

Land Dispossession and Economic Marginalization: The Consequences of the Indian  
Act on Indigenous Land Rights in New Brunswick from 1876-2013

by

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## **Abstract**

This thesis examines the enduring consequences of the Indian Act on Indigenous land rights and economic marginalization in New Brunswick from 1876 to 2013, with a particular focus on the Elsipogtog Blockade. It integrates interdisciplinary literature on Indigenous populations and the Canadian State alongside a review of key legislation that frames the relationship. It explores how the implementation and amendments of the Indian Act have contributed to the dispossession of Indigenous lands, restricted economic opportunities, and undermined traditional governance structures. The study highlights the lasting impacts of forced relocations, land expropriations, and discriminatory policies on Indigenous communities and Elsipogtog in particular, leading to social dislocation and economic challenges. By contextualizing the Elsipogtog Blockade within this historical narrative, this research underscores the urgent need for reconciliation and redress for Indigenous peoples in New Brunswick.

## **Dedication**

This thesis is lovingly dedicated to my parents, Mr. and Mrs. Manu, whose unwavering support and encouragement have been a constant source of strength throughout this journey. Additionally, I dedicate this work to my dearest friend, Emmanuel Sefah-Boakye, may he rest in peace, whose memory continues to inspire me.

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## Chapter One

### **Land Dispossession and Economic Marginalization: The Consequences of the Indian Act on Indigenous Land Rights in New Brunswick from 1876-2013.**

#### **Introduction**

This thesis examines the profound impact of Canada's Indian Act on Indigenous land rights across the country and especially in the province of New Brunswick from 1876 to 2013. By exploring how Scholars, experts and documentary film makers from a range of disciplines and background have highlighted that the Indian Act facilitated the expropriation of Indigenous lands and hindered economic self-sufficiency, this study aims to shed light on the long-term consequences for Indigenous communities in the region. Through a detailed historiographical analysis, this research seeks to contribute to a deeper understanding of the systemic challenges faced by Indigenous peoples as a result of colonial policies.

Paving the way to 1800s, the socio-political environment in Canada was moulded by complex connections with native<sup>1</sup> people, government approaches, and thoughts of "improvement." Canadian authorities and legislators impacted by British Victorian era thoughts of "improvement," and colonialism barred indigenous people groups from self-administration.<sup>2</sup> The federal system in Canada also played a role in shaping social policies, with debates on the impact of federalism on the adoption of social programs, highlighting a tense relationship between the state and Indigenous people.<sup>3</sup> Additionally, the period generates significant debates and analysis among

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<sup>1</sup> The term "native" is used to refer to indigenous populations or communities.

<sup>2</sup> Carol, Devens., L., F., S., Upton. (1980). Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867. *William and Mary Quarterly*, 38(3), 523-. doi: 10.2307/1864359

<sup>3</sup> Francis, Mark. "The" civilizing" of indigenous people in nineteenth-century Canada." *Journal of World History* (1998): 51-87.

political sociologists, providing essential insights into Canadian politics and society.<sup>4</sup> These factors, including the treatment of indigenous peoples, federal dynamics, and political analyses, all contributed to the socio-political landscape in Canada leading up to 1876.

Scholarly discussions surrounding the enactment of the Indian Act of 1876 reveals a prevailing consensus on the deep-seated complexities and power dynamics inherent in the relationship between the Canadian state and Indigenous peoples during this pivotal period of assimilationist policies. The government's assimilationist agenda, rooted in notions of Euro-Canadian cultural superiority, sought to integrate Indigenous peoples through policies like the establishment of residential schools, aimed at eradicating Indigenous cultural identities.<sup>5</sup> The Indian Act of 1876 represented a culmination of these efforts, centralizing control over Indigenous affairs and facilitating the Canadian state's broader colonial objectives. This climate of expansion, economic exploitation, and cultural suppression set the stage for the implementation of the Indian Act, embedding deep-seated inequalities in Canadian-Indigenous relations.<sup>6</sup>

From the perspective of the Canadian government, the Indian Act's primary objectives were to implement assimilationist policies, maintain control over Indigenous populations, and promote discrimination, particularly against Indigenous population.<sup>7</sup> In an effort to bring Indigenous societies into line with European economic systems and values, the act sought to eradicate Indigenous cultures, impose

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<sup>4</sup> Choquette, Éléna, and Jean-François Godbout. "Politiques sociales au Canada: le fédéralisme a-t-il un effet conservateur?." *Publications du CÉRIUM* (2015).

<sup>5</sup> Dickason, Olive Patricia. "The many faces of Canada's history as it relates to Aboriginal people." *Walking a tightrope: Aboriginal people and their representations* 2 (2005): 117.

<sup>6</sup> Carter, Sarah. *Aboriginal people and colonizers of western Canada to 1900*. Vol. 5. University of Toronto Press, 1999.

<sup>7</sup> Palmater, Pamela. "Genocide, Indian policy, and legislated elimination of Indians in Canada." *Aboriginal policy studies* 3, no. 3 (2014).

patrilineal descent, and regulate property inheritance. Indigenous women were the target of discriminatory provisions like section 12(1) (b), this particular provision limited Indigenous women's ability to pass on their status to their descendants on the same terms as Indigenous men. This resulted in extreme poverty and the loss of status upon marriage to non-Indigenous individuals. Through the Indian Act, the Canadian government's historical approach reflected a desire to assimilate Indigenous peoples and maintain dominance over their communities, identities, and resources, despite challenges and criticisms.<sup>8</sup>

The Indian Act in Canada encompasses various components that have had significant impacts on Indigenous communities. It defines who is considered "Indian" based on criteria like blood quantum and patrilineal descent, leading to issues of identity and membership.<sup>9</sup> The Act includes provisions for land management, often resulting in the forced relocation of Indigenous peoples and the establishment of reserves.<sup>10</sup> The Act's governance structures have been criticized for giving Chief and Council too little or too much power, making it difficult for Indigenous communities to make decisions and hold themselves accountable.<sup>11</sup> Additionally, the Act has been used as a tool to assimilate Indigenous peoples into European-style economies, eroding traditional cultural practices and systems of governance.<sup>12</sup> Overall, the Act sought to control and assimilate Indigenous populations while facilitating the Canadian government's broader colonial objectives.

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<sup>8</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

<sup>9</sup> Imai, Shin. "The structure of the Indian Act: Accountability in governance." *Osgoode CLPE Research Paper* 35 (2012).

<sup>10</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

<sup>11</sup> Burde, Howard. "The HITECH act: an overview." *AMA Journal of Ethics* 13, no. 3 (2011): 172-175.

<sup>12</sup> Nettheim, Garth, Gary D. Meyers, and Donna Craig. "Indigenous peoples and governance structures." *A Comparative Analysis of Land and Resource Management Rights* (2002).

The Indian Act of 1876 had a significant immediate impact on Indigenous land ownership and use, leading to significant displacement and a loss of autonomy. The Act centralized land management, putting the Canadian government in charge of reserve lands and acting as the trustee for Indigenous peoples. This shift drastically curtailed Indigenous land rights, as communities could no longer freely manage or transfer their lands without government approval, leading to widespread displacement and dispossession.<sup>13</sup> The Act's imposition of restrictive land use policies disrupted traditional practices such as hunting, fishing, and farming, which were essential for Indigenous livelihoods and cultural practices.<sup>14</sup> Consequently, the Act's land control measures imposed by the Canadian government not only stripped Indigenous peoples of their lands but also undermined their economic independence and cultural integrity, setting the stage for ongoing socio-economic challenges and resistance.<sup>15</sup>

Canada's Indian Act mirrors colonial control measures imposed upon indigenous peoples around the world. Despite the oppressive policies imposed by the 1876 Indian Act, Indigenous cultures have demonstrated remarkable resilience and resistance, adapting in various ways to preserve their identity and autonomy. Indigenous communities globally, including those in India, the United States, and Hawaii have actively resisted colonial domination through various means such as advocating for political changes, maintaining traditional knowledge of the environment, and persisting in their religious practices despite persecution and stigmatization.<sup>16</sup> In Canada, Indigenous resistance has taken many forms, from legal

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<sup>13</sup> Todorovski, Dimo, and Jossam Potel. "Exploring the nexus between displacement and land administration: The case of Rwanda." *Land* 8, no. 4 (2019): 55.

<sup>14</sup> Encyclopedia, The Canadian. "Indian Act." *The Canadian Encyclopedia*. Historica Canada. Article published February 07, 2006; Last Edited September 23, 2022.

<sup>15</sup> Ibid

<sup>16</sup> Sengar, Bina. "Ideas of Indigenous Resilience through Triangulated Model: Ecological Society Experiences of the United States of America and India." In *Indigenous Societies in the Post-colonial*

challenges and political activism to the revitalization of cultural practices.<sup>17</sup> This resistance is evident in the persistent efforts of Indigenous communities to assert their rights through court cases, such as the landmark Calder case of 1973, which affirmed the existence of Aboriginal title in Canadian law.<sup>18</sup> Additionally, grassroots movements and organizations have played crucial roles in advocating for Indigenous rights and cultural preservation. The revival of cultural traditions, coupled with strategic political engagement, reflects a dynamic and ongoing resistance to colonial policies. This resilience underscores the strength and adaptability of Indigenous cultures, highlighting their capacity to endure and thrive despite systematic attempts at assimilation and marginalization.<sup>19</sup>

Canadian history has been shaped by the interactions between settlers and Indigenous people. The relationships between Indigenous peoples and successive British and Canadian governments have seen significant transformation over the past 250 years. A partnership that started with trade agreements and mutual reliance resulted in numerous violent land-related conflicts over space and time; some of the Indigenous Peoples were supporters of the settlers while others were not. When British forces first established military and colonial control of what is now called Canada, power dynamics began to emerge and the relationship changed quickly. After the Dominion of Canada was established, new legislation aimed directly at controlling and assimilating Indigenous populations, coupled with the creation of the Indian Department set the stage for a new policy agenda that continued over the

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*World: Responses and Resilience Through Global Perspectives*, pp. 15-32. Singapore: Springer Nature Singapore, 2023.

<sup>17</sup> Alfred, Taiaiake, and Jeff Corntassel. "Being Indigenous: Resurgences against contemporary colonialism." *Government and opposition* 40, no. 4 (2005): 597-614.

<sup>18</sup> Cruickshank, David A. "Calder Case." *The Canadian Encyclopedia*. Historica Canada. Article published August 24, 2006; Last Edited September 02, 2020.

<sup>19</sup> Alfred, Taiaiake, and Jeff Corntassel. "Being Indigenous: Resurgences against contemporary colonialism." *Government and opposition* 40, no. 4 (2005): 597-614.

next 150 years. The establishment of the Indian Department created a body that was specifically aimed at “managing Indian Affairs” from birth to death. However, the Department was not the only force aspiring to enfranchise Indigenous people; in 1869 the Gradual Enfranchisement Act was legislated, and for the first time in history “Indianness” was not only defined but legally created.<sup>20</sup>

These early forms of assimilation and European control gave birth to what many have referred to as the longest standing barrier to Indigenous self-government, independence and control over their own communities, the Indian Act.<sup>21</sup> The Indian Act spans far beyond giving definition to the term “Indian.” It defines who can and cannot register for Indian status, which can transmit status onto their descendants and in early legislative provisions, even afforded status to the non-Indian wives of status-Indian men. For Indigenous women, provisions within the Act have never afforded them the same rights as their male counterparts. Historically, several provisions of the Indian Act worked to exclude women from various rights by terminating their status, or enfranchising them.<sup>22</sup> These provisions which stripped Indigenous women of their status had rippling effects on a multiplicity of generations below them. As a result of the discriminatory provisions of the Act, Indigenous descendants of matrilineal lines have never had equal entitlement to Indian status and have been deprived of their Indigenous people identities.

Scholarly interpretations of the Indian Act in Canada have evolved significantly over time, especially in the context of recent movements for

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<sup>20</sup> Barry Pritzker, *A Native American Encyclopedia: History, Culture, and Peoples*, 1st ed (Oxford University Press, 2000) pp. 1-590.

<sup>21</sup> Clarkson, Linda, Vern Morrissette, and Gabriel Régallet. *Our responsibility to the seventh generation: Indigenous peoples and sustainable development*. Winnipeg: International Institute for Sustainable Development, 1992.

<sup>22</sup> Elysa Darling & Drew Lafond, UN Human Rights Committee Rules Indian Act is Discriminatory in McIvor Case (January 2019), online: University of Calgary, Faculty of Law

reconciliation and Indigenous rights. The Indian Act's discriminatory measures and their long-lasting effects have been scrutinized, highlighting the inter-ethnic tensions it created and its role in shaping modern social dynamics.<sup>23</sup> Initially, many historical analyses, such as those by J.R. Miller, focused on the administrative and legal aspects of the Act, emphasizing its role in centralizing control over Indigenous affairs and facilitating colonial expansion.<sup>24</sup> Over the past few decades, however, there has been a shift towards a more critical examination of the Act's impacts on Indigenous communities, informed by Indigenous scholarship and activism. Glen Coulthard has framed the Act within the broader context of settler colonialism, highlighting its role in perpetuating systemic oppression and marginalization.<sup>25</sup> Recent scholarship has been further influenced by movements for reconciliation, such as the Truth and Reconciliation Commission of Canada, which have brought to light the enduring harms, caused by the Act and emphasized the need for transformative change. This has led to calls for the Act's reform or abolition, with scholars like John Borrows advocating for a legal framework that recognizes Indigenous sovereignty and self-determination. These evolving interpretations reflect a growing recognition of the need to address historical injustices and support Indigenous rights in contemporary Canada.<sup>26</sup>

This thesis seeks to put to bare that the Indian Act is riddled with inequality and colonial ideologies that have discriminated against Indigenous people from their traditional rights and as active community members and have painted them as

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<sup>23</sup> Vidigal, Geraldo. "Hidden meanings: Evolutionary interpretation between norm application and progressive development." *Geraldo Vidigal, Hidden Meanings: Evolutionary Interpretation Between Norm Application and Progressive Development, Journal of International Economic Law, Amsterdam Law School Research Paper 2020-75* (2020).

<sup>24</sup> Miller, James Rodger. *Shingwauk's vision: A history of Native residential schools*. University of Toronto Press, 1996.

<sup>25</sup> Coulthard, Glen Sean. "Red skin, white masks: Rejecting the colonial politics of recognition." *Minneapolis: Minnesota* (2014).

<sup>26</sup> Borrows, John. *Canada's Indigenous constitution*. University of Toronto Press, 2010.

inferior. Centuries of colonization have devalued the traditional roles of Indigenous women, creating a power imbalance based on gender identity that limits the ability of men, women, and their communities in achieving equality. In turn, these colonial notions have been internalized by Indigenous communities and have contributed to the gross violations against Indigenous people in Canada. Indigenous communities suffer high rates of violence against them, violence that continues today.<sup>27</sup> The abuse against Indigenous people is a product of years of exposure to racism, sexism and discrimination within the confines of the Indian Act.

