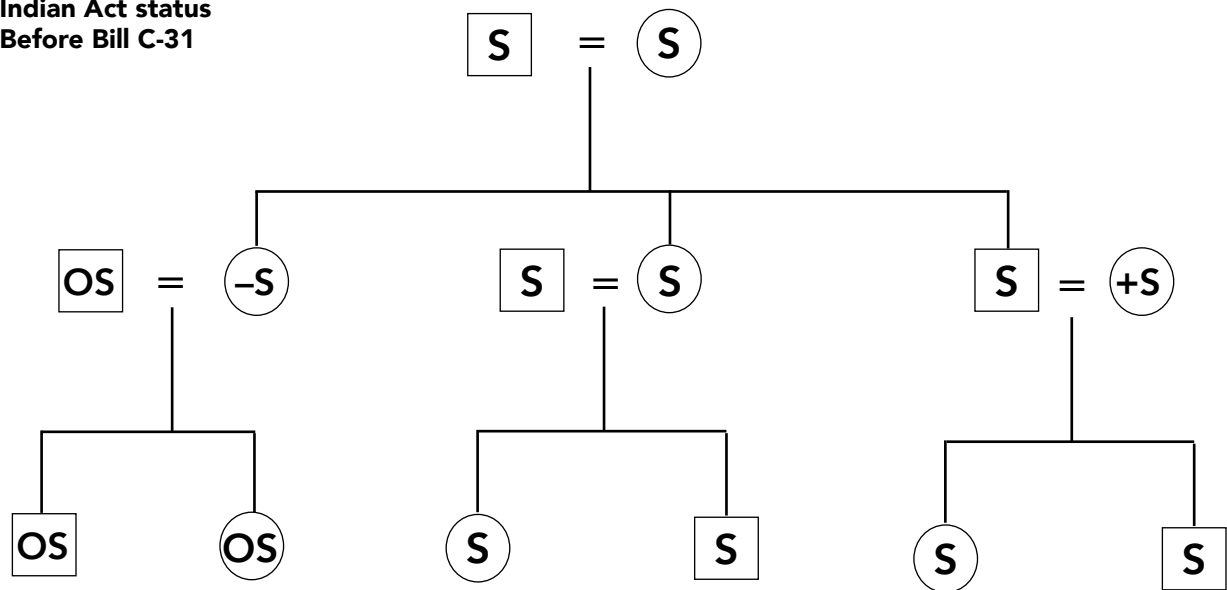
S : Person born with Status under the Indian Act

OS : Person born without Status under the Indian Act (Indigenous or non-Indigenous)

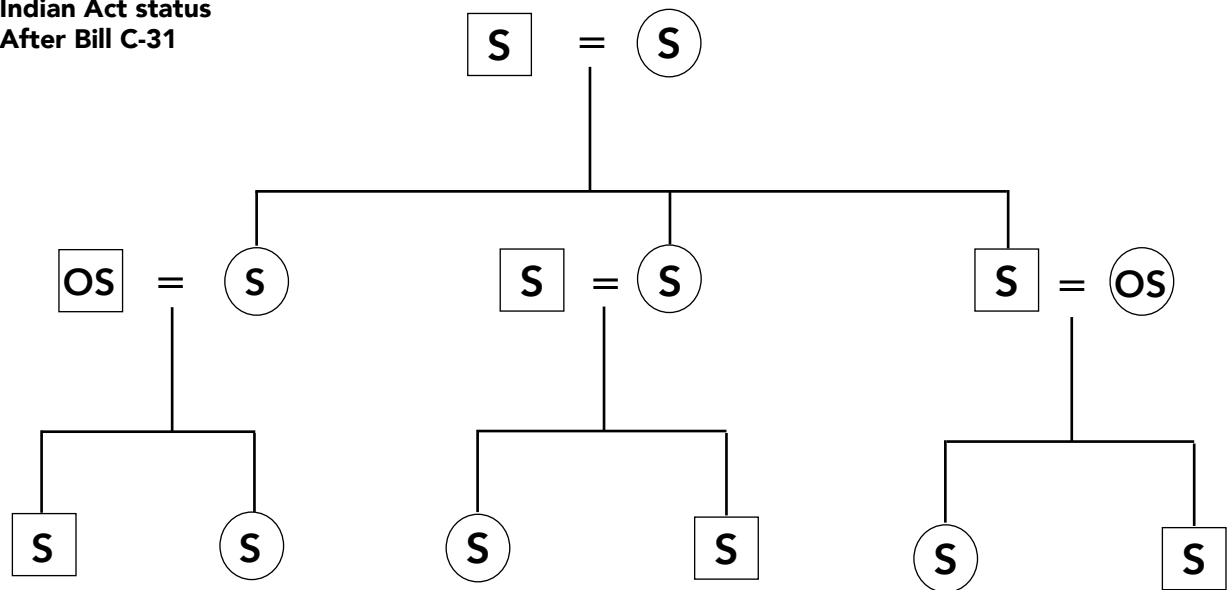
-S : Status person who lost Status under the Indian Act

