

Replacing the Indian Act

with the

Nisichawayasihk Cree Nation

OTHASOWEWIN CONSTITUTION

To summarize, what happens to the *Indian Act*, the Constitution alone is intended to replace up to 22 sections immediately with a further 15 being replaced through the Constitution and subsequent self-government negotiations and there are 5 provisions which NCN will want to retain (marked with an *). These will be discussed during self-government negotiations. The remainder will not apply due to the Aski-Pumenikewin land code.

Indian Act Section	Description	Comment
2(3)	Powers band and council	Constitution & Self-government negotiations
4(2) & (3)	Authority of federal government to decide if Indian Act applicable including ss. 114 to 122 off-reserve	Self-government negotiations
5	Membership	Constitution
6	Entitlement to registration	Constitution & self-government negotiations
7	Restrictions on registration	Constitution & self-government negotiations
8 & 9	Band Lists	Constitution & self-government negotiations
10	Band control of membership	Constitution
11	Membership rules for departmental band list	Constitution & Self-government negotiations
12	Bill C-31 registrations	Constitution
13.1	Band List Control by INAC	Constitution & Self-government negotiations
14	Notice provisions regarding band list	Constitution & Self-government negotiations
14.1 – 14.3	Inquiries and protests about band lists and appeals	Constitution
15	Certain payments for those who are no longer band members	Constitution & Self-government negotiations
16	Transferred member's interests	Constitution & Self-government negotiations
17	Creation of new bands by Minister	Canada's ongoing responsibility
18	Reserves held by the Crown for use and benefit of band	Aski-Pumenikewin applies
19	Surveys	Aski-Pumenikewin applies
20	Possession Lands in reserves	Aski-Pumenikewin applies
21	Reserve Lands register	Canada maintains responsibility
22	Improvements to reserve lands	Aski-Pumenikewin applies
23	Compensation for improvements	Aski-Pumenikewin applies
24	Transfer of possession of reserve lands	Aski-Pumenikewin applies
25	Indian ceasing to live on reserve lands	Aski-Pumenikewin applies
26	Correction of Certification of Possession, etc.	Aski-Pumenikewin applies
27	Cancellation of Certificates of Possession, etc.	Aski-Pumenikewin applies
28	Grants of reserve land void	Aski-Pumenikewin applies
29	Exemption from seizure	Constitution and self-government negotiations*
30	Penalty for trespass on reserve lands	Aski-Pumenikewin applies
31	Process related to trespass	Aski-Pumenikewin applies
32	Trade transactions require INAC approval	Aski-Pumenikewin applies
33	Offence for illegal trade transactions	Aski-Pumenikewin applies
34	INAC decides standards for roads & bridges	Aski-Pumenikewin applies
35	Municipalities taking lands for public purposes	Aski-Pumenikewin applies
36	Special reserves	Ongoing responsibility of Canada
37	Surrenders and designations of reserve lands	Aski-Pumenikewin applies
38	Band surrenders to Crown	Aski-Pumenikewin applies
39	Conditions that must be met for surrender	Aski-Pumenikewin applies
39.1	Valid designations	Aski-Pumenikewin applies
40	Certification of designations	Aski-Pumenikewin applies
41	Effect of surrenders and designations	Aski-Pumenikewin applies
42	Powers of Minister related to deceased Indians	Constitution and to extent necessary subsequently necessary self-government negotiations
43	Further powers of Minister over deceased property	Constitution and to the extent subsequently necessary self-government negotiations
44	Courts exercise of jurisdiction with consent of Minister	Constitution and to the extent subsequently necessary, self-government negotiations
45	Wills	Constitution and to the extent subsequently necessary, self-government negotiations
46	Minister may declare will void	Constitution and to the extent subsequently necessary, self-government negotiations
47	Appeal of Minister's decision to Federal Court	Constitution and to the extent subsequently necessary, self-government negotiations
48	Distribution of property on intestacy	Constitution and to the extent subsequently necessary, self-government negotiations

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Indian Act Section	Description	Comment
49	Deceased claim to reserve property	Aski-Pumenikewin applies
50 (1)	Non-residents do not have rights to land	Constitution
50 (2) – (3)	INAC sale of lands and reversion to band	Constitution and self-government negotiations
50 (4)	Ministerial approval of occupation of lands	Aski-Pumenikewin applies
51	Mentally incompetent Indians	Constitution and self-government negotiations
52	Property of infant children	Constitution and self-government negotiations
52.1 – 52.5	Money of infant children	Constitution and self-government negotiations
53 – 60	Management of Reserves and Surrendered and Designated Lands	Aski-Pumenikewin applies
61 - 68	Management of Indian Moneys	Constitution and to the extent subsequently necessary, self-government negotiations
69	Management of revenue moneys	Aski-Pumenikewin applies
70	Loans to Indians	Self-government negotiations
71	Operation of Farms	Aski-Pumenikewin applies
72	Payment of Treaty Money	Ongoing responsibility of Canada*
73	Regulation making authority Canada	Constitution and Aski-Pumenikewin
74 - 79	Elections of Chiefs and Band Councils	Constitution and Election Law
80	Regulations respecting band and council meetings	Constitution
81	Powers of the Council	Constitution
82.1	Ministerial approval of bylaws	Constitution
83 - 84	Money bylaws with Ministerial approval and recovery	Constitution
85	Bylaws relating to intoxicants	Constitution
86	Certification of bylaws by INAC officials	Constitution
87	Property Exempt from Taxation	Constitution and Self-government negotiations*
88	Applicability of provincial laws to Indians	Constitution and Self-government negotiations
89	Restrictions on mortgage, seizure of property	Constitution and Self-government negotiations*
90	Property deemed to be situate on reserve	Constitution and Self-government negotiations*
91	Certain property on a reserve may not be acquired (heritage objects)	Constitution
92	Prohibition on INAC employees trading with Indians without a licence	Ongoing responsibility of Canada (to manage its own employees conduct)
93	Removal of materials from a reserve	Aski-Pumenikewin applies
94 – 100	These sections were previously repealed	N/A
101 - 108	Offences, Punishment and Enforcement	Constitution and Self-government negotiations
109 - 113	These sections were previously repealed	N/A
114 – 119; 122	Schools, regulation making authority related to schools, attendance	Constitution and Self-government negotiations
120 - 121	Teachers and religious denomination of band members	Constitution
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50 (4)	Ministerial approval of occupation of lands	Aski-Pumenikewin applies

Disclaimer: This document has been prepared as information only, and has no legal force and effect. It aims to provide information about the OTHASOWEWIN's (Constitution) often complex and technical issues. If there are any discrepancies between this document and the Constitution or Indian Act, the Constitution and Indian Act prevails.