This thesis has been organized into four chapters, which will unpack the historical legacy of resistance, culminating with a critical analysis of the 2013 Elsipogtog Blockade in New Brunswick and the response from the provincial government. More precisely, I will examine how Indigenous people have dealt with the nullification of Indian Act provisions pertaining to Indian identity that have been condemned as discriminatory and in contravention of section 15 of the Canadian Charter of Rights and Freedoms. These identified discriminations have reopened conversations and debates about the existence of the Indian Act itself. Chapter one serves as the introductory chapter to the entire thesis. It begins by providing a brief historical recount of Settler-Indigenous relations in Canada. This historiography chapter aims to provide a brief synopsis of key moments in history to better ground the investigation of the role played by diverse colonial politics and legislative measures that have historically targeted Indigenous people and their lands. This is not to say that all groups of Indigenous peoples experienced the same historical upbringing; however, it is a fair assumption to presume that all Indigenous peoples

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<sup>27</sup> Gallagher, Gail. "Art, activism and the creation of awareness of missing and murdered Indigenous women and girls (MMIWG); Walking with our sisters, REDress project." (2020).

have been in some way affected by similar colonial policies, methods of oppression, and bouts of discrimination at the hands of the Canadian state with an immeasurable impact on Indigenous people in New Brunswick as well. This chapter will look at how chaotic encounters, coupled with moments of war and economic ventures, brought about a different dynamic to a relationship that was once founded upon mutual exchange and allegiance, to one of colonial control and domination.

The second chapter focuses on conducting a thorough analysis of the Indian Act's influence on Indigenous land rights in Canada in terms of gender and in reserve creation. It delves into the historical context of the Act, examining its establishment and key provisions related to Indigenous land management. The chapter explores the impact of the Act on land reservations, land use regulations, and Indigenous sovereignty, highlighting how it has shaped the relationship between Indigenous communities and the Canadian government. Additionally, it discusses the erosion of traditional land systems, challenges faced by Indigenous peoples in asserting their land rights, and potential pathways for supporting Indigenous self-determination in land governance.

The third chapter focuses on the Elsipogtog Blockade in New Brunswick as a significant event in Indigenous rights and environmental activism. It delves into the historical context leading up to the blockade, examining the socio-political landscape surrounding Indigenous land rights and resource extraction projects. The chapter analyzes the motivations behind the blockade, the strategies employed by the Elsipogtog First Nation, and the responses from the government and industry. It also explores the impact of the blockade on Indigenous communities, the environment, and the broader discourse on Indigenous sovereignty and environmental justice. Using

thorough analysis, the chapter aims to highlight the complexities of resistance movements, the power dynamics at play, and the implications for future Indigenous rights advocacy and environmental activism. The analysis of the Elsipogtog Blockade and its implications for Indigenous rights and environmental activism could also be connected to the broader context of the Indian Act in Canada. The historical legacy of the Indian Act and its impact on Indigenous land rights, autonomy, and self-determination likely influenced the socio-political landscape that led to events such as the Elsipogtog Blockade. Understanding the interplay between legislation like the Indian Act and contemporary Indigenous resistance movements can provide valuable insights into the ongoing struggles for Indigenous sovereignty, environmental justice, and the decolonization of Indigenous lands and communities.

Finally, the conclusion synthesizes the findings from each chapter, reflecting on the ongoing implications of the Indian Act. Throughout the thesis, methodologies from Indigenous studies, legal analysis, and historical inquiry have been employed to provide a comprehensive exploration of the complexities surrounding the Indian Act and its legacy.

## **Historiography of the Indian Act**

### **Impact on Indigenous Identity and Cultural Heritage**

There have been different historical views about the Indian Act from various scholars. Since the creation of the Act, Indigenous scholars have contested its effects on the Indigenous people's socio-political and economic well-being. Early historians

interpreted the Indian Act's implications for Indigenous identity as fundamentally oppressive and assimilative, reflecting a broader agenda of colonial control. More recently Scholars like Kelm and Smith emphasized how the Act dictated Indigenous identity, reinforcing gender biases and undermining self-governance, while also perpetuating historical injustices that resonate today.<sup>28</sup> Additionally, the introduction of Bill C-31 in 1985 further complicated identity negotiations, as it allowed for some restoration of status but also led to internal conflicts within communities regarding identity and belonging.<sup>29</sup> Mamers Danielle Taschereau highlights the Act's role in shaping a colonial narrative that marginalized Indigenous voices and experiences.<sup>30</sup>

Nineteenth century scholars like Mark Francis discussed how Victorian notions of "civilization" influenced policies that marginalized Indigenous self-governance and cultural practices, reflecting a broader discourse that excluded Indigenous voices.<sup>31</sup> Scholars like Martin Cannon emphasize the need to explore the implications of these legislative changes on Indigenous identities and the ongoing negotiations within communities, arguing against binary perspectives of oppression.<sup>32</sup>

Palmater Pamela also stresses on the impact of the Indian Act on Indigenous Identity and Culture. Palmater emphasizes that the Indian Act's registration provisions have had a profound impact on Indigenous identity and culture. By creating two legal categories status and non-status Indians. A "registered Indian" is more commonly referred to as a "Status Indian," although the latter is not referenced in the Act. Those

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<sup>28</sup> Kelm, Mary-Ellen, and Keith D. Smith. *Talking back to the Indian Act: Critical readings in settler colonial histories*. University of Toronto Press, 2018.

<sup>29</sup> Cannon, Martin John. "Bill C-31-An Act to Amend the Indian Act: Notes toward a qualitative analysis of legislated injustice." *The Canadian journal of Native studies* 25, no. 1 (2005): 373-387.

<sup>30</sup> Mamers, Danielle Taschereau. "Looking at Law." *CR: The New Centennial Review* 21, no. 3 (2021): 135-164.

<sup>31</sup> Francis, Mark. "The "civilizing" of indigenous people in nineteenth-century Canada." *Journal of World History* (1998): 51-87.

<sup>32</sup> Cannon, Martin. "Revisiting histories of legal assimilation, racialized injustice, and the future of Indian status in Canada." (2007): 35.

Indigenous peoples who are denied registration status are referred to as “non-status Indians for their lack of rights and legal recognition.”<sup>33</sup> Grant Twist argued that the Act was part of a broader strategy of cultural genocide, systematically eroding Indigenous social, political, and spiritual traditions under the guise of civilizing efforts.<sup>34</sup>

The Act fragmented Indigenous communities and created divisions within families and bands. Indigenous people with status were granted certain rights and benefits like access to reserve lands, while non-status Indigenous people were excluded from these entitlements, leading to further marginalization and exclusion.<sup>35</sup> The denial of federal recognition to non-status Indians has also resulted in the erosion of Indigenous identity, culture, and communal connections. Many non-status Indians have been unable to access their ancestral lands, participate in band governance, or benefit from programs and services designed for Indigenous peoples. This exclusion has contributed to the loss of cultural knowledge, language, and traditions, as well as the disintegration of community ties.<sup>36</sup>

Scholars like Mary-Ellen Kelm and Keith D Smith emphasize the Act's role in shaping Indigenous identity through policies on residential schools, gender bias, land theft, and self-governance.<sup>37</sup>

Mukesh Eswaran also argues that the Indian Act's emphasis on individual property rights has contributed to the erosion of Indigenous cultural practices and

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<sup>33</sup> Paul, P. "The Politics of Legislated Identity: The Effect of Section 6 (2) of the Indian Act in the Atlantic Provinces." In *Amherst, NS: Atlantic Policy Congress of First Nations Chiefs*. 1999.

<sup>34</sup> Twist, Grant. "Civil Indian Policy and aboriginal-white relations in nineteenth century Canada: a cultural genocide?." Master's thesis, Canterbury Christ Church University (United Kingdom), 2014.

<sup>35</sup> Palmater, Pamela. "Genocide, Indian policy, and legislated elimination of Indians in Canada." (2014).

<sup>36</sup> *Ibid*

<sup>37</sup> Kelm, Mary-Ellen, and Keith D. Smith. *Talking back to the Indian Act: Critical readings in settler colonial histories*. University of Toronto Press, 2018.

communal land rights. Privatization of land has disrupted traditional lifestyles and weakened cultural ties to the land, leading to a decline in the transmission of cultural knowledge and practices.<sup>38</sup>

### **Systemic Inequities and Discrimination**

The Indian Act, enacted in 1876, has been critiqued for its role in shaping Indigenous identity and perpetuating systemic inequities, particularly through policies like residential schools and gender discrimination, as highlighted by Mary-Ellen Kelm and Keith D. Smith.<sup>39</sup> The 1985 amendment, Bill C-31, aimed to rectify gender-based discrimination by allowing Indigenous women who married non-Indigenous men to retain their status, yet it also introduced new challenges regarding identity and community membership.<sup>40</sup> For example, Bill C-31, introduced in 1985, was intended to eliminate discrimination against Indigenous women by creating a non-discriminatory legal criterion for defining "Indian" under the Act. The post-World War II period saw growing criticism of the Indian Act's assimilationist goals. The 1951 amendments removed some of the most overtly discriminatory provisions such as voting rights and enfranchisement, but the Act remained a tool of colonial control.<sup>41</sup>

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<sup>38</sup> Eswaran, Mukesh. "The Wrongs of Property Rights: The Erosion of Indigenous Communal Land Rights and Its Welfare Consequences." *Canadian Public Policy* 49, no. 3 (2023): 267-292.

<sup>39</sup> Kelm, Mary-Ellen, and Keith D. Smith. *Talking back to the Indian Act: Critical readings in settler colonial histories*. University of Toronto Press, 2018.

<sup>40</sup> Hartley, Gerard. "The Search for Consensus: A Legislative History of Bill C-31, 1969–1985." (2007): 5.

<sup>41</sup> Tester, Frank James, Paule McNicoll, and Jessie Forsyth. "With an ear to the ground: The CCF/NDP and Aboriginal policy in Canada, 1926-1993." *Journal of Canadian studies* 34, no. 1 (1999): 52-74.

Sidney Haring emphasized the legal injustices faced by Aboriginal peoples, revealing that colonial judges often disregarded Indigenous rights, which contributed to systemic discrimination.<sup>42</sup>

In contemporary scholarship, Todd Roy emphasizes the pressing need to address systemic issues stemming from the Indian Act in Canada, particularly focusing on changing discriminatory clauses that perpetuate violence against Indigenous women and advocating for reconciliation.<sup>43</sup> Lianne Leddy stresses how the Indian Act's establishment of patrilineality for Indian status disenfranchised women who married outside their communities, stripping them of legal status and reinforcing patriarchal structures that marginalized their roles within society.<sup>44</sup> Similarly, Burton Michael James criticizes the Act's emphasis on patrilineal descent for determining status, pointing out how this historical practice excluded many Indigenous women and their descendants from federal recognition.<sup>45</sup> He highlights the Act's enfranchisement measures, which disproportionately affected women marrying non-Indigenous men, leading to loss of status and the inability to pass it on to their children.<sup>46</sup>

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<sup>42</sup> Haring, Sidney L. *White man's law: Native people in nineteenth-century Canadian jurisprudence*. University of Toronto Press, 1998.

<sup>43</sup> Todd, Roy. "21 Things You May Not Know about the Indian Act: Helping Canadians Make Reconciliation with Indigenous Peoples a Reality by Bob Joseph." *British Journal of Canadian Studies* 33, no. 1 (2021): 136-136.

<sup>44</sup> Leddy, Lianne C. "Aboriginal women's fight to keep their status." *Herizons* 28, no. 4 (2015): 48-50.

<sup>45</sup> Burton, Michael James. "Legislated oppression: Racism, patriarchy and colonialism in the status provisions of the Indian Act." PhD diss., Faculty of Graduate Studies and Research, University of Regina, 2012.

<sup>46</sup> Ibid

Lee Timofeev discusses how the Act reflects discriminatory measures rooted in Anglo-Saxon chauvinism, leading to inter-ethnic tensions and the Oka crisis.<sup>47</sup> Mary-Ellen Kelm and Keith Douglas Smith's work further critiques the Act's role in perpetuating inequities, emphasizing the need for historical understanding and Indigenous methodologies to address ongoing injustices.<sup>48</sup>

Gwen Brodsky has also linked the Act's gender-discriminatory provisions to the high levels of violence against Indigenous women, as these provisions have contributed to their vulnerability and exclusion from their communities.<sup>49</sup> However, the bill has been criticized for failing to fully address the systemic issues of gender discrimination and for creating new challenges for Indigenous women and their communities.<sup>50</sup> Cannon further argues that amendments like Bill C-31 have introduced complexities regarding identity and status, leading to internal conflicts within communities.<sup>51</sup>

Martin Cannon argues that the Act, despite its oppressive nature, has provided a framework for Indigenous communities to negotiate their identities and assert their rights within a colonial structure, thus facilitating a form of political engagement and self-definition.<sup>52</sup> Additionally, the introduction of amendments like Bill C-31 has been seen as a step towards recognizing and rectifying gender-based discrimination,

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<sup>47</sup> Тимофеев, В.В., 2021. Интенсификация ассимиляции индейцев в Канаде в контексте реализации положений Индейского акта. *Концепт: философия, религия, культура*, 5(1), pp.96-109.

<sup>48</sup> Kelm, Mary-Ellen, and Keith D. Smith. *Talking back to the Indian Act: Critical readings in settler colonial histories*. University of Toronto Press, 2018.

<sup>49</sup> Brodsky, Gwen. "Indian act sex discrimination: Enough inquiry already, just fix it." *Canadian Journal of Women and the Law* 28, no. 2 (2016): 314-320.

<sup>50</sup> Cannon, Martin John. "Bill C-31-An Act to Amend the Indian Act: Notes toward a qualitative analysis of legislated injustice." *The Canadian journal of Native studies* 25, no. 1 (2005): 373-387.

<sup>51</sup> Cannon, Martin John. "Bill C-31-An Act to Amend the Indian Act: Notes toward a qualitative analysis of legislated injustice." *The Canadian journal of Native studies* 25, no. 1 (2005): 373-387.

<sup>52</sup> Cannon, Martin John. "Bill C-31-An Act to Amend the Indian Act: Notes toward a qualitative analysis of legislated injustice." *The Canadian journal of Native studies* 25, no. 1 (2005): 373-387.

allowing for a more inclusive understanding of Indigenous status that acknowledges matrilineal descent.<sup>53</sup>

### **Land Ownership and Management**

Many scholars and Indigenous leaders advocate for the repeal of the Indian Act, arguing that it is incompatible with Indigenous self-determination and human rights.<sup>54</sup> Cristina Stanciu noted that the Act was intertwined with Americanization policies, which coerced Indigenous peoples into renouncing their political allegiances and adopting settler norms, further entrenching colonial dominance.