+S : Person born without Status who gained Status under the Indian Act

Indian Act status
Before Bill C-31



Indian Act status
After Bill C-31



Delgamuukw v. British Columbia

Timeline of Trials

1984

35 Gitksan and 13 Wet'suwet'en Hereditary Chiefs filed their court action against BC. Delgamuukw (Earl Muldoe) was a claimant for the Gitksan, while Gisday'wa (Alfred Joseph) was one of those representing the Wet'suwet'en.

1987-1990

The trial, known as Delgamuukw et al v. the Attorney General of BC, began in Smithers Court House on May 11, 1987. It continued until June 30, 1990. It was heard by BC Chief Justice Allan McEachern. There were 318 days of testimony, including the oral histories of the Gitksan and Wet'suwet'en Elders and Chiefs.

1991, March 8

Chief Justice McEachern delivered his judgment. It dismissed the claims of the Gitksan and Wet'suwet'en and said Aboriginal Title had been extinguished.

1993

The case was appealed at the BC Court of Appeal. The judges disagreed with McEachern CJ and ordered a new trial to clarify the legality of Aboriginal Title.

1997

The Supreme Court of Canada heard the appeal on June 16 and 17. The judgement was delivered December 11, 1997. It said McEachern CJ made a mistake by not accepting the testimony of oral histories.

SMITHERS – The provincial governments is being sued by the Gitksan-Wet'suwet'en Tribal Council for recognition of claims it has made to northwest lands.

Although the suit was filed with the BC Supreme Court, tribal council president Neil Sterritt said he expected the action to go to the Supreme Court of Canada and last three to five years.

He said the suit is directed against the provincial Government because it does not recognize aboriginal title.

The Interior News, Smithers, 12 September 1984, p. 1.

The Supreme Court of Canada ordered a new trial to resolve the issues, but that never happened. However, the judges laid down important principles for interpreting Aboriginal Title in future cases. They also acknowledge the admissibility of oral histories as legal evidence in courts.

The Delgamuukw Test for Demonstrating Aboriginal Title

In Delgamuukw, the Supreme Court of Canada set out a three-part test for Aboriginal Title.

1. The Indigenous nation must have occupied the territory before the declaration of sovereignty.
2. If present occupation is invoked as evidence of occupation before sovereignty, there must be a continuity between present occupation and occupation before sovereignty.
3. At the time of declaration of sovereignty, this occupation must have been exclusive.

Learning Stations Response Sheet

Station _____ Station Topic _____

Tell something about the documents that you found...

Surprising

Interesting

Troubling

Think of 2 questions you have about the document or topic.

Station _____ Station Topic _____

Tell something about the documents that you found...

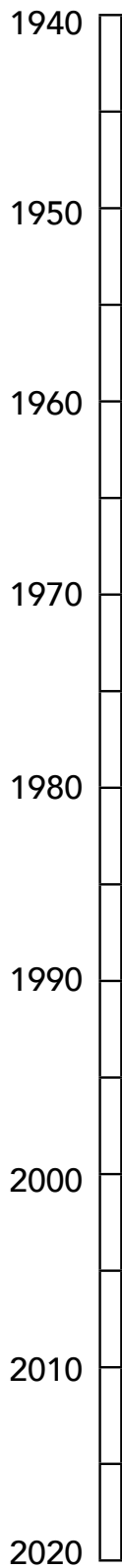
Surprising

Interesting

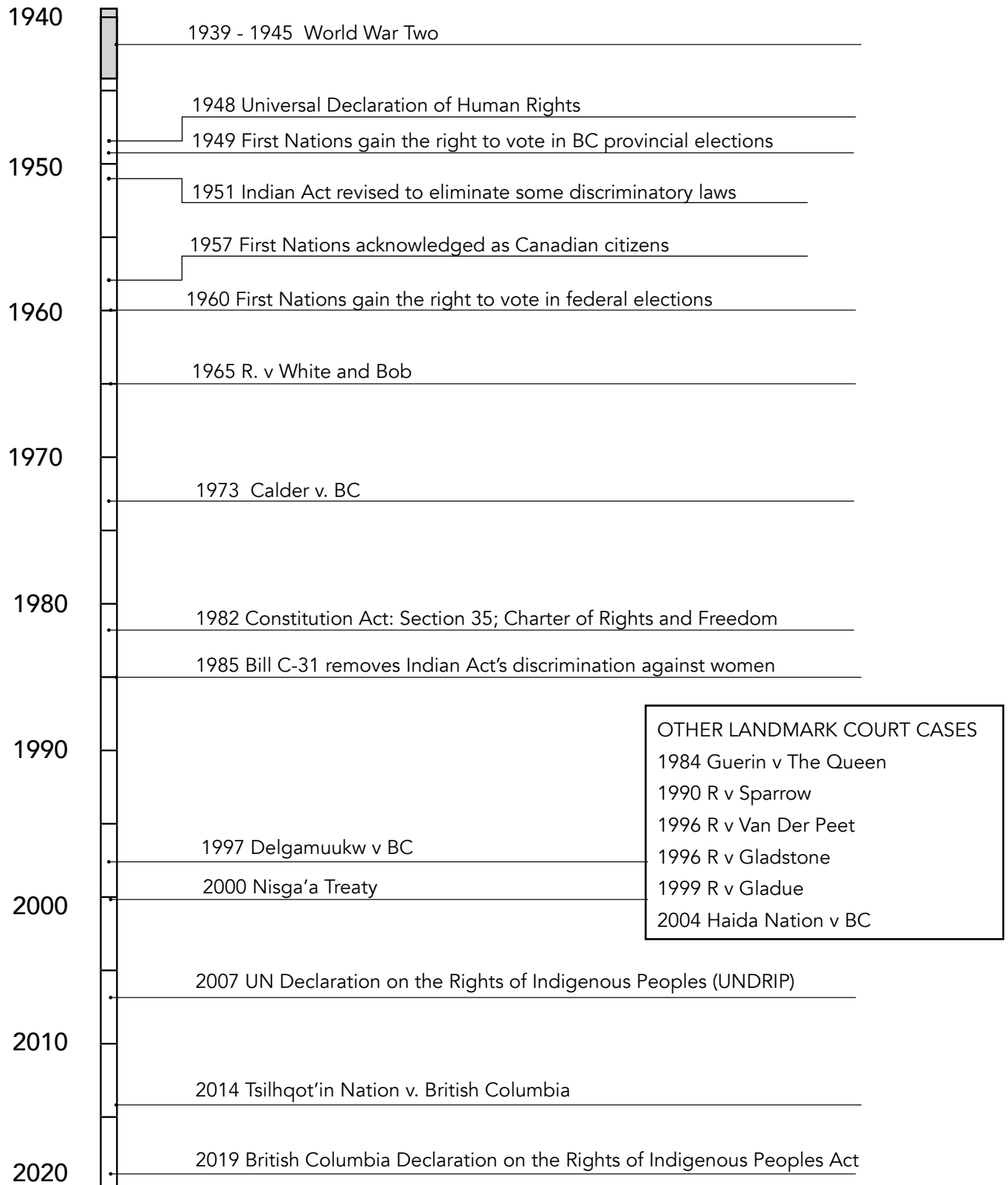
Troubling

Think of 2 questions you have about the document or topic.

Acknowledging Rights Timeline



Acknowledging Rights Timeline: Key



Analysing the Indian Act

The Indian Act is a set of laws that defines the administrative relationship between First Nations and the Government of Canada (and by extension, all Canadians). Originally it put complete control of First Nations education, culture, politics and economics in the hands of the government. It is still in effect today, although its implementation is interpreted through Section 35(1) of the Constitution Act.

Selected Sections from the Indian Act

(Dates are when Section was added to the Act)



Interpretation (i) (1876) "Person" means an individual other than an Indian.



94 (1941). 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.



139 (1920). Any constable may arrest without warrant any person or Indian found gambling or drunk on any part of a reserve. ... Such person or Indian shall be liable to imprisonment for a term not exceeding three months or to a penalty not exceeding fifty dollars. ... Half of the penalty shall belong to the informer.