Lauren Kepkiewicz and Bryan Dale connect the Act to discussions on food sovereignty and land reforms in Canada.<sup>55</sup> Stacey MacTaggart focuses on the legislative gaps in the Act regarding on-reserve matrimonial property and the implications for Indigenous women, emphasizing the importance of the recent Family Homes on Reserves and Matrimonial Interests or Rights Act.<sup>56</sup>

Cory Woolsey argues that the act has disrupted traditional Indigenous systems of governance and resource management.<sup>57</sup> In 2010, Tom Flanagan et al criticized the Indian Act that it has led to the erosion of Indigenous sovereignty and self-

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<sup>53</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *Vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

<sup>54</sup> Burton, Michael James. "Legislated oppression: Racism, patriarchy and colonialism in the status provisions of the Indian Act." PhD diss., Faculty of Graduate Studies and Research, University of Regina, 2012.

<sup>55</sup> Kepkiewicz, L. and Dale, B., 2019. Keeping 'our land: Property, agriculture and tensions between Indigenous and settler visions of food sovereignty in Canada. *The Journal of Peasant Studies*, 46(5), pp.983-1002.

<sup>56</sup> MacTaggart, Stacey L. "Lessons from history: The recent applicability of matrimonial property and human rights legislation on reserve lands in Canada." *WJ Legal Stud.* 6 (2015): 1.

<sup>57</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *Vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

determination, as well as the loss of land and resources.<sup>58</sup> The Act's emphasis on assimilation has also undermined Indigenous cultural and economic systems, leading to a loss of traditional knowledge and practices.<sup>59</sup>

Clifford Atleo and Jonathan Boron argue that the Act, rooted in settler colonialism, has historically facilitated the dispossession of Indigenous peoples from their territories, complicating efforts for land repatriation and sustainable development.<sup>60</sup> Christopher Alcantara, argues that the Act's provisions, such as the Certificate of Possession system, while allowing some individual property rights, still impose significant restrictions that hinder economic development and self-determination for Indigenous communities.<sup>61</sup>

Shirley Thompson and Kaoru Suzuki argue that the Indian Act imposed a system of reserves, which confined Indigenous communities to specific areas, often marginalizing them from resource-rich lands.<sup>62</sup> This forced relocation and land dispossession disrupted Indigenous economies, which were traditionally based on hunting, gathering, and agriculture, leading to long-term economic dependency and poverty.<sup>63</sup>

Frank Tough posits that the Act's limitations on land ownership and management have led to "dead capital," where land cannot be easily bought, sold, or

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<sup>58</sup> Flanagan, Tom, Christopher Alcantara, and André Le Dressay. *Beyond the Indian Act: Restoring aboriginal property rights*. McGill-Queen's Press-MQUP, 2010.

<sup>59</sup> Hanna, Alan. "Reconciliation through relationality in Indigenous legal orders." *Alta. L. Rev.* 56 (2018): 817.

<sup>60</sup> Atleo, Clifford, and Jonathan Boron. *Land Is Life: Indigenous Relationships to Territory and Navigating Settler Colonial Property Regimes in Canada*. *Land 11* (5): 609. 2022.

<sup>61</sup> Alcantara, Christopher. "Individual property rights on Canadian Indian reserves: The historical emergence and jurisprudence of certificates of possession." (2003).

<sup>62</sup> Thompson, Shirley, and Kaoru Suzuki. "Displacement of Indigenous people in Canada under the Indian Act: participatory video with Lake St. Martin and Little Saskatchewan first nations on flood impacts." *Journal of Geoscience and Environment Protection* 10, no. 11 (2022): 242-264.

<sup>63</sup> Holmes, Alvin Ishmael. "Social welfare aspects and implications of the Indian act." PhD diss., University of British Columbia, 1961.

leveraged for economic activities.<sup>64</sup> Flanagan et al criticizes that the Act's framework for land management has resulted in insecure land tenure, deterring investment and leading to economic losses. For instance, certificates of possession and leases under the Indian Act are temporary and cannot be sold outside the First Nation, limiting their economic potential.<sup>65</sup> Laura Wright and Jerry White argue that the Indian Act's provisions have also influenced the development of oil and gas resources on Indigenous lands. While such development can create employment and wealth-sharing opportunities, it often leads to economic inequality and environmental damage.<sup>66</sup> Susan Collis puts to bare that the Indian Act has undermined Indigenous sovereignty by imposing a foreign legal framework on Indigenous lands. This has disrupted traditional governance structures and decision-making processes, eroding the ability of Indigenous communities to manage their lands autonomously.<sup>67</sup>

Some scholars have argued in favor of reforming the Indian Act, highlighting its potential for reform and its role in facilitating certain aspects of governance for First Nations. Douglas Sanderson suggests that rather than abolishing the Indian Act, it should be reformed through an "overlapping consensus" approach, where both the Canadian government and First Nations can find common ground without compromising their foundational beliefs. He identifies areas such as financial accountability and membership integration as ripe for consensus, proposing reforms like redirecting income tax payments to First Nation communities to incentivize the

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<sup>64</sup> Tough, Frank J. "'Full Circle': Theories of Property Rights as Indicated by Two Case Summaries Concerning the Individualization of Collective Indigenous Lands Interests." *Journal of Aboriginal Economic Development* 8, no. 2 (2013): 24-39.

<sup>65</sup> Flanagan, Tom, Christopher Alcantara, and André Le Dressay. *Beyond the Indian Act: Restoring aboriginal property rights*. McGill-Queen's Press-MQUP, 2010.

<sup>66</sup> Wright, Laura, and Jerry P. White. "Developing Oil and Gas Resources On or Near Indigenous Lands in Canada." *International Indigenous Policy Journal* 3, no. 2 (2012): 1-18.

<sup>67</sup> Collis, Susan. "W (h)ither the Indian Act? how statutory law is rewriting Canada's settler colonial formation." *Annals of the American Association of Geographers* 112, no. 1 (2022): 167-183.

inclusion of non-status Indians and enhance community funding.<sup>68</sup> Similarly, Naomi Metallic argues for the strategic use of Indian Act by-laws as a means for First Nations to assert control over local matters. Despite the historical limitations imposed by the federal government's disallowance power, recent amendments have expanded the scope for First Nations to pass by-laws, which Metallic sees as a viable interim solution to address urgent needs for self-governance and service provision on reserves.<sup>69</sup>

Overall scholars have examined the Indian Act in a variety of ways such as its effects on Indigenous people's socio-political and economic well-being, land ownership and management and Indigenous Identity and Culture. Many have been critical of the Indian Act and scholars such as Mary-Ellen Kelm, Keith D. Smith and Palmater Pamela have underscored how deeply disruptive the Indian Act has been in the lives of Indigenous peoples, and how it has impacted Indigenous sovereignty.

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<sup>68</sup> Sanderson, Douglas. "Overlapping consensus, legislative reform and the Indian Act." *Queen's LJ* 39 (2013): 511.

<sup>69</sup> Metallic, Naomi. "Indian Act by-Laws: A Viable Means for First Nations to (Re) Assert Control over Local Matters Now and Not Later." *UNBLJ* 67 (2016): 211.

## Chapter Two

This chapter examines the profound and enduring impact of the Indian Act on Indigenous communities in Canada, particularly focusing on its evolution, historical context, and the detrimental effects it has had, notably on Indigenous women and their rights. By exploring the Act's legacy of perpetuating inequalities, discrimination, and hurdles for Indigenous peoples, the thesis underscores the pressing need for decolonization and the abolition of colonial legislation to advance Indigenous rights and self-governance. Through a comprehensive examination spanning the Act's inception in 1876 to its contemporary ramifications, the chapter looks into how the legislation centralized control over Indigenous affairs, enforced assimilationist policies, regulated land management, and perpetuated displacement and cultural erasure. It also scrutinizes the resilience and resistance of Indigenous cultures in the face of oppressive policies, alongside scholarly interpretations elucidating the Act's pivotal role in shaping Indigenous identity and its implications for reconciliation and Indigenous rights movements in present-day Canada. Furthermore, the chapter looks into the historical context of colonial policy in New Brunswick during the 18th and 19th centuries, uncovering the intricate interplay of economic, social, and political factors that shaped governance and decision-making in the region. It also explores the impact of British imperial interests and colonial policies on New Brunswick's development, shedding light on the establishment of a loyalist settlement pattern post-American Revolution. Additionally, the analysis extends to the historical narrative of colonial occupation in New Brunswick, examining interactions between Indigenous peoples and European settlers, key events shaping the socio-political landscape, and the enduring impacts on Indigenous communities. Finally, the chapter looks into the complexities of Indigenous resistance strategies, the essential role of traditional

knowledge in advocating for sustainability and community resilience, and the urgent need for reforms to enhance autonomy and economic opportunities for Indigenous populations, particularly in the context of land rights and governance.

### **Historical Context of the Indian Act**

The Indian Act, historically significant in defining Indigenous peoples in Canada, underwent various iterations such as the 1876 and 1951 versions, the Act classified some individuals as status Indians, granting them access to benefits while erasing or cancelling others from recognition.<sup>70</sup> The Indian Act had profound negative impacts on Indigenous communities in Canada, particularly affecting Indigenous women and their rights.<sup>71</sup> The Act enforced patrilineal descent and property inheritance, leading to extreme poverty among First Nations women and eroding cultural transfer mechanisms.<sup>72</sup> Furthermore, the Act defined Indian Status based on historic colonial legislation, resulting in discrimination and inequality, especially towards Indigenous women who have never had equal status provisions.<sup>73</sup> The 1985 Bill C-31 amendments to the Indian Act also significantly influenced First Nations communities, leading to population growth in the short term but potentially creating challenges in the long term regarding entitlement to Indian registration and nation membership.<sup>74</sup> The "Blackout period" of the Indian Act refers to a period between 1887 and 1951 when certain sections of the Act were not applicable to First Nations people. During this time, many Indigenous individuals lost their status due to various

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<sup>70</sup> Mamers, Danielle Taschereau. "Looking at Law: Refusals of Settler Colonial Politics in Nadia Myre's Indian Act." *CR: The New Centennial Review* 21, no. 3 (2021): 135-164.

<sup>71</sup> Deschambault, Mackenzie. "An Exploration of the Colonial Impacts of the Indian Act on Indigenous Women in Canada." PhD diss., Carleton University, 2020.

<sup>72</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

<sup>73</sup> Deschambault, Mackenzie. "An Exploration of the Colonial Impacts of the Indian Act on Indigenous Women in Canada." PhD diss., Carleton University, 2020.

<sup>74</sup> Clatworthy, Stewart. "Impacts of the 1985 Indian Act Amendments: A Case Study of Brokenhead Ojibway Nation." (2007): 75.

reasons, such as enfranchisement, serving in the military, obtaining a university degree, or even becoming a professional. This period had significant impacts on Indigenous communities, leading to the loss of status, cultural identity, and rights among many individuals and families.<sup>75</sup>

Additionally, the First Nations Elections Act in 2014 aimed to provide improvements in electoral systems and governance within Indigenous communities, offering opportunities for experimentation with digital technologies to enhance democratic engagement and governance.<sup>76</sup> Scholars largely agree that the main objectives of the Indian Act were to enforce patrilineal descent and property inheritance uniformly across First Nations cultures in Canada, aiming to assimilate Indigenous peoples into a European-style economy and trading system while discriminating against First Nations women.<sup>77</sup> The Act also defined certain Indigenous peoples as status Indians, rendering them visible to the state and granting access to treaty-owed benefits, while excluding or erasing others, effectively eroding Indigenous identity and culture.<sup>78</sup> Additionally, the Act aimed to ensure the eventual disappearance of Indigenous peoples through registration provisions that led to legislative extinction after two generations of intermarriage, resulting in distinct legal

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<sup>75</sup> Swiffen, Amy. "How the Indian Act's 'blackout period' denied Indigenous Peoples their legal rights "The Conversation. October 12, 2022.

<sup>76</sup> Gabel, Chelsea, Karen Bird, Nicole J. Goodman, and Brian Budd. "The Impact Of Digital Technology On First Nations Participation and Governance." *Canadian Journal of Native Studies* 36, no. 2 (2016).

<sup>77</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

<sup>78</sup> Mamers, Danielle Taschereau. "Looking at Law: Refusals of Settler Colonial Politics in Nadia Myre's Indian Act." *CR: The New Centennial Review* 21, no. 3 (2021): 135-164.

categories of “status” and non-status Indians with differential access to services and benefits.<sup>79</sup>

The Indian Act had profound negative effects on Indigenous communities in Canada, particularly impacting Indigenous women and their rights. The Act enforced patrilineal descent and property inheritance, leading to extreme poverty among First Nations women and eroding cultural transfer mechanisms.<sup>80</sup> Additionally, the Act often denied Indigenous women their status and rights if they married non-Indigenous men, contributing to the loss of their connection to their communities and cultures.<sup>81</sup> These disenfranchisements of Indigenous women further perpetuated cycles of poverty and marginalization within Indigenous communities, hindering their ability to access resources and participate fully in decision-making processes that affected their lives.

Furthermore, amendments to the Indian Act, such as Bill C-31, resulted in significant demographic changes within First Nations populations, with many individuals facing challenges in obtaining registration entitlement and band membership.<sup>82</sup> Additionally, the Act's provisions governing elections within Indigenous communities often led to administrative difficulties and inconsistencies, prompting the introduction of the First Nations Elections Act in 2014 to improve

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<sup>79</sup> Palmater, Pamela. "Genocide, Indian policy, and legislated elimination of Indians in Canada." *Aboriginal policy studies* 3, no. 3 (2014).

<sup>80</sup> Deschambault, Mackenzie. "An Exploration of the Colonial Impacts of the Indian Act on Indigenous Women in Canada." PhD diss., Carleton University, 2020.

<sup>81</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

<sup>82</sup> Clatworthy, Stewart. "Impacts of the 1985 Indian Act Amendments: A Case Study of Brokenhead Ojibway Nation." (2007): 75.

electoral systems and governance in First Nations communities.<sup>83</sup> Overall, the Indian Act perpetuated inequalities, discrimination, and challenges for Indigenous peoples in Canada, highlighting the urgent need for decolonization and the abolishment of such colonial legislation.<sup>84</sup>

### **Historical Context of the Colonial Policy in New Brunswick**

In the case of New Brunswick, Canada's Indian Act added to a longer legacy of settler-Indigenous colonial policy encompassing economic, social, and political dimensions. Economic interests, particularly the timber trade, played a crucial role in shaping policies that favoured resource extraction and exportation, which were vital for the colony's growth and sustainability.<sup>85</sup> Additionally, the demographic composition, including the influx of Loyalists and their descendants, significantly impacted governance and policy-making, as these groups sought to establish a society reflective of their values and interests.<sup>86</sup> Political dynamics, including the relationship with Britain and local governance structures, also influenced policy decisions. The need for effective administration and representation led to the establishment of institutions that balanced local needs with imperial directives.<sup>87</sup> Furthermore, social factors, such as Indigenous relations and the integration of diverse communities, complicated policy frameworks, often leading to tensions and conflicts over land and

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<sup>83</sup> Gabel, Chelsea, Karen Bird, Nicole J. Goodman, and Brian Budd. "THE IMPACT OF DIGITAL TECHNOLOGY ON FIRST NATIONS PARTICIPATION AND GOVERNANCE." *Canadian Journal of Native Studies* 36, no. 2 (2016).