140A (1930). Where it is proven in court that any Indian, by inordinate frequenting of a poolroom either on or off an Indian reserve, misspends or wastes his time to the detriment of himself, his family or household, shall be forbidden to enter such poolroom for one year.



141 (1927). Every person who, solicits or requests from any Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund for the prosecution of any claim which the tribe or band of Indians to which such Indian belongs ... 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.



CHAPTER 98

An Act respecting Indians

SHORT TITLE

1. This Act may be cited as the Indian Act. R.S., c. 81, Short title.

INTERPRETATION

2. In this Act, unless the context otherwise requires,
- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| (a) "agent" or "Indian agent" means and includes a commissioner, assistant commissioner, superintendent, agent or other officer acting under the instructions of the Superintendent General [Minister]; | Definitions
"Agent."
"Indian agent." |
| (b) "band" means any tribe, band or body of 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; and, when action is being taken by the band as such, means the band in council; | "Band." |
| (c) "Department" means the Department of Indian Affairs [Department of Mines and Resources]; | "Department." |
| (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 reserve which has been surrendered to the Crown; | "Indian lands." |

The opening section of the 1941 version of the Indian Act.

Protection Under the Indian Act

While the Indian Act is discriminatory legislation, it does include some protections for First Nations.

The Act gives the federal government legal responsibilities towards First Nation. There are legal protections such as tax exemptions for property on reserves, and the protection of reserve lands from seizure. The Act, for the time being, keeps some Traditional Territories as First Nations land.

The Indian Act also serves to protect – to some extent – from interference by the provinces. This is why First Nations have fought against the outright abolishment of the Indian Act until other legal protections are in place.

Indian Act: Anti-Potlatch Laws

Laws prohibiting important cultural ceremonies became more restrictive over time.

Indian Act, 1884

3. Every Indian or other person who engages in or assists in celebrating the Indian festival known as the “Potlatch” or in the Indian dance known as the “Tamanawas” is guilty of a misdemeanour, and shall be liable to imprisonment for a term of not more than six nor less than two months in any gaol or other place of confinement; and any Indian or other person who encourages, directly or indirectly, an Indian or Indians to get up such a festival or dance, or to celebrate the same, or who shall assist in the celebration of the same is guilty of a like offence, and shall be liable to the same punishment.

Indian Act, 1927

140(1). 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.

(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.

(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 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.

Federal and Provincial Election Acts

The Indian Act was not the only act to discriminate against First Nations. Federal and provincial Election Acts prohibited people with Indian Status from voting.

Canada Elections Act, R.S.C. 1952, C. 23, s. 14.

14.(2) The following persons are disqualified from voting at an election and incapable of being registered as electors and shall not vote nor be so registered, that is to say,

(e) every Indian, as defined in the Indian Act, ordinarily resident on a reserve, unless,

(i) he was a member of His Majesty's Forces during World War I or World War II, or was a member of the Canadian Forces who served on active service subsequent to the 9th day of September, 1950, or

(ii) he executed a waiver, in a form prescribed by the Minister of Citizenship and Immigration, of exemptions under the Indian Act from taxation on and in respect of personal property, and subsequent to the execution of such waiver a writ has issued ordering an election in any electoral district;

Province of British Columbia

Municipal Elections Act, 1948

4. No Chinese, Japanese, or Indians shall be entitled to vote at any municipal election for the election of a Mayor, Reeve, Alderman, or Councillor.

Provincial Elections Act, 1948

4. (1) The following persons shall be disqualified from voting at any election, and shall not make application to have their names inserted in any list of voters : —

(a) Every Indian: Provided that the provisions of this clause shall not disqualify or render incompetent to vote any person who:—

(i) Has served in the Naval, Military, or Air Force of any member of the British Commonwealth of Nations in any war, and who produces a discharge from such Naval, Military, or Air Force to the Registrar upon applying for registration under this Act and to the Deputy Returning Officer at the time of polling;

(ii) Has been enfranchised under the provisions of the "Indian Act" of the Dominion;

(iii) Is not resident upon or within the confines of an Indian reserve.

First Nations Rights in 1948?

Analyse these clippings from the *Native Voice* to find evidence of violations of the Universal Declaration of Human Rights in 1948.

1

CANADIAN CITIZENS

January 1st, 1947, saw the dawning of a new stage in the lives of Canadian people. With the birth of the new year all people residing in Canada regardless of their birthplace, foreign or British, are entitled by law to call themselves Canadians. Much publicity has already been given through the press and radio on the forward step taken by the Dominion Government which makes further comment from THE NATIVE VOICE unnecessary at this time excepting to mention that under Canadian laws INDIANS ARE NOT PEOPLE.

Native Voice, January 1947, page 4.



Native Voice, February 1947, page 4.

2

The NATIVE VOICE

THE SWASTIKA STILL GROWS

Native youth and White youth fought alongside each other in Europe and on the hillsides of Hong Kong accepting and giving each other that comradeship so needed under tense circumstances.

Native workers and White workers work alongside in our mills, canneries, logging camps and most of the other industries in B.C. with a mutual respect for each other.

Some theatre managers on Vancouver Island and Northern B.C. do not believe that there should be joint enjoyment of pictures and carry out a segregation program.

We have been told of a small town in the Northern interior where Natives are refused service in restaurants and where the local medical practitioner has one waiting room for Natives and one for Whites.

The concepts of democracy of both Native and White youth laying alongside the other on the battlefields of the world were at a variance of these smug practices of democracy in certain B.C. communities.

Native Voice, January 1947, page 8

3

BC Indians Aroused Over School Ban On Children

VICTORIA, B.C.—Indians are banding together to demand revision of a section of the Indian Act which compels native children to attend designated schools regardless of the wishes of their parents.

Vancouver Island tribesmen were reported this month seething with unrest and discontent following exclusion of 12 Songhee Reserve children from the Craigflower School in Esquimalt.

UNFAIR LAWS

Tribes along the Fraser Valley, along the Thompson and in far northern B.C. are being told to call their braves together to protest jointly to the federal Indian Affairs department against the "unfair white man's laws."

"We are working on the recommendations now," said Chief Percy Ross of the Songhee Indian reserve.

"We are going to send them to Ottawa. If nothing is done about them there is going to be a blow-up."

Trouble began brewing when the Indian department refused to pay the tuition fees of native children at Craigflower School because they were not attending a school of their religious faith.

The Indian department's action was based on a provision in the act which states:

"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 school conducted under Protestant auspices."

Native Voice, October 1950, page 8

First Nations Rights in 1948?

4

Page 8 The NATIVE VOICE July, 1947

OUR MAIL BOX

Write to The VOICE any News of Interest in your District, etc.

The following letter has been sent to The Native Voice requesting that it be printed, then forwarded to Mr. Geo. Fellowes, Chilliwack, B.C.

Lytton, B.C.,
June 26th, 1947.

Mr. Geo. Fellowes,
Chilliwack, B.C.

Dear Mr. Fellowes:

Having read the Province about you, I thought I'd write to you.

It is not only the Indian reserve in Chilliwack that is neglected. It is exactly the same all along the Indian reserves through here. Old Indian people hardly getting anything on their relief. My mother is 75 years old and gets only \$5.00 (five dollars) relief a month, and she is not allowed to buy anything on it that she needs. She has to get what is on the list that the storekeepers claim is given to them by the Indian Agent, such as flour, baking powder, two pounds of sugar, table salt, rolled oats, cheese, matches, lard (if any), tea and \$1.00 worth of meat, which lasts her only two days and she has to go without the rest of the month.

One old lady's house burned down two years ago. She went to the Indian Agent about it. She was told to go and live with her sister in a one-room house. She is still without a house. And while there were two sawmills running in the Indian reserve, where does the money go?

My mother's log house is in an awful shape. The logs are rotten and has six inches of moss on the roof and leaks all over and has cardboards on window panes. She has been sickly for years and years. Three weeks after my father died, I brought her to my place—five months later we went in to see our Indian Agent about her house, so she could stay there in the summer time when she didn't need much wood. The Indian Agent told her he couldn't let her have what she needed as she is not living there. He also said, "You can make a living on \$5.00 a month all right." We asked him if he could, he did not answer that. Imagine an old woman of 75-years old living alone and having to go out and pack her own wood to keep warm.

One official said in the Province paper, "We are practically run ragged, we can't possibly cope with every needy case at once." What are they doing? When we go in to see our Indian Agent to ask for something we need, he just growls at us and refuses and reminds us who we are. I know, because I've been in there with, and for my mother. Why, our Indian Agent has been in the Indian Office for 16 years or more and seems to have done very little for needy Indians. He promises things for some but never comes through. He is sure of his pay but we have to live poor.