<sup>84</sup> Thompson, Shirley, and Kaoru Suzuki. "Displacement of Indigenous People in Canada under the Indian Act: Participatory Video with Lake St. Martin and Little Saskatchewan First Nations on Flood Impacts." *Journal of Geoscience and Environment Protection* 10, no. 11 (2022): 242-264.

<sup>85</sup> Wynn, Graeme. "'Deplorably Dark and Demoralized Lumberers'?: Rhetoric and Reality in Early Nineteenth-Century New Brunswick." *Journal of Forest History* 24, no. 4 (1980): 168-187.

<sup>86</sup> Mancke, Elizabeth, David Bent, and Mark J. McLaughlin. "'their unalienable right and privilege': New Brunswick's Challenge to the Militarization of the British Empire, 1807-1814." *Acadiensis* 46, no. 1 (2017): 49-72.

<sup>87</sup> Bateman, Thomas MJ. "Stuck... in this place: shrinking policy space in New Brunswick." *Journal of New Brunswick Studies/Revue D'études Sur Le Nouveau-Brunswick* 2 (2011).

resources.<sup>88</sup> For example, disputes over traditional territories between different Indigenous groups or conflicts arising from conflicting land use practices between Indigenous communities and non-Indigenous settlers have been ongoing challenges exacerbated by complex policy landscapes. These tensions underscore the importance of culturally sensitive and inclusive approaches to land and resource management to foster cooperation and sustainable development among all stakeholders. Collectively, these elements illustrate the complexity of colonial policy development in New Brunswick, highlighting the interplay between economic imperatives and social realities.

Economic factors significantly influenced colonial policy in New Brunswick, shaping decisions around resource management, trade, and settlement patterns. Thomas Bateman highlights that the colonial administration prioritized economic development through land grants and infrastructure investments, aiming to attract settlers and stimulate agricultural production.<sup>89</sup> Jason Hall emphasizes the role of timber and shipbuilding industries, which were critical to the colony's economy, leading to policies that favored these sectors and facilitated trade with Britain.<sup>90</sup> Judith Rygiel discusses how economic pressures, such as fluctuating market demands, prompted shifts in policy, particularly in resource allocation and labor management.<sup>91</sup> Thomas William Acheson notes that the reliance on external markets created vulnerabilities, influencing colonial governance to adapt policies that would stabilize

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<sup>88</sup> Steel, Heather. "Where's the Policy? Immigration to New Brunswick, 1945-1971." *Acadiensis* 35, no. 2 (2006): 85-105.

<sup>89</sup> Bateman, Thomas MJ. "Stuck... in this place: shrinking policy space in New Brunswick." *Journal of New Brunswick Studies/Revue D'études Sur Le Nouveau-Brunswick* 2 (2011).

<sup>90</sup> Hall, Jason. "High Freshets and Low-Lying Farms: Property Law and St. John River Flooding in Colonial New Brunswick." *Dalhousie LJ* 39 (2016): 195.

<sup>91</sup> Rygiel, Judith. "Thread in Her Hands-Cash in Her Pockets: Women and Domestic Textile Production in 19th-Century New Brunswick." *Acadiensis* 30, no. 2 (2001): 56-70.

the economy during downturns.<sup>92</sup> Peter Russell adds that the interplay between local economic interests and imperial directives often resulted in tensions, as colonial leaders sought to balance profitability with sustainability.<sup>93</sup>

### **The History of Colonial Occupation in New Brunswick**

The history of colonial occupation in New Brunswick is marked by complex interactions between Indigenous peoples and European settlers, primarily the French and British. Initially, the region was inhabited by various Indigenous groups, including the Mi'kmaq and Wolastoqiyik, who had established trade networks and governance systems long before European contact.<sup>94</sup> The French established Acadia in the early 17th century, significantly influencing the cultural landscape until British control was solidified following the Treaty of Utrecht in 1713, which ceded Acadia to Britain.<sup>95</sup> The violent forced relocations during the Seven Years War further disrupted the Acadian population, causing immense suffering and dislocation as communities were forcibly uprooted from their homes and dispersed across various regions.<sup>96</sup> The British colonial period saw the influx of Loyalists after the American Revolution, further altering the demographic and political dynamics.<sup>97</sup> The British colonial period saw the influx of Loyalists after the American Revolution, further altering the demographic and political dynamics.<sup>98</sup> This period was characterized by land dispossession and the imposition of colonial governance, which marginalized

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<sup>92</sup> Acheson, T. W. "New Brunswick Agriculture at the End of the Colonial Era: A Reassessment." *Acadiensis* 22, no. 2 (1993): 5-26.

<sup>93</sup> Russell, Peter. "New Brunswick's First Copper Coinages." *Acadiensis* 25, no. 2 (1996): 105-116.

<sup>94</sup> Porter, Richard L. "History and Land Use Change: The New Brunswick Copper Mining and Processing Complex, Rutgers University, and Johnson & Johnson." *New Jersey Studies: An Interdisciplinary Journal* 2, no. 1 (2016): 77-119.

<sup>95</sup> Nicholas, Andrea Bear. "The role of colonial artists in the dispossession and displacement of the Maliseet, 1790s-1850s." *Journal of Canadian Studies* 49, no. 2 (2015): 25-86.

<sup>96</sup> *Ibid*

<sup>97</sup> Acheson, T. W. "New Brunswick Agriculture at the End of the Colonial Era: A Reassessment." *Acadiensis* 22, no. 2 (1993): 5-26.

<sup>98</sup> Acheson, T. W. "New Brunswick Agriculture at the End of the Colonial Era: A Reassessment." *Acadiensis* 22, no. 2 (1993): 5-26.

Indigenous rights and sovereignty.<sup>99</sup> Contemporary scholarship emphasizes the need to recognize these historical injustices and their lasting impacts on Indigenous communities in New Brunswick today.<sup>100</sup> Thus, the colonial history of New Brunswick is a narrative of conflict, adaptation, and resilience among its diverse populations.

The colonial occupation was marked by several key events that shaped the socio-political landscape of the regions involved. One significant event was the establishment of colonial administrations, which often led to the imposition of foreign governance structures and legal systems, disrupting indigenous political systems and social hierarchies.<sup>101</sup> Additionally, economic exploitation was prevalent, with colonial powers extracting resources and labor, which fueled local resistance movements and contributed to social unrest.<sup>102</sup> Cultural exchanges also played a crucial role, as colonial powers introduced new religions, languages, and educational systems, which had lasting impacts on local cultures.<sup>103</sup> Furthermore, the resistance against colonial rule, exemplified by various uprisings and movements, highlighted the struggle for autonomy and identity among colonized peoples.<sup>104</sup> Lastly, the eventual decolonization processes, influenced by global political changes post-World War II,

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<sup>99</sup> Hall, Jason. "High Freshets and Low-Lying Farms: Property Law and St. John River Flooding in Colonial New Brunswick." *Dalhousie LJ* 39 (2016): 195.

<sup>100</sup> Kehoe, Karly, ed. *Reappraisals of British Colonisation in Atlantic Canada, 1700-1930*. Edinburgh University Press, 2020.

<sup>101</sup> Kaldellis, Anthony. *The New Roman Empire: A History of Byzantium*. Oxford University Press, 2024.

<sup>102</sup> Daly, Martin W. "The British Occupation, 1882-1922." *The Cambridge History of Egypt* 2 (1998): 239-251.

<sup>103</sup> Gros, Stéphane. "Chronology of Major Events." *Frontier Tibet* (2019): 19.

<sup>104</sup> Ismail, Sah-Hadiyatan. "'Second Colonial Occupation': The United States and British Malaya 1945-1949." *Asian Culture and History* 4, no. 1 (2012): 29.

marked the transition from colonial rule to independence, reshaping national identities.<sup>105</sup>

Indigenous cultures employed various strategies to resist colonial occupation, demonstrating resilience and adaptability. One significant form of resistance was the preservation and revitalization of cultural practices, which served as a means of asserting identity against colonial imposition. For instance, some communities engaged in traditional ceremonies and storytelling, reinforcing their cultural heritage and community bonds despite external pressures.<sup>106</sup> Additionally, Indigenous groups often utilized strategic alliances and negotiations to counter colonial forces, leveraging their knowledge of the land and resources to maintain autonomy. This included forming coalitions with other indigenous groups or even with colonial powers when beneficial.<sup>107</sup> Moreover, active forms of resistance, such as uprisings and protests, were also prevalent, as seen in various historical contexts where indigenous peoples directly confronted colonial authorities to reclaim their rights and territories.<sup>108</sup> However, these resistance efforts were not without challenges, as colonial powers frequently employed violent repression and manipulation, complicating the dynamics of resistance and survival.<sup>109</sup>

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<sup>105</sup> Burton, Mark. "Community psychology under colonial occupation: The case of Palestine." *Journal of Community Psychology* 43, no. 1 (2015): 119-123.

<sup>106</sup> Wedig, Josiane Carine, Simão Ternoski, Miguel Angelo Perondi, and Norma Kiyota. "Emigration Movements of Rural Women in Itapejara d'Oeste/PR: facing relations of patriarchal power." *Redes (1414-7106)* 26, no. 1 (2021).

<sup>107</sup> Dutta, Mohan Jyoti, Pankaj Baskey, Rabin Mandi, and Indranil Mandal. "Indigenous Resistance in South Asia." In *Oxford Research Encyclopedia of Communication*. 2024.

<sup>108</sup> Barker, Adam J. "Already occupied: Indigenous peoples, settler colonialism and the Occupy movements in North America." *Social Movement Studies* 11, no. 3-4 (2012): 327-334.

<sup>109</sup> Reuther, Nina. "'As long as we Dance and Sing we Will Stay Alive.': Indigenous North American Resistance against Assimilation through Song and Dance." *Comparative American Studies An International Journal* 18, no. 3 (2021): 397-412.

## **Analysis of the Indian Act: Impact on Indigenous Land Rights**

The Indian Act is a foundational piece of legislation in Canadian Indigenous policy, profoundly shaping the relationship between the federal government and Indigenous peoples. Enacted in 1876 and amended numerous times, the Indian Act has been a defining force regulating various aspects of Indigenous life, including land rights, governance, and identity.<sup>110</sup>

The Indian Act which reflected a colonial mentality that aimed for assimilation and cultural erasure was fundamentally created to establish control over Indigenous peoples and their territory. For almost a century, the Act has exerted considerable influence over Indigenous communities through clauses that specify land management, the creation of reserves, and governance systems.

The effects of the Act on Indigenous land rights, in particular, have been a topic of contention, as limitations on resource management and land ownership present major obstacles to Indigenous people's attempt to reclaim their ancestral lands. The Indian Act has perpetuated a cycle of dispossession and economic disadvantage for Indigenous communities.<sup>111</sup>

Specific parts of the Indian Act that limit land use include sections related to land allotment, leasing, and management on reserves. For instance, Section 20 of the Indian Act outlines regulations regarding the leasing of reserve lands, stating that "No lease or license in respect of lands in a reserve shall be valid unless approved by the

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<sup>110</sup> John Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," in J.R. Miller, ed., *Sweet Promises: A Reader on Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1991).

<sup>111</sup> Terrill, Leon. "Property and the regulation of houses in communities on indigenous land." In *The Routledge Handbook of Property, Law and Society*, pp. 190-202. Routledge, 2022.

Minister."<sup>112</sup> This requirement places significant control over land use in the hands of the government, limiting Indigenous autonomy and self-governance in managing their lands.

As debates surrounding the Act continue to evolve, understanding its historical roots, provisions, and implications for Indigenous communities is crucial for grasping the complexities of Indigenous policy in Canada. This chapter aims to delve into the analysis of the Indian Act, focusing on its impacts on Indigenous land rights and the broader implications for Indigenous sovereignty and self-determination.

### **Reserves and Impacts on Indigenous land tenure systems**

According to an article by John Holmes and associates, it was believed that land could not be fully and exclusively vested in First Nations peoples at the time of the Royal Proclamation and the Indian Act's formation, it was thought that Indigenous groups lived in a lower social and spiritual growth.<sup>113</sup> As such, it was felt that providing these people with total control over their traditional territory would result in the mismanagement of the land and a lack of development. The adoption of Christian values, private property, and European agricultural practices were viewed as key to the civilization and advancement of Indigenous peoples.<sup>114</sup>

The Indian Act, enacted in 1876, played a pivotal role in the establishment and management of Indian reserves in Canada. It defined the legal framework under which lands were reserved for Indigenous peoples, asserting that all lands designated

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<sup>112</sup> The Indian Act, Assented on 12<sup>th</sup> April, 1876

<sup>113</sup> Holmes, Joan. "The Original Intentions of the Indian Act." Joan Holmes & Associates Inc. 2002. <http://www.joanholmes.ca/Indian%20Act%20Paper%20Final.pdf>

<sup>114</sup> Alcantara, Christopher. "Individual Property Rights on Canadian Indian Reserves: The Historical Emergence and Jurisprudence of Certificates of Possession." *The Canadian Journal of Native Studies*, vol. 23, no. 2, 2003, pp. 391-424. [http://www3.brandonu.ca/cjns/23.2/cjns23no2\\_pg391-424.pdf](http://www3.brandonu.ca/cjns/23.2/cjns23no2_pg391-424.pdf)

for Indigenous people were held by the Crown for their use and occupancy.<sup>115</sup> The Act limited First Nations' authority over land management, recognizing only a narrow scope of governance, which hampered their ability to address issues such as matrimonial real property disputes.<sup>116</sup> Furthermore, the Act's provisions allowed for the creation of by-laws by Band Councils, although these powers were historically constrained by federal oversight.<sup>117</sup> Recent amendments have begun to enhance the autonomy of First Nations in passing by-laws, yet the legacy of the Indian Act continues to influence the socio-economic conditions on reserves, often impeding effective governance and economic development.<sup>118</sup>

Reserves were created across Canada in the 19<sup>th</sup> century to protect the interest of the Indigenous bands that had historically occupied and owned the land. For Indigenous bands, these reserves are now a vital resource and area of control. The Indian Act governs the management of reserves and related fields. Reserves are declared to be "held by Her Majesty for the use and benefit of the respective bands for which 'they were set apart."<sup>119</sup> The band's form of ownership is derived from 'the Royal Proclamation of 1763.

*For all practical purposes, possession by an Indian band of land is of the same effect in relation to day-to-day control thereof as possession of land by any person owning the title in fee simple. Neither the Crown nor any government official has any right or*

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<sup>115</sup> Alcantara, Christopher. "Privatize Reserve Land? No. Improve Economic Development Conditions on Canadian Indian Reserves? Yes." (2008).

<sup>116</sup> Cornet, Wendy, and Allison Lendor. "Matrimonial real property issues on-reserve." (2004): 143.