What about the Indian Residential Schools? There is one here and school children buy their own bread to take back to school on Saturdays, and some of them go home at nights when they get a chance to get something to eat and bring some bread and butter and jam back to school with them.

And we don't get any higher education than Grade 6. The Indian Day School here has been closed for over a year. We had a good teacher but she had to resign as the Indian Agent would not give her any school supplies or enough wood for winter. And she was told before she started teaching not to teach any higher than Grade 6.

FROM AN INDIAN GIRL.

This letter from "an Indian Girl" in Lytton was a response to the reports by teacher George Fellowes about poverty on the Chilliwack Reserve.

Note that \$5 in 1947 would be worth roughly \$500 today.

TEACHER WILL CONTINUE PROBE

Fellowes to Tour B.C. Reserves

Schoolmaster George Fellowes, whose revelations of squalor and neglect on the Chilliwack Indian Reserve led to a series of articles in The Daily Province exposing the conditions there, will tour other reserves in the province on invitation of the B.C. Native Brotherhood to "do the same sort of thing."

Mr. Fellowes agreed with Native Brotherhood officials that Chilliwack reserve was no worse than most reserves.

A Native Brotherhood official

declared that reserve was "only one example." Conditions on the west coast of Vancouver Island were "unbelievable," he claimed.

Meanwhile, at Chilliwack, hundreds of letters and telephone calls, hampers of food and clothing are still arriving from Vancouver and other B.C. points. Offers of beds and blankets, badly needed on the reserve and on other reserves, for that matter were being made.

Mr. Fellowes has had to ask that would-be helpers slow down

their support.

Meanwhile, a personal representative of Cardinal McGuigan, former newspaperman Frank Bell, was at the Chilliwack Reserve in the course of an investigation of B.C. reserves sponsored by the Cardinal.

Representatives of an international news magazine have telegraphed request that Mr. Fellowes, who is already author of three books on juvenile problems, write a report of his investigations.

Vancouver Province, June 10, 1947, page 1

Examining the Universal Declaration of Human Rights

When the Universal Declaration of Human Rights was signed in 1948, many rights of First Peoples were infringed upon. Examine some Articles of the Declaration to find some examples. Decide the status today: are the rights now acknowledged, or are there still some infringements today?

	Examples of infringement of rights in 1948	Status today
Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.		
Article 6. Everyone has the right to recognition everywhere as a person before the law.		
Article 21 (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.		
Article 21 (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.		
Article 25 (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control		
Article 26 (3). Parents have a prior right to choose the kind of education that shall be given their children.		

The Courts of Canada and British Columbia

Landmark court cases for First Peoples have involved several levels of courts as the cases have been appealed. The courts have changed over time and you may come across some courts which no longer exist. Here is a guide to the levels of appeal through the courts in the past and today.

Historical Courts

Magistrates Court

This was the first level of court for small offenses such as arrests under the game laws. Magistrates were often not formally trained lawyers or judges.

County Court (until 1990)

BC is divided into 8 judicial counties, and County Court handled matters from the entire region defined as a county. It heard appeals from Magistrates courts.

Provincial Court (from 1969)

Provincial courts replaced Magistrates court, and eventually the County Courts.

Supreme Court of BC

BC Court of Appeal (from 1910)

Supreme Court of Canada

Judicial Committee of the Privy Council in London, United Kingdom (until 1933 for criminal appeals and 1949 for civil appeals)

Due to Canada's colonial roots, the final court of appeal was held by the British Crown in London. In historical documents it is often referred to just as The Privy Council. It is a committee of senior judges, and is still in operation today for some Commonwealth countries.

Court System Today

These are the levels of courts in the judicial system that apply to the pursuit of Indigenous Rights and Title. There are other levels of courts.

Provincial Court

First level of trial court covering criminal, criminal youth, family, child protection, small claims, and traffic cases.

Supreme Court of BC

Secondary level of trial court, hearing civil and criminal cases and some appeals from the Provincial Court.

BC Court of Appeal

Highest court in the province, hearing appeals from the Provincial and Supreme Courts.

Supreme Court of Canada

The last court of appeal in Canada. It usually only hears cases of national importance, and cases that settle an important point of law. Since the Constitution Act of 1982, the Supreme Court of Canada has been called upon to interpret the act, including Indigenous Rights under Section 35, and the Charter of Rights and Freedom.

Regina vs. White and Bob [1965]

In July, 1963, two Snuneymuxw men, Clifford White and David Bob, were charged with hunting deer out of season, under the BC Game Act. At their first court appearance on July 8, White and Bob made their position clear:

"The peace treaty signed years ago between the crown and the Indians," they said from the prisoner's box, "gives us the right to hunt and fish any time of year."¹

Their case was delayed several times, but was finally heard in Nanaimo Magistrate's court in September. There was a bit of a scene in the courtroom, however, not including the cardboard boxes full of old deer carcasses given as evidence. White and Bob's lawyer James Wilson wanted to delay the hearing further.

Shortly before the trial began, the Indian Agent in Duncan had contacted Wilson. He said he was gathering important information from other First Nations who wanted to support the pair, but many were out fishing, so he couldn't get all the witnesses he needed. Wilson told the court, "The rights and liberties of this group of Her Majesty's subjects are jeopardized unless we have a properly prepared case."

However, Magistrate Lionel Beevor-Potts felt the case had been delayed long enough, and he refused a postponement. Wilson then withdrew from the case, claiming he had not been given sufficient instruction. So, White and Bob took over their defense themselves.

On the last day of the trial, September 25, the courtroom was filled with First Nations supporters. White and Bob called Cowichan Elder and historian Joseph Elliott as a witness. He read from the treaty signed with James Douglas, including the statement, "it is understood that we are at liberty to hunt over unoccupied lands."

It was not enough to convince the magistrate, who held that "the alleged treaty was not material to this case." Further, as he pronounced them guilty, he said "It was pure piggish on your part. You could have got permits for hunting if you tried."

Clifford White explained to the court, "We were hunting for others, nor just ourselves." David Bob stated "that treaty clearly states we are allowed to hunt at any time."²

The men were fined \$100 or 40 days in jail. Curiously, the magistrate said, "The fine would be much heavier if you were not native Canadians."

But as soon as White and Bob left the court, supporters were rallying to raise funds for an appeal. They hired a young lawyer named Tom Berger. The appeal was heard in Nanaimo County Court three months later before Judge A. Swencisky.

The Crown Prosecutor argued that the case was constitutionally invalid and should be dismissed. Berger argued that the Game Act did not apply, thanks to the treaty. Judge Swencisky ruled there were grounds for appeal and he acquitted the men.

In his judgement, Swencisky held "that the aboriginal right of the Nanaimo Indian tribes to hunt on unoccupied land, which was confirmed to them by the Proclamation of 1763, has never been abrogated or extinguished and is still in full force and effect."³

The province appealed the decision, believing it was an important constitutional issue. The Native Brotherhood of BC promised to pay for the costs of the appeal for White and Bob. "The Brotherhood is willing to carry this fight to the highest court necessary," said President Guy Williams.⁴

At the BC Court of Appeal in Vancouver in October 1964, Clifford White and David Bob faced five senior judges, who stated publicly they were aware of the importance of the case.⁵ Three of the judges agreed with Judge Swencisky and the case was dismissed.

The province immediately appealed to the Supreme Court of Canada in Ottawa. However, that court's seven judges quickly dismissed the appeal. "We do not find it necessary to hear you," the judges told the lawyers. They all agreed with the decision of the BC Court of Appeal. The Douglas treaty was a legal treaty.

Ironically, in a province with almost no First Nations treaties, the first court case to acknowledge Indigenous rights was about the recognition of treaty rights.

1. Nanaimo Daily Free Press, July 8, 1963, page 1

2 Nanaimo Daily News, 26 September, 1963, page 13.

3 Quoted in Regina v. White and Bob, 1964, Dominion Law Reports, page 626. <https://www.canlii.org/en/bc/bcca/doc/1964/1964canlii452/1964canlii452.html>

4 Nanaimo Daily News, October 2 1964, page 10.

5 Nanaimo Daily News, October 6, 1964, page 5.

Landmark Court Case Research

Name of Court Case

Appellants

Respondents

Dates of Provincial Trials

Dates of Supreme Court of Canada Trial

Case Summary

Supreme Court of Canada Decision

Outcomes, Impacts on Indigenous Rights

Indigenous Rights Landmark Court Case Summaries

Court Case	Supreme Court Decision	Impact on Indigenous Rights
Guerin v The Queen [1984]		
R v Sparrow [1990]		
R v Van Der Peet [1996]		
R v Gladstone [1996]		
Delgamuukw v BC [1997]		
R. v. Gladue [1999]		
Haida Nation v BC [2004]		
Tsilhqot'in Nation v BC [2014]		

Acknowledging Wrongs: Residential School Apologies

Apology to First Nations Peoples

*The Right Reverend Robert Smith, Moderator The United Church of Canada, 1986**

Long before my people journeyed to this land your people were here, and you received from your Elders an understanding of creation and of the Mystery that surrounds us all that was deep, and rich, and to be treasured.