<sup>117</sup> Metallic, Naiomi. "Indian Act by-Laws: A Viable Means for First Nations to (Re) Assert Control over Local Matters Now and Not Later." *UNBLJ* 67 (2016): 211.

<sup>118</sup> Alcantara, Christopher. "Privatize Reserve Land? No. Improve Economic Development Conditions on Canadian Indian Reserves? Yes." (2008).

<sup>119</sup> CAN. REV. STAT. c. 1-6, 18(1) (1970)

*status to interfere with such possession by the band except when such right or status has been confirmed by or under statute.*<sup>120</sup>

Putting this within the context of the Royal Proclamation of 1763, sheds light on potential conflicts between the principles outlined in the Royal Proclamation and certain provisions within the Indian Act. The Royal Proclamation recognized Indigenous land rights and sought to regulate the acquisition of Indigenous territories by settlers. However, the Indian Act, despite acknowledging Indigenous possession of land, also imposed restrictions and controls that have historically undermined Indigenous sovereignty and self-governance. Therefore, while the quote underscores the importance of Indigenous land possession, it also hints at the complexities and contradictions present in the legal framework governing Indigenous lands, potentially reflecting areas where the Indian Act may conflict with the principles of the Royal Proclamation.

The Indian Act has significantly disrupted the ownership and management of reserves; control over the reserves and associated funds lies with the Minister of Indian Affairs, although the band council's approval is necessary in certain defined situations. The Minister may direct the use of reserve lands through local Indigenous Affairs officials for schools, administration burial grounds, health projects, and with the consent of the band council, for any other purpose for the general welfare of the band.<sup>121</sup> The Minister of Indian Affairs has the authority to survey and divide the land, as well as to oversee the construction of roads that the band is obligated to maintain in compliance with the Minister's directives.<sup>122</sup> In cases where land on a reserve remains uncultivated, the Minister has the authority to instruct its cultivation through leasing

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<sup>120</sup> *Brick Cartage Ltd. v. The Queen*, [1965] Can. Exch. 102, 106 (Ex. 1964).

<sup>121</sup> CAN. Rav. STAT. c. 1-6, 18(2) (1970).

<sup>122</sup> *Ibid* Sec.19,340

or other means, provided such actions are undertaken with the consent of the band council.<sup>123</sup> No such consent is necessary for the operation of farms on the reserve by the Minister.<sup>124</sup>

Recognition of the management prerogative of the Minister is manifest in section 60 of the Indian Act, which provides:

- a) The Governor in Council may at the request of a band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable.
- b) The Governor in Council may at any time withdraw from a band a right conferred upon the band.

The primary authority granted to the band council under the Indian Act concerning reserve land involves the allocation of possession of that land to band members. However, these allotments are contingent upon the Minister's approval.<sup>125</sup> The Minister issues a Certificate of Possession when approval is given and a Certificate of Occupation when the approval given is conditional.

Certificates of Possession (CPs) under the Indian Act significantly influenced the property rights of band members on reserve land, presenting both opportunities and limitations. It allowed individual band members to obtain ownership of specific tracts of reserve land for personal use, such as building homes or businesses, thereby providing a semblance of private property rights.<sup>126</sup> However, these rights are constrained; Holders of this certificate cannot sell their land outside the First Nation, and their ability to transfer possession, lease, or utilize the land as equity is limited

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<sup>123</sup> Ibid Sec 58

<sup>124</sup> Ibid Sec 71

<sup>125</sup> Ibid Sec 20(1),81(1)

<sup>126</sup> Alcantara, Christopher. "Individual property rights on Canadian Indian reserves: The historical emergence and jurisprudence of certificates of possession." (2003).

compared to off-reserve property rights.<sup>127</sup> Empirical studies indicate that CPs are often undervalued, with discounts ranging from 65% to 98% compared to fee simple properties, reflecting the economic disadvantages faced by CP holders.<sup>128</sup> "Fee simple" is a term used in real estate law to describe absolute ownership of property. When someone owns property in fee simple, they have the most extensive bundle of rights possible under the law. This includes the right to use, sell, lease, mortgage, and bequeath the property. Furthermore, the overarching control of the federal government complicates the autonomy of First Nations in managing their lands, highlighting the need for reforms to enhance property rights and economic opportunities for Indigenous communities.<sup>129</sup> Particulars of the Certificates are entered in a Reserve Land Register maintained by the Department of Indian Affairs.<sup>130</sup> An Indian may also transfer a right to possession to another member of the band subject, of course, to the Minister's approval.<sup>131</sup>

The provisions of the Indian Act indicate the managerial prerogative of the Minister of Indian Affairs over reserves and band resources. The denial of self-government inflicted by such provisions is compounded by the denial of any legal remedy. Regarding reserves, it stipulates that: "Subject to this Act and -to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used for the use and benefit of the

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<sup>127</sup> Flanagan, Tom, Christopher Alcantara, and André Le Dressay. *Beyond the Indian Act: Restoring aboriginal property rights*. McGill-Queen's Press-MQUP, 2010.

<sup>128</sup> Rogers, Steven, Ceilidh Ballantyne, Erin Tompkins, and Brian Ballantyne. "Price of the Soil: Property Values of Leaseholds and Certificates of Possession." *Journal of Aboriginal Economic Development* 11, no. 1 (2018): 60-74.

<sup>129</sup> Brinkhurst, Marena, Joan Philip, and Murray B. Rutherford. "Land Management On Individually Held Lands Under The Indian Act Reserve Land Tenure System: Experiences from the Penticton Indian Band." *Journal of Aboriginal Economic Development* 8, no. 2 (2013): 40-54.

<sup>130</sup> *Ibid* Sec 20(21)

<sup>131</sup> *Ibid* Sec 24

band.<sup>132</sup> The provisions deny any action for breach of trust by the Minister. Thus, the Indian Act classically seeks to confer on the Minister "power without responsibility" and necessarily imposes on band members responsibility for the exercise of this power.

Another objective that informed land regime sections of the Indian Act was the goal of obtaining arable land for settlement and economic development. Originally a key goal of the British, this is also reflected by a major shift in treaty-making towards land cession before the Act's creation.<sup>133</sup> From this perspective, exerting control over traditional lands and unilaterally establishing reserves vested in the Crown were policy choices that allowed the government to move Indigenous peoples away from resource-rich territory and onto isolated plots of land away from settlers.<sup>134</sup> This strategy enabled the Crown to gather First Nations peoples onto designated Crown lands, establishing a means to enforce their residency and retain their limited property and treaty rights. The perspective here was that this would allow the government to transform Indigenous societies by slowly introducing land ownership, farming practices, and religion.<sup>135</sup> The combination of agriculture and private property in particular was seen by government officials as central to the 'civilizing processes.'<sup>136</sup>

Viewed through this lens, the land system outlined in the Indian Act stands as a pivotal element of the legislation. Primarily, the Indian Act formalizes the creation

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<sup>132</sup> Ibid Sec18(1)

<sup>133</sup> Holmes, Joan. "The Original Intentions of the Indian Act." Joan Holmes & Associates Inc. 2002. <http://www.joanholmes.ca/Indian%20Act%20Paper%20Final.pdf>

<sup>134</sup> Alcantara, Christopher. "Individual Property Rights on Canadian Indian Reserves: The Historical Emergence and Jurisprudence of Certificates of Possession." *The Canadian Journal of Native Studies*, vol. 23, no. 2, 2003, pp. 391-424. [http://www3.brandonu.ca/cjns/23.2/cjnsv23no2\\_pg391-424.pd](http://www3.brandonu.ca/cjns/23.2/cjnsv23no2_pg391-424.pd)

<sup>135</sup> Ibid

<sup>136</sup> Ibid

of reserves. Reserve land is defined as “a tract of land, the legal title to which is vested in Her Majesty, which has been set apart by Her Majesty for the use and benefit of a band”.<sup>137</sup> The fundamental aspect highlighted in this section of the Act is that the legal ownership of these lands’ rests with the Crown. This underscores the initial Crown goal of establishing supremacy over First Nations peoples and their territories, thereby vesting ultimate decision-making authority in the hands of the Crown. However, First Nations are considered to have a recognized interest in these lands, and associated rights, including the right to exclusive occupation and land use.<sup>138</sup> It also reflects approaches to governance that informed the creation of the Indian Act, most notably the idea that the occupation of reserves by First Nations people would only be temporary, as these peoples would be quickly absorbed into broader Canadian culture.<sup>139</sup>

Section 81 of the Indian Act provides First Nations communities on reserve with by-law-making authorities that could go beyond what Canadian municipalities have been granted. For example, as long as the proposed by-laws are “not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister”, band councils can take action to protect the health of reserve residents, to carry out zoning activities for reserve lands, to preserve, protect and manage traditional harvesting resources.<sup>140</sup>

Historically, as in many areas of First Nations governance, by-laws require the approval of the Minister. In the past, this approval was rarely forthcoming, and if

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<sup>137</sup> Government of Canada. Indian Act (R.S.C., 1985, c. I-5). Current to February 15, 2018. <http://laws-lois.justice.gc.ca/eng/acts/i-5/>

<sup>138</sup> Holmes, Joan. “The Original Intentions of the Indian Act.” Joan Holmes & Associates Inc. 2002. <http://www.joanholmes.ca/Indian%20Act%20Paper%20Final.pdf>

<sup>139</sup> Holmes, Joan. “The Original Intentions of the Indian Act.” Joan Holmes & Associates Inc. 2002. <http://www.joanholmes.ca/Indian%20Act%20Paper%20Final.pdf>

<sup>140</sup> Government of Canada. Indian Act (R.S.C., 1985, c. I-5). Current to February 15, 2018. <http://laws-lois.justice.gc.ca/eng/acts/i-5/>

granted, came with the caveat that parts of the proposed by-law be altered or weakened.<sup>141</sup> Furthermore, the approval of the Minister did not necessarily reflect the legality of the by-law in question, which could be challenged in court.<sup>142</sup> Over time, ministerial oversight has nevertheless relaxed, and by-law-making powers have been increasingly utilized by First Nations peoples, including those of New Brunswick. This long process has continued into the 21st century, with an amendment to the Indian Act put in place in December 2014, entirely removing the requirement of Ministerial approval from section 81.<sup>143</sup> The relaxation of ministerial oversight and the increased utilization of by-law making powers by First Nations peoples, including those in New Brunswick, have enabled Indigenous communities to enact regulations tailored to their specific needs and priorities. For instance, First Nations may implement bylaws related to environmental protection, hunting and fishing regulations, land-use planning, business licensing, or cultural preservation. These bylaws empower Indigenous communities to govern themselves more effectively and make decisions that reflect their unique cultural, social, and economic circumstances.

The land regime under the Indian Act in New Brunswick is characterized by a complex historical context and specific legal frameworks that govern Indigenous land rights. Unlike other regions, the peace and friendship treaties existed in New Brunswick, with early agreements primarily recognizing Indigenous occupancy without delineating specific boundaries.<sup>144</sup> The Indian Act facilitates individual property rights through mechanisms like Certificates of Possession, which allow band

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<sup>141</sup> Leslie, John F. "The Indian Act: An Historical Perspective." Canadian Parliamentary Review, vol. 25, no. 2, 2002. <http://www.revparl.ca/english/issue.asp?param=83&art=255>

<sup>142</sup> Hykin, Berry J. "Contaminated Sites on First Nations Land." Woodward and Company, 2016. [http://www.woodwardandcompany.com/wp-content/uploads/pdfs/2016-09-20-Contaminated\\_Sites\\_on\\_First\\_Nation\\_Lands-Final.pdf](http://www.woodwardandcompany.com/wp-content/uploads/pdfs/2016-09-20-Contaminated_Sites_on_First_Nation_Lands-Final.pdf)

<sup>143</sup> Indian Act, R.S.C., 1985, c. I-5.

<sup>144</sup> Hamilton, W. D. "Indian Lands in New Brunswick: The Case of the Little South West Reserve." *Acadiensis* 13, no. 2 (1984): 3-28.

members to claim ownership of reserve land, albeit with limitations compared to off-reserve property rights.<sup>145</sup> Additionally, the Act has historically imposed a patrilineal system of inheritance, adversely affecting First Nations women and their economic status.<sup>146</sup> Recent amendments have empowered First Nations to utilize by-law provisions more effectively, enabling them to assert greater control over local governance and essential services on reserves.<sup>147</sup> The Crown's claim at the time the Act was enacted was that if limitations were not put on property rights, settlers would take advantage of the Indigenous people.<sup>148</sup>

It has been observed that the European settlers had a different cultural understanding of private property as compared to the Indigenous people. For instance, the idea that land could be owned as private property in the European sense was not held by the Indigenous people.<sup>149</sup> Indigenous people have been greatly impacted by the complicated private property structure under the Indian Act. One notable characteristic is the restriction on the sale or granting of land until it has been transferred to the Crown by the Indigenous band. This provision has often been a point of contention and has influenced land tenure and ownership patterns within Indigenous communities.<sup>150</sup> In addition, this absolute surrender is only valid if it is made to the Crown if it is assented to by a majority of the electors of the band, and if

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<sup>145</sup> Alcantara, Christopher. "Individual property rights on Canadian Indian reserves: The historical emergence and jurisprudence of certificates of possession." (2003).

<sup>146</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

<sup>147</sup> Metallic, Naiomi. "Indian Act by-Laws: A Viable Means for First Nations to (Re) Assert Control over Local Matters Now and Not Later." *UNBLJ* 67 (2016): 211.

<sup>148</sup> Holmes, Joan. "The Original Intentions of the Indian Act." Joan Holmes & Associates Inc. 2002. <http://www.joanholmes.ca/Indian%20Act%20Paper%20Final.pdf>

<sup>149</sup> Ibid

<sup>150</sup> Government of Canada. "Indian Reserve Waste Disposal Regulations (C.R.C., c. 960)." Indian Act. Current to February 15, 2018b. [http://lawslois.justice.gc.ca/eng/regulations/C.R.C.,\\_c.\\_960/page-1.html](http://lawslois.justice.gc.ca/eng/regulations/C.R.C.,_c._960/page-1.html)

it is accepted by the Governor in Council.<sup>151</sup> Due to this, the crown has absolute authority over land sales and grants, and it is free to reject any surrender as it deems right. This framework was essentially "impervious to substantial change" after it was put in place, which led to "inertia and lack of an inventive approach to policy deliberations".<sup>152</sup> However, this set of assumptions and policies would begin to shift following the Second World War.

The 1951 amendment to the Indian Act, replacing the earlier rudimentary location ticket system, signaled a dramatic change toward a more extensive system of private property rights. The rudimentary location ticket system was a basic method of identifying and allocating land to individual Indigenous people within reserves under the Indian Act before the 1951 amendment. With an emphasis on releasing traditional lands for economic development, this modification was part of a larger movement to modernize Indigenous governance. This shift in policy had far-reaching implications for Indigenous communities and their relationship with their lands and resources.<sup>153</sup> This system known as the Certificates of Possession System, is a combination of the temporary, conditional ownership that First Nations peoples were historically limited to and the full ownership of land that most Canadians enjoy.<sup>154</sup>

Under the Certificates of Possession system, legal title to lands on reserve is still held by the Crown. However, with the consent of the Minister, a holder of a Certificate of Possession has several legal options over the more restrictive system

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<sup>151</sup> Ibid

<sup>152</sup> Leslie, John F. "The Indian Act: An Historical Perspective." Canadian Parliamentary Review, vol. 25, no. 2, 2002. <http://www.revparl.ca/english/issue.asp?param=83&art=255>

<sup>153</sup> Alcantara, Christopher. "Individual Property Rights on Canadian Indian Reserves: The Historical Emergence and Jurisprudence of Certificates of Possession." The Canadian Journal of Native Studies, vol. 23, no. 2, 2003, pp. 391-424. [http://www3.brandonu.ca/cjns/23.2/cjns23no2\\_pg391-424.pdf](http://www3.brandonu.ca/cjns/23.2/cjns23no2_pg391-424.pdf)

<sup>154</sup> Ibid

previously in place. This includes the ability to build a residence on the land in question, to divide the territory up into smaller Certificates of Possession, to transfer interest in the land to other individuals, and to pass on land through a will. (Indian Act, Section 24).<sup>155</sup> Furthermore, the area in question may be leased by the owner of a Certificate of Possession.

Aside from taxes levied by band councils, certificates of possession are free from legal seizure and taxation. The drawback is that banks and other financial institutions are reluctant to do business with holders of a Certificate if they cannot collect on possible defaults, even though this gives the holder of the Certificate more security and occasionally tax-free revenue.<sup>156</sup> An additional issue is that due to the continued requirement of Ministerial approval, transactions involving Certificates of Possession are often slow; in an Indigenous community of Xanadu in Alberta, the length of time to conclude a transaction was eleven years<sup>157</sup> As a result, decisions regarding land use and environmental management are likewise limited and subject to major delays.

In line with the cross-cutting themes identified in modern Indigenous governance, one of the major objectives of the Certificate of Possession system was to encourage economic development. This has been somewhat successful in New Brunswick, where some First Nations have used the system to promote private property ownership on reserves, though it's hard to say how often. This has been accomplished by Elsipogtog First Nation using ministerial and band guarantees for loans obtained

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<sup>155</sup> Alcantara, Christopher. "Individual Property Rights on Canadian Indian Reserves: The Historical Emergence and Jurisprudence of Certificates of Possession." *The Canadian Journal of Native Studies*, vol. 23, no. 2, 2003, pp. 391-424. [http://www3.brandonu.ca/cjns/23.2/cjnsv23no2\\_pg391-424.pdf](http://www3.brandonu.ca/cjns/23.2/cjnsv23no2_pg391-424.pdf)

<sup>156</sup> Alcantara 406

<sup>157</sup> Alcantara 410

from external lenders.<sup>158</sup> Flanagan and Alcantara note that a major effect of the system is a reduction in the reliance of bands on the federal government for housing.<sup>159</sup> Although the First Nations of New Brunswick have made some innovative uses of the land management and property system found in the Indian Act, the regime's lack of clarity has led many First Nations peoples in New Brunswick to rely on courts when it comes to solving problems related to land use.<sup>160</sup>

### **Indigenous Status under the Indian Act**

In the past, knowing who qualified to be registered under the Indian Act was important to ascertain who was interested in and entitled to protection on the lands reserved for Indians. The first federal legislation on this issue declared that such persons were, "all persons of Indian blood, reputed to belong to a specific tribe, band or body of Indians and their descendants".<sup>161</sup> The wives of such individuals were also qualified to be "Indians". However, in 1869, an enactment specified that Indigenous women and their children lost status upon marriage to a non-Indigenous man. This enactment cemented the patrilineal character of the status system.<sup>162</sup>

There were further modifications to the Act in 1951 to allow for charter organizations based on the statutory requirements earlier in an attempt to resolve disagreements. A charter organization, within the context of Indigenous governance in Canada, refers to a formal entity established by Indigenous communities under the

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<sup>158</sup> Flanagan, Tom; Christopher Alcantara. "Individual Property Rights on Canadian Indian Reserves." Fraser Institute, 2004. <https://www.fraserinstitute.org/sites/default/files/PropertyRightsonIndianReserves.pdf>

<sup>159</sup> Ibid

<sup>160</sup> Alcantara, Christopher. "Individual Property Rights on Canadian Indian Reserves: The Historical Emergence and Jurisprudence of Certificates of Possession." *The Canadian Journal of Native Studies*, vol. 23, no. 2, 2003, pp. 391-424. [http://www3.brandonu.ca/cjns/23.2/cjnsv23no2\\_pg391-424.pdf](http://www3.brandonu.ca/cjns/23.2/cjnsv23no2_pg391-424.pdf)

<sup>161</sup> The Indian Act, Assented on 12<sup>th</sup> April, 1876.pp 43

<sup>162</sup> The Indian Act, Assented on 12<sup>th</sup> April, 1876.pp 44

provisions of the Indian Act or other relevant legislation. These organizations are created to govern specific aspects of community affairs, such as land management, economic development, social programs, or cultural initiatives. The right to register was now limited to charter group members, descendants in the male line, and their wives.<sup>163</sup> Illegitimate children of Indigenous women are entitled unless a protest is made that the father of the child was not an “Indian”.<sup>164</sup> Two groups are particularly disenfranchised, the Metis and the enfranchised. The Act specifically declares that those who "received or have been allotted half-breed lands or money scrip" and their descendants are not considered to be Indians. A person lost status if they graduated from university, married a non-status person (if they were a woman), or, from 1876 to 1880, became a Christian minister, doctor, or lawyer.<sup>165</sup>

A commissioner determined who was Metis and “Indian” in the late 19th century based on a complex of factors including reputation, blood, and manner of living. When treaties with the Indigenous people were entered into in Western Canada individual allotments of land or money scrip were granted to the Metis. These grants were manipulated for great profit by land and trading companies such that the Metis were deprived of any land base. The Federal Government has always maintained that the grant of land and money scrip extinguished any claims to special status the Metis might have preferred.<sup>166</sup>

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<sup>163</sup> Leslie, John. *The Indian Act: a historical perspective*. Canadian Parliamentary Review, 2002.

<sup>164</sup> The Indian Act, Assented on 12<sup>th</sup> April, 1876.pp 44

<sup>165</sup> Encyclopedia, The Canadian. "Indian Act." *The Canadian Encyclopedia*. Historica Canada. Article published February 07, 2006; Last Edited September 23, 2022.

<sup>166</sup> Barkwell, Lawrence J., Leah Dorion, and Darren R. Préfontaine, eds. *Metis legacy: A Metis historiography and annotated bibliography*. Winnipeg, Man.: Pemmican Publications, 2001.

The Indian Act provides that if an Indigenous person applies for enfranchisement and if the Minister of Indian Affairs believes that the person:

- (a) is of the full age of 21 years,
- (b) is capable of assuming the duties and responsibilities of citizenship, and
- (c) when enfranchised, will be capable of supporting himself and his dependents,

The Governor in Council may by order declare that the Indian and his wife and minor unmarried children are enfranchised.<sup>167</sup> An enfranchised person is not entitled to be registered as an Indian.<sup>168</sup>

Enfranchisement has been a key element in Canada's federal Indian policy during the 19th and early 20th centuries, notwithstanding its lack of application these days. It stands for the federal goal of "civilizing" or integrating the Indian population. Indians were more likely to ask for enfranchisement if they wanted to stay away from people who had issues with franchises. For a brief period, the Federal Government also employed involuntary enfranchisement. "An Indian who is granted the right to vote is given a portion of the treaty annuity capitalization and band funds. Any interest in reserve land must be disposed of to the band or a member thereof, though the land itself may be "enfranchised" and cease to be reserve land with the consent of the band council."<sup>169</sup> A band, upon a majority vote, may also enfranchise all its members.<sup>170</sup> A registrar employed by the Department of Indian Affairs administers the status provisions of the Indian Act.<sup>171</sup> The power of the bands or band councils over the make-up of their membership is strictly limited; only actions of the Registrar

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<sup>167</sup> "Indian Act." *R.S.C., 1985, c. I-5*, section 109.

<sup>168</sup> *Ibid*

<sup>169</sup> "Indian Act." *R.S.C., 1985, c. I-5*, section 111

<sup>170</sup> "Indian Act." *R.S.C., 1985, c. I-5*, section 112

<sup>171</sup> "Indian Act." *R.S.C., 1985, c. I-5*, section 09

that are not in accord with the Act may be protested. The band also must consent to the admission of new members.<sup>172</sup>

On June 13, 1978, the Federal Government issued a "Discussion Paper on the Revision of the Indian Act." The paper suggested several choices but appeared to favor the approach that "all registered Indians retain their status on marriage to a non-Indian and non-Indian spouse do not gain status. This alternative is more in keeping with current federal human rights legislation."<sup>173</sup> The Minister's preference regarding children's status was that

*all children of mixed marriages may choose status at the age of maturity if they so desire and may become band members if accepted by the band. This alternative would require the establishment of fair and equitable criteria to be applied by all bands in accepting or rejecting those who opt for Indian membership.*<sup>174</sup>

The federal initiatives represent a continued reluctance to extend any realistic form of self-government to band councils on reserves to enable them to determine their membership and also represent a preoccupation with an aspect of the status system that has not attracted the interest of a significant portion of the Indigenous population. While the provision allowing children of mixed marriages to choose their status at maturity may seem progressive, the ensuing debate and potential amendments are unlikely to address the primary goals of Indigenous people. Instead, they may primarily serve the political interests of the Federal Government, potentially

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<sup>172</sup> "Indian Act." *R.S.C., 1985, c. I-5*, section 13

<sup>173</sup> Discussion Paper on the Revision of the Indian Act, June 13, 1978, at 17.

<sup>174</sup> "Indian Act." *R.S.C., 1985, c. I-5*, section 18

falling short in advancing the self-determination and empowerment of Indigenous peoples.

## **Gender and Impacts on Indigenous land tenure systems**

The Indian Act of 1876 enforced a band council system that often conflicted with Indigenous peoples' traditional governance practices, as seen in the Nêhiyawak's struggle to reclaim their governance rooted in kinship and cultural teachings.<sup>175</sup> Furthermore, the Act's focus on privatized family structures limited the scope of Indigenous peoplehood and governance, framing it within a colonial context that prioritized individual rights over collective sovereignty.<sup>176</sup> As a result, Indigenous communities have developed a more negative perception of settler institutions and governance, viewing them as tools of colonial oppression rather than as legitimate systems of authority.<sup>177</sup>

The Indian Act significantly impacted Indigenous cultural practices in Canada by enforcing Euro-Canadian norms and undermining traditional systems. By imposing a patrilineal descent and property inheritance model, the Act marginalized Indigenous women and disrupted their roles as cultural leaders and matriarchs, leading to a loss of cultural transmission and identity.<sup>178</sup>

As section 12 (1)(b) of the *Indian Act* stated, “a woman who married a person who is not an Indian is not entitled to be registered.” Women who married a non-status man still lost their status rights, as did their children. One of these rights was the right to own and inherit property on reserves. Furthermore, the 1951 Act

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<sup>175</sup> Johnson, Paulina R. "E-kawôtiniket 1876: Reclaiming Nêhiyaw governance in the territory of Maskwacîs through Wâhkôtowin (Kinship)." PhD diss., The University of Western Ontario (Canada), 2017.

<sup>176</sup> Goldstein, Alyosha. "On the reproduction of race, capitalism, and settler colonialism." *Race and capitalism: Global territories, transnational histories* 45, no. 1 (2017): 42.

<sup>177</sup> McDonald, Chris, and Lorena Figueiredo. "A framework for comparative assessment of indigenous land governance." *Land* 11, no. 6 (2022): 906.

<sup>178</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

introduced the “Double Mother” clause sometimes called the Double Mother rule which takes away status from a person whose mother and grandmother acquired status through a marriage.<sup>179</sup>

The Doctrine of Coverture, stemming from English common law traditions, had profound implications for women's legal status and autonomy within marriage. Originating in medieval Europe and transplanted to colonial North America, coverture legally subordinated married women to their husbands, effectively erasing their independent legal identities.<sup>180</sup> Under this doctrine, women lost control over property, contracts, and decision-making, as their rights became absorbed by their spouses upon marriage. This legal principle not only reinforced gender inequalities but also restricted women's participation in public and legal affairs.<sup>181</sup> In colonial settings, including those in Canada, the Doctrine of Coverture intersected with Indigenous legal traditions, further complicating the status of Indigenous women and their rights within both colonial and Indigenous legal frameworks.

Furthermore, the Act structured the types of sporting opportunities available to Indigenous people, legitimizing Euro-Canadian sports as the dominant form of play, which further alienated Indigenous cultural expressions.<sup>182</sup> Additionally, the Indian Act's influence on sporting opportunities marginalized Indigenous cultural expressions by promoting Euro-Canadian sports such as hockey over traditional Indigenous games like lacrosse, canoe racing, and snowshoeing, thereby eroding the

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<sup>179</sup> Ibid

<sup>180</sup> Zaher, Claudia. "When a woman's marital status determined her legal status: a research guide on the common law doctrine of coverture." *Law Libr. J.* 94 (2002): 459.

<sup>181</sup> Ibid

<sup>182</sup> Forsyth, Janice. "The Indian Act and the (re) shaping of Canadian Aboriginal sport practices." *International Journal of Canadian Studies* 35 (2007): 95-111.

rich heritage and distinct sporting traditions of Indigenous communities.<sup>183</sup> The educational policies stemming from the Act also aimed to assimilate Indigenous children into Euro-Western ways of thinking, effectively erasing Indigenous knowledge systems and practices.<sup>184</sup> The Indian Act empowered the Minister of Indian Affairs to enrol and place all Indigenous children (excluding, for many years, the Métis) in school. Then Prime Minister Sir John A. Macdonald was very clear about the need to sever the connection between the students and their indigenous communities: “When the school is on the reserve, the child lives with his parents who are savages; he is surrounded by savages, and though he may learn to read and write, his habits and training and mode of thought are Indian. He is simply a savage who can read and write.”<sup>185</sup>

MacDonald’s remarks reflects the discriminatory and dehumanizing attitudes prevalent in historical colonial perspectives towards Indigenous peoples, particularly regarding education and cultural assimilation. It signifies the ethnocentric belief that Indigenous cultures and ways of life were inferior compared to Western norms and values. This kind of thinking was often used to justify oppressive policies, such as forcibly removing Indigenous children from their families and communities to attend residential schools. The goal of these schools was to assimilate Indigenous children into Euro-Canadian culture, eradicating their languages, traditions, and identities.

It also underscores the damaging impact of assimilationist policies on Indigenous communities, perpetuating harmful stereotypes and denying the value of

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<sup>183</sup> Ibid

<sup>184</sup> Friedel, Tracey L., Jo-ann Archibald, Ramona Big Head, Georgina Martin, and Marissa Muñoz. "Indigenous pedagogies: Resurgence and restoration." *Canadian Journal of Native Education* 35, no. 1 (2012).