We did not hear you when you shared your vision. In our zeal to tell you of the good news of Jesus Christ we were closed to the value of your spirituality.

We confused Western ways and culture with the depth and breadth and length and height of the gospel of Christ.

We imposed our civilization as a condition for accepting the gospel.

We tried to make you be like us and in so doing we helped to destroy the vision that made you what you were. As a result you, and we, are poorer and the image of the Creator in us is twisted, blurred, and we are not what we are meant by God to be.

We ask you to forgive us and to walk together with us in the Spirit of Christ so that our peoples may be blessed and God's creation healed.

*First public apology ever made regarding Residential School by any organization involved. A second expanded and more detailed apology was made by the United Church in 1998.

The Apology of The Royal Canadian Mounted Police (RCMP) with Respect to the Indian Residential School Legacy

Giuliano Zaccardelli, Commissioner Royal Canadian Mounted Police, May 2004

Many Aboriginal people have found the courage to step outside of that legacy of this terrible chapter in Canadian history to share their stories. You heard one of those stories today. To those of you who suffered tragedies at residential schools we are very sorry for your experience. Healing has begun in many communities as you heard today, a testament that is a testament to the strength and tenacity of Aboriginal people and Aboriginal communities.

Canadians can never forget what happened and they never should. The RCMP is optimistic that we can all work together to learn from this residential school system experience and ensure that it never happens again.

The RCMP is committed to working with Aboriginal people to continue the healing process. Your communities deserve better choices and better chances. Knowing the past, we must all turn to the future and build a brighter future for all our children.

We, I, as Commissioner of the RCMP, am truly sorry for what role we played in the residential school system and the abuse that took place in that system.

Acknowledging Wrongs: Residential School Apologies

Statement of Reconciliation, The Jesuits in English Canada

*Delivered by Father Winston Rye, S.J., at the Truth and Reconciliation Commission of Canada's Québec National Event, Montreal, April 25, 2013**

Let me begin today by first acknowledging all Survivors of the Residential Schools and their families, the Elders present, the Commissioners, Church and community leaders and members of the wider communities. We thank you sincerely for the invitation to share in this important event.

The Jesuits in English Canada want to take this special occasion to honour the Survivors. It has taken great courage, strength and generosity for you to come forward and to share your story with all of us here, a story of loss, grief, hardship, but also of resistance and healing.

We also greet the children and grandchildren of the Survivors, who suffered in turn from their parent's trauma in the Residential Schools and learned from their character and bravery.

We come today to pay tribute to the individuals who attended the Spanish Residential School; both boys and girls. We recognize and embrace the students who attended the St. Peter Claver Residential School for Boys, St. Charles Garnier Collegiate and St. Joseph's School for Girls, some of whom are with us today in the audience.

This gathering is a symbol of hope and a reminder to all of us that such abuse must never happen again.

I stand here on behalf of the Jesuits to say that we are truly, deep within our hearts, sorry for what we did to injure individuals, families and communities by participating in the Canadian Residential School system.

When the Jesuits first met with First Nations peoples 400 years ago, we recognized the greatness of your traditional spiritual beliefs. That openness was lost in the 20th Century.

The legacy of the Residential Schools is a terrible cloud on our legacy of friendship. Today, we are relearning how to trust each other in a deeper understanding of our own faith through the lessons that your Elders have taught us.

It has been a struggle for the Jesuits to recognize that we became an active part of a system aimed at the assimilation of your traditional culture. It was not until it was much too late that we realized the harm that we had done.

The Jesuits are proud to still count many of our former students as friends and colleagues. We are grateful for the forgiveness and understanding that you have extended to us over the years. We humbly thank you for sticking with us and continuing to welcome us in your homes and communities.

We come to celebrate the achievements of our students. We recognize that what they achieved as professionals, athletes and community leaders was not because of our efforts at the school – but through their own strength of character and love of knowledge.

*This is an excerpt of the apology. For full text please see Truth and Reconciliation Summary Report pg. 390-393