<sup>185</sup> Quoted in Truth and Reconciliation Commission of Canada, *They Came for the Children* (Winnipeg: The Truth and Reconciliation Commission of Canada, 2012), 6.

Indigenous knowledge and ways of being. It reflects a broader historical context of cultural oppression and attempts to erase Indigenous identities in favor of Western ideals. Despite these challenges, Indigenous communities are actively reclaiming their cultural rights and practices, as evidenced by legal challenges against discriminatory provisions of the Act.<sup>186</sup>

The Indian Act significantly impacted Indigenous land rights by historically enforcing discriminatory provisions that stripped Indigenous women of their status and rights upon intermarriage, thereby affecting their ability to participate in community governance and land ownership.<sup>187</sup>

Moreover, Section 28 of the Indian Act imposes restrictions on the sale, transfer, or encumbrance of reserve lands, stating that "No Indian is capable of giving any right or interest in any reserve or in any timber on a reserve or in any way disposing of or encumbering any such right or interest."<sup>188</sup> This provision restricts Indigenous peoples' ability to utilize their lands for economic development or other purposes without government approval, hindering their land management practices and economic self-sufficiency.

These sections of the Indian Act not only constrain Indigenous communities' capacity to make decisions about their lands but also perpetuate a legacy of colonial control and dependency. These specific quotes and provisions reveal how the Indian Act continues to shape and restrict Indigenous land use, reinforcing power imbalances and limiting Indigenous sovereignty over their territories. The 1985 amendments to

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<sup>186</sup> Deschambault, Mackenzie. "An Exploration of the Colonial Impacts of the Indian Act on Indigenous Women in Canada." PhD diss., Carleton University, 2020.

<sup>187</sup> McIver, Sharon. "Aboriginal Women's Rights as Existing Rights." *Canadian Woman Studies/Les cahiers de la femme* (1995).

<sup>188</sup> The Indian Act, Assented on 12<sup>th</sup> April, 1876

the Act, known as Bill C-31, aimed to rectify some of these injustices by reinstating status to many women and their descendants, yet it also created complexities regarding registration and membership that could exclude future generations from their rights.<sup>189</sup> Thus, while legislative changes have aimed to improve land rights, systemic issues, and incomplete implementations continue to challenge indigenous communities' access to their ancestral lands.<sup>190</sup>

The Indian Act has significantly shaped Indigenous governance in Canada by creating a paradoxical framework that both limits and empowers the Chief and Council. On one hand, it restricts their decision-making authority by granting extensive powers to the Minister of Indian Affairs, which has led to administrative difficulties and a lack of accountability within communities.<sup>191</sup> This has resulted in frequent appeals and conflicts, as seen in the governance struggles of various Indigenous nations.<sup>192</sup> Conversely, the Act has also been criticized for providing too much power to the Chief and Council, leading to concerns about their accountability to community members.<sup>193</sup> "Subject to this Act and to the terms of any treaty or surrender, the council of the band may make by-laws for the government of the band and the conduct of the members of the band, and generally for the welfare of the Indians of the band." This provision shows the power vested in the Chief and Council to create by-laws that govern various aspects of the community, which has led to debates about the level of accountability they hold towards their constituents. One

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<sup>189</sup> Clatworthy, Stewart. "Impacts of the 1985 Indian Act Amendments: A Case Study of Brokenhead Ojibway Nation." (2007): 75.

<sup>190</sup> Nandwani, Bharti. "Land Rights Recognition and Political Participation: Evidence from India." *The Journal of Development Studies* 59, no. 11 (2023): 1741-1759.

<sup>191</sup> Imai, Shin. "The structure of the Indian Act: Accountability in governance." *Osgoode CLPE Research Paper* 35 (2012).

<sup>192</sup> LaRoque, Kent A. "The 1934 Indian Reorganization Act and Indigenous Governance: A Comparison of Governance of Santa Clara Pueblo and the Turtle Mountain Band of Chippewa Nations—1991–2000." PhD diss., Virginia Tech, 2004.

<sup>193</sup> Imai, Shin. "The structure of the Indian Act: Accountability in governance." *Osgoode CLPE Research Paper* 35 (2012).

such debate arises around the transparency and inclusivity of the decision-making process within the Chief and Council when formulating by-laws. Some argue that there is a lack of transparency and accountability in how these laws are created and implemented, leading to concerns about the representation of community interests and the need for more participatory and democratic decision-making processes within Indigenous governance structures.

The introduction of the First Nations Elections Act in 2014 aimed to address these issues by allowing for longer terms and more democratic processes, thereby promoting self-governance and community engagement.<sup>194</sup>

The disadvantaged economic position of First Nations women under the Indian Act stemmed from discriminatory provisions that restricted their ability to inherit property and could even lead to the loss of their "Indian Status," resulting in significant economic hardships and perpetuating cycles of poverty within Indigenous communities. This systemic marginalization is further exacerbated by the absence of community foundations in Indigenous communities, which concentrates wealth in settler-dominated areas and deprives Indigenous populations of essential resources for development.<sup>195</sup> Additionally, while resource development on Indigenous lands, such as oil and gas, presents potential benefits like employment and wealth sharing, it often leads to economic inequality and environmental degradation, complicating the path to sustainable economic growth.<sup>196</sup> Overall, the Indian Act has created barriers that

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<sup>194</sup> Gabel, Chelsea, Karen Bird, Nicole J. Goodman, and Brian Budd. "THE IMPACT OF DIGITAL TECHNOLOGY ON FIRST NATIONS PARTICIPATION AND GOVERNANCE." *Canadian Journal of Native Studies* 36, no. 2 (2016).

<sup>195</sup> Blacksmith, Craig, Keshab Thapa, and Tayzia Stormhunter. "Indian Act Philanthropy: Why are Community Foundations Missing from Native Communities in Manitoba, Canada?." *Canadian Journal of Nonprofit and Social Economy Research* 14, no. S1 (2023): 12-pp.

<sup>196</sup> Wright, Laura, and Jerry P. White. "Developing Oil and Gas Resources On or Near Indigenous Lands in Canada." *International Indigenous Policy Journal* 3, no. 2 (2012): 1-18.

hinder equitable economic opportunities for Indigenous peoples, perpetuating cycles of poverty and dependency.

The Indian Act significantly impacted Indigenous land ownership by enforcing a system that prioritized state control and limited the autonomy of First Nations. Specific provisions within the Indian Act that facilitated this state control over Indigenous land ownership included regulations around land allocations, permits for land use, and restrictions on the ability of Indigenous communities to manage their territories independently. For instance, the Act introduced the system of reserves, which confined Indigenous peoples to designated plots of land and restricted their ability to freely use and develop their traditional territories.

It established a framework that classified Indigenous peoples, often rendering many illegible and erasing their rights to land and resources.<sup>197</sup> The Act's imposition of patrilineal descent disrupted traditional inheritance practices, particularly disadvantaging Indigenous women and contributing to economic marginalization.<sup>198</sup> Furthermore, recent proposals to privatize communal lands under the guise of economic development have been criticized as a form of dispossession, intensifying capital accumulation at the expense of Indigenous sovereignty.<sup>199</sup> Current land management practices, as highlighted in analyses, reveal that existing property rights

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<sup>197</sup> Mamers, Danielle Taschereau. "Looking at Law: Refusals of Settler Colonial Politics in Nadia Myre's Indian Act." *CR: The New Centennial Review* 21, no. 3 (2021): 135-164.

<sup>198</sup> Woolsey, Cora A. "The Indian Act: Social Engineering of Canada's First Nations." *vis-à-vis: Explorations in Anthropology* 12, no. 1 (2013).

<sup>199</sup> Hall, Rebecca Jane. "Divide and conquer: Privatizing Indigenous land ownership as capital accumulation." *Studies in Political Economy* 96, no. 1 (2015): 23-46.

are insecure and economically detrimental, necessitating reforms such as a First Nations Property Ownership Act to restore control over reserve lands.<sup>200</sup>

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<sup>200</sup> Flanagan, Tom, Christopher Alcantara, and André Le Dressay. *Beyond the Indian Act: Restoring aboriginal property rights*. McGill-Queen's Press-MQUP, 2010.

## Chapter Three

### **Resilience and Resistance: The Elsipogtog Blockade of New Brunswick- A Turning Point in Indigenous Rights and Environmental Activism**

In this Chapter, I argue that Indigenous people in Canada occupy a space that is simultaneously within and outside the settler nation state. Lorenzo Veracini explores settler colonialism as a distinct form of colonialism that involves the permanent settlement of colonizers, leading to the displacement and subjugation of indigenous populations.<sup>201</sup> However, the nation state cannot dictate everything and it cannot eradicate the will of people to resist their oppressors, nor should this in any way be the national mandate. Indigenous communities are resisting the nation state by offering distinct, anti-colonial, anti-hegemonic narratives about their struggle through their protests. This is not a new venture for Indigenous communities throughout history. Since contact, Indigenous people have been resisting the imposition of colonialism and its associates. Therefore, although I am not the first to explore Indigenous communities' resistance, I highlight those protest narratives that arise from this specific resistance to shale gas exploration in Elsipogtog and the impacts of the Indian Act. This protest received international attention through Al Jazeera media coverage where by Indigenous people in Elsipogtog focuses on ensuring the land and water are available for future generations. In this discourse the land and water are presented as the focus of people's actions as these resources ensure a distinctly indigenous future.

Water is sacred. It is the core of our Indianness. It is who we are. It is what connects us to our spirituality. It's what connects us to everything that's alive.

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<sup>201</sup> Veracini, Lorenzo. "Introducing: Settler colonial studies." *Settler colonial studies* 1, no. 1 (2011): 1-12.

It's what connects us to each other. It's what connects us to the thousands of years before us and the thousands of years that will come after us.<sup>202</sup>

The people of the protests often condemn the actions of the government, which they argue fails to consider the dangers of shale gas development namely, the potentially irreversible damage on future generations' land and water. This concern is made clear as protestors cite the necessity of protecting water for their children and/or grandchildren. The Elsipogtog Blockade of New Brunswick stands as a poignant marker in the annals of Indigenous rights and environmental activism, a testament to the enduring spirit of resilience and resistance in the face of formidable challenges. At the heart of this narrative lies a profound story of struggle and solidarity, where the Mi'kmaq people, alongside allies, took a stand against the encroachment on their ancestral lands and waters. On October 17, 2013, a group of Mi'kmaq from Elsipogtog, New Brunswick gained national attention for defending their ancestral land against shale gas development. The Elsipogtog First Nation's clash with the Royal Canadian Mounted Police (RCMP) which resulted in the arrest of some protestors. The community members of Elsipogtog set up a blockade near Rexton, New Brunswick, to protest shale gas exploration on their traditional lands. The blockade, erected on Route 134, aimed to prevent further development in the area. The police response to the blockade was swift and intense, leading to clashes between law enforcement officers and protesters, culminating in a significant escalation of tensions.

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<sup>202</sup> Al Jazeera (December 6, 2013). Elsipogtog: The Fire Over Water [Video File]. Retrieved from <http://www.aljazeera.com/programmes/faultlines/2013/12/elsipogtog-fire-overwater-20131249130589515.html>

The Elsipogtog Blockade in New Brunswick serves as a stark reminder of the ongoing impact of colonial policies like the Indian Act on Indigenous peoples' land tenure. The blockade symbolizes a contemporary manifestation of the historical injustices and imbalances in power that have marginalized Indigenous communities, including the Mi'kmaq in New Brunswick. By resisting encroachments on their ancestral lands and waters, the Mi'kmaq at Elsipogtog not only assert their rights and sovereignty but also challenge the legacy of dispossession and control perpetuated by the Indian Act, highlighting the urgent need for reconciliation and a reimagining of Indigenous land tenure in the region.

### **Events leading up to the Protest**

Examining New Brunswick's underlying political, social, and economic circumstances including the controversy surrounding shale gas extraction is necessary to put the events of October 17, 2013, in perspective. With a high unemployment rate of almost 10% at the time of the protests, New Brunswick was experiencing economic instability.<sup>203</sup> Concerns regarding the province's economic fragility are heightened by the fact that its population is elderly and shrinking. Together with this bleak economic outlook, a faltering social sector is becoming more and more incapable of providing for the needs of its most vulnerable citizens. Despite a projected deficit of \$11 billion, the provincial Conservative Government made the unrealistic promise not to raise taxes in an attempt to garner support before the 2014 election. This seemingly illogical action has been presented here as an illustration of the Government's lack of foresight.

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<sup>203</sup> Profile of the New Brunswick Labour Force", 2013.

Premier David Alward tried to reduce the deficit by lowering public service options, lowering sick leave among public service employees, and preventing any increases in university financing rather than enacting a progressive tax structure to address the looming financial disaster.<sup>204</sup> Extensive economic problems and bleak development plans paired with the overwhelming concerns of voters fed into a climate of economic desperation and pessimism in the province.

Beyond the grim social and economic climate, New Brunswick has a historically uneasy relationship with Indigenous communities. As is the case in many Canadian provinces, there are ongoing disputes over hunting and fishing rights, treaty rights, and unceded land. Indigenous residents of New Brunswick experience these difficulties in amplification as an economically, socially, and politically marginalized population. The self-identified Indigenous population faces a 20% unemployment rate, a lower-than-average income, and lower rates of university degree completion.<sup>205</sup> The proposal for shale gas exploration in the province was depicted by the Government as the saving grace for the failing economy, but only further provoked tensions between the floundering government and economically deprived Indigenous communities.

In addition to the political, social, and economic uncertainties facing New Brunswick, hydraulic fracturing is still a hotly contested method of resource extraction. Either the relatively new practice is hailed as the solution to the planet's depleting oil sources or it is criticized as another imminent environmental disaster. The method of liberating shale gas deposits from deep beneath the earth's surface is known as hydraulic fracturing.

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<sup>204</sup> Bissett, K. (2013c, November 6). N.B. Premier: Shale gas work to go forward. *The Chronicle Herald*. p. B6

<sup>205</sup> Profile of the New Brunswick Labour Force”, 2013

The fracking process occurs after a well has been drilled and steel pipe (casing) has been inserted in the well bore. The casing is perforated within the target zones that contain oil or gas, so that when the fracturing fluid is injected into the well it flows through the perforations into the target zones. Eventually, the target formation will not be able to absorb the fluid as quickly as it is being injected. At this point, the pressure created causes the formation to crack or fracture. Once the fractures have been created, injection ceases and the fracturing fluids begin to flow back to the surface. Materials called proppants (e.g., usually sand or ceramic beads), which were injected as part of the frack fluid mixture, remain in the target formation to hold open the fractures.<sup>206</sup>

Leading up to the protests, anti-fracking documentaries, such as “Gas Land and David Suzuki’s *The Nature of Things: Shattered Ground*” drew attention to the possible threats to groundwater as a result of these massive well bores leaking fracking fluid. During the time of the protest, the government of New Brunswick had already accepted bids for territory exploration from large oil and gas companies without consulting any non-Indigenous or Indigenous communities. Indigenous and non-Indigenous resident-organized groups chastised the secrecy of the Government and called for action and a moratorium on further exploration. As more research about the long-term effects of fracking pointed to serious dangers, public discourse shifted against shale gas extraction. New Brunswick’s Premier, Brian Gallant, has declared a

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<sup>206</sup> King, George E. "Hydraulic fracturing 101: What every representative, environmentalist, regulator, reporter, investor, university researcher, neighbor and engineer should know about estimating frac risk and improving frac performance in unconventional gas and oil wells." In *SPE Hydraulic Fracturing Technology Conference and Exhibition*, pp. SPE-152596. SPE, 2012.

moratorium on shale gas exploration, which will be revisited in the next several years.<sup>207</sup>

It is clear that the Elsipogtog demonstration was a reflection of broader problems pertaining to environmental justice, Indigenous sovereignty and community resilience rather than a regional dispute. Environmental Justice refers to the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. In order to shape a more sustainable and inclusive future for all stakeholders engaged, it emphasizes the significance of meaningful collaboration, equitable resource governance, and the necessity of addressing historical injustices.<sup>208</sup>

Ingrid Waldron's work, "There's something in the Water," discusses environmental racism and its impact on marginalized communities, including Indigenous populations. By examining the disproportionate exposure to environmental hazards faced by these communities, Waldron puts to bare the urgent need for environmental justice and equitable resource governance.<sup>209</sup>

I have gained valuable insights into the enduring struggles faced by Indigenous communities, the urgent need for proactive environmental stewardship, and the imperative of fostering meaningful dialogue and partnerships to address complex socio-environmental challenges. The protest at Elsipogtog stands as a

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<sup>207</sup> McHardie, D. "New Brunswick indefinitely extends hydraulic fracturing moratorium." *CBC News* 27 (2016).

<sup>208</sup> Nixon, Rob. *Slow Violence and the Environmentalism of the Poor*. Harvard University Press, 2011.

<sup>209</sup> Waldron, Ingrid RG. *There's something in the water: environmental racism in Indigenous & Black communities*. Fernwood Publishing, 2021.

poignant reminder of the ongoing quest for justice, equity, and harmony between people and the land they inhabit.<sup>210</sup>

### **Shale gas and the duty to consult**

Disputes about the land and water surrounding Elsipogtog First Nation became the motivation for protests. Elsipogtog residents made claims about the availability and vitality of the land for traditional hunting and fishing practices, which could be harmed by shale-gas extraction, and these claims seemed to be simultaneously denied by the Provincial Government. I want to point out that the land was and is contested: the Mi'kmaq considers this land to be unceded Mi'kmaw land while the federal and provincial governments deem the land Crown property.<sup>211</sup> Despite the residents' insistence on the necessity of the area for their livelihood, their concerns about seismic activity were largely ignored. At the time of the protest, Premier David Alward (2010-2013) and his cabinet followed Canadian governmental procedures to address the community's concerns such as water scarcity and contamination and health risk. However, the Government's actions only seemed to exacerbate the discontentment of Elsipogtog residents and provoke more objections. To provide further context, I again emphasize that Canada has a long history of delivering colonizing legislation at the federal and provincial levels. So much so, that in more recent years Canada has been highly criticized by international organizations such as the United Nations for its shortcomings concerning Indigenous nations.<sup>212</sup> Despite international pressures, the Canadian Government has been reluctant to admit wrongdoing. Reflective of Canada's stubborn stance against Indigenous rights is the

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<sup>210</sup> Ibid

<sup>211</sup> Howe, Miles. *Debriefing Elsipogtog: The anatomy of a struggle*. Fernwood Publishing, 2015.

<sup>212</sup> Hansen, E. (n.d.). UN Declaration on the rights of Indigenous peoples. Indigenous Foundations. Retrieved from <http://indigenousfoundations.arts.ubc.ca/home/globalindigenous-issues/un-declaration-on-the-rights-of-indigenous-peoples.html>

Government's refusal, until recently, to commit to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The UNDRIP was adopted by 144 countries, with 11 abstentions and 4 countries voting against it. These four countries were Canada, the USA, New Zealand, and Australia. Since 2009 Australia and New Zealand have reversed their positions and now support the Declaration, while Canada just assented it in 2021.<sup>213</sup> The UNDRIP stands out for its emphasis on recognizing and protecting the inherent rights and self-determination of Indigenous peoples worldwide.

Given Canada's colonial history and the high stakes of protecting settler nation-state sovereignty, one could surmise that settler anxieties limited the possibility of this international declaration. Canada's initial reluctance to sign the UNDRIP illustrates the perceived threat Indigenous rights pose to Canadian colonial governance.<sup>214</sup> It seems that when the opportunity arises to fracture settler controls over land and national sovereignty, the settler government prefers superficial measures of inclusion. I can deduce that, in the context of the UNDRIP, the Indian Act serves as a tangible example of the entrenched colonial mechanisms that have historically suppressed Indigenous rights and perpetuated settler dominance. Canada's initial hesitance to endorse the UNDRIP can be understood as a reflection of the broader reluctance to dismantle these colonial structures that uphold settler control over Indigenous lands, resources, and governance. The UNDRIP, with its emphasis on Indigenous self-determination, land rights, and cultural preservation, presents a challenge to the status quo established by colonial policies like the Indian Act. By endorsing the UNDRIP,

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<sup>213</sup> Ibid

<sup>214</sup> Bannerji, Himani. *The dark side of the nation: Essays on multiculturalism, nationalism and gender*. Canadian Scholars' Press, 2000.

Canada would be committing to upholding the rights and freedoms of Indigenous peoples in a manner that fundamentally challenges the legacy of colonialism and the ongoing impacts of laws like the Indian Act. Inevitably, these measures fail, at which point Indigenous peoples must confront the significant lack of government actions to respect their rights; protests, blockades, and sit-ins are the material response to generations of governmental failures. To suppress the growth of these confrontations current Prime Minister Justin Trudeau campaigned on promises to strengthen relationships with Indigenous nations. As a symbol of his commitment, he advocated for clean drinking water on reserves and launched an inquiry into Missing and Murdered Indigenous Women and Girls. However, it is unclear if his commitment will last as his term progresses and the reality settles in that fixing the colonial relationship means fixing the colonial system. In New Brunswick the colonial relationship between the Provincial Government and the residents of Elsipogtog was further strained by the failure (or perceived failure) of consultation. Leading up to the events in October 2013, Premier Alward and members of the Elsipogtog Council, including Chief Aaron Sock, were in consultation meetings regarding shale gas exploration. In the deliberations, one of the main points of divergence between the Province and the Council members was differing interpretations of the duty to consult legislation. In the context of Indigenous rights and land use in Canada, the duty to consult represents a legal obligation stemming from the Honour of the Crown to uphold Section 35 of the Constitution Act, which recognizes and affirms Indigenous rights. The duty to consult has emerged as a pivotal aspect of Indigenous rights and resource development in Canada, rooted in Section 35 of the 1982 Constitution Act. This provision acknowledges and upholds existing Aboriginal and treaty rights, mandating that the government engage in meaningful consultation with Indigenous

communities when decisions have the potential to impact their rights or interests.<sup>215</sup> This duty to consult forms a legal obligation that necessitates active dialogue and accommodation to address Indigenous concerns effectively. However, the 1969 White Paper, proposed by Prime Minister Pierre Elliot Trudeau, sought to abolish the Indian Act and assimilate Indigenous peoples into mainstream Canadian society, aiming to shift responsibility to provincial governments.<sup>216</sup> Nevertheless, this initiative faced staunch opposition from Indigenous groups who perceived it as a threat to their rights, cultures, and autonomy.

In contemporary contexts, the duty to consult has become intricately intertwined with resource development projects, requiring federal, provincial, and territorial governments to engage with Indigenous nations.<sup>217</sup> This consultation process plays a vital role in incorporating Indigenous perspectives and addressing their apprehensions regarding resource extraction, land utilization, and environmental consequences. UNDRIP further underscores the rights of Indigenous peoples to free, prior, and informed consent in matters concerning their lands, resources, and cultures, underscoring the significance of genuine engagement and collaboration between Indigenous communities and governments at all levels in decisions related to resource development.<sup>218</sup>

The duty to consult requires the government to engage in meaningful and good-faith consultations with Indigenous communities when proposed actions or decisions

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<sup>215</sup> Act, Constitution. *Part 1: Canadian charter of rights and freedoms*. 1982.

<sup>216</sup> Nickel, Sarah. "Reconsidering 1969: The White Paper and the making of the modern Indigenous rights movement." *Canadian Historical Review* 100, no. 2 (2019): 223-238.

<sup>217</sup> Boyd, Brendan, and Sophie Lorefice. "Understanding consultation and engagement of Indigenous Peoples in resource development: A policy framing approach." *Canadian Public Administration* 61, no. 4 (2018): 572-595.

<sup>218</sup> Champagne, Duane. "UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples): human, civil, and Indigenous rights." *Wicazo Sa Review* 28, no. 1 (2013): 9-22.

have the potential to impact their rights or interests. This legislation vaguely outlines the rights of Indigenous nations regarding their lands; it was an added provision by the Federal Government in March 2011 to the Aboriginal Consultation and Accommodation Guidelines for Federal Officials. The updated section of the duty to consult states:

The duty to consult and, where appropriate, accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty by the Crown and continues beyond formal claims resolution through to the application and implementation of Treaties. The Crown's efforts to consult and, where appropriate accommodate Aboriginal groups whose potential or established Aboriginal or Treaty rights may be adversely affected should be consistent with the overarching objectives of reconciliation.<sup>219</sup>

Interestingly, this amendment specifically mentions the duty to consult to reconciliation and accommodation 'where appropriate' and yet, the definition of appropriateness is visibly lacking.

The absence of a clear definition of what constitutes "appropriateness" in the duty to consult and accommodate framework not only creates ambiguity in the reconciliation process but also reflects the broader historical context of the Indian Act, which established a governance structure where Indigenous nations like the Mi'kmaq were positioned as subordinate to federal and provincial governments. This legacy of imposed authority and unequal power dynamics underscores the urgent need for a more defined and equitable approach to consultation and accommodation, one that respects Indigenous sovereignty, rights, and self-determination within a framework of true partnership and reconciliation. Therefore, without specific measures detailed in the policy, there is space for confusion, delays, and ignorance from those who

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<sup>219</sup> Craik, Neil. "Process and reconciliation: Integrating the duty to consult with environmental assessment." *Osgoode Hall LJ* 53 (2015): 632.

translate this duty in vastly different ways. The ambiguities of these guidelines are an example of the ineffective legislation created for governing Indigenous lands. In adhering to their (colonial) interpretation of the duty to consult legislation, the New Brunswick Government did consult with the Elsipogtog Band Council. In her book "Fracking Uncertainty," Dr. Millar navigates the intricate landscape of dual-level environmental impact assessments in the context of fracking. She examines how this bureaucratic complexity shapes the regulatory environment, influencing decision-making processes and compliance standards at federal and provincial levels. Dr. Millar also examines the challenges posed by this dual assessment system, exploring how it impacts the efficiency, transparency, and overall effectiveness of environmental governance in the context of fracking operations.<sup>220</sup>

However, the consultation was minimal and divisive. As a result, this legislation, like so many others, failed because it attempted to navigate land treaties and dictate boundaries in the best interest of the Crown, not Indigenous sovereignty. This discrepancy between the duty to consult legislation and the expectations of the people of Elsipogtog bolstered tensions with the Provincial Government, as the two seemed on opposite sides of the debate. Chief George Ginnish, of the Assembly of First Nations, conceptualizes the continuing miscommunication as insurmountable. In an interview about the Elsipogtog protests with *The Moncton Times and Transcript*, he stated, "First Nations in New Brunswick have been attempting to work within the confines of a restrictive compartmentalized consultation process that is completely unworkable because it runs counter to our customs and traditions".<sup>221</sup> If the Government is to build genuine relationships with Indigenous nations and create

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<sup>220</sup> Millar, Heather. *Fracking uncertainty: hydraulic fracturing and the provincial politics of risk*. University of Toronto Press, 2024.

<sup>221</sup> Chilibeck, J. (2013, October 19). Premier, Elsipogtog chief hold meeting. *The Moncton Times and Transcript*, p. A6.

legislation that reflects this commitment then there needs to be a complete shift in thinking. The duty to consult would instead be understood by the Government as a consultation at any cost, not just where appropriate. The failure to uphold Free, Prior, and Informed Consent (FPIC) as outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a direct consequence of the inadequate interpretation of the duty to consult by some governments.

### **Indigenous people resistance to shale gas**

The Al Jazeera (2013) documentary *Elsipogtog: The Fire over Water* was one source I found to extensively feature Indigenous people's stories. Most revealingly, Amanda Polchies is prominent in the documentary beyond just the use of her iconic image. (Amanda Polchies stands with her arms outstretched, holding an eagle feather, facing a line of police officers clad in riot gear. Her posture exudes strength and determination, embodying a sense of defiance and resilience in the face of adversity.) Her reflections on the experience occupy considerable screen time. In the documentary she is not reduced to an image; instead, she is accentuated as a decisive actor within the resistance. When explaining her actions in the moments the photograph was taken, she states,

I just had this feather and I didn't know what to do and the first thought in my mind was pray. So I kneeled down on the road and I started praying. I was praying for Doris and I was praying for the other women that had gotten

sprayed and I was praying for my people, hoping that this will end peacefully, nobody will get hurt, nobody would die.<sup>222</sup>



**Amanda Polchies, in a famous image from the 2013 shale gas protests in Kent County. (Ossie Michelin/APTN National News)**

In this instance, the act of sharing her story allows Polchies to finally exercise agency instead of having it implied, and therefore contained, within the literal confines of a photo. This provides her with the opportunity to challenge the symbolic ambiguities of her gestures and posture that the popular media can interpret and co-opt for its own purposes that is, the kneeling had a specific purpose and the feather's direction had meaning. In this photo, she is enacting strength against state agents who are threatening her people, for not submitting to their will. The *Al Jazeera*

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<sup>222</sup> Al Jazeera (December 6, 2013). *Elsipogtog: The Fire Over Water* [Video File]. Retrieved from <http://www.aljazeera.com/programmes/faultlines/2013/12/elsipogtog-fire-overwater-20131249130589515.html>

documentary also allows Polchies to speak about her people's motivation for protest, a conversation that does not appear in the mainstream, and one whose absence allowed the media to extrapolate its meaning and conclusions that may serve settler interests instead of Indigenous interests. One example of how the Mi'kmaq motivation for protest may have been misrepresented in mainstream media coverage is the portrayal of the protests solely as disruptive or unlawful actions, without delving into the underlying reasons and historical context that drove the community to take a stand. This narrow depiction can undermine the legitimacy of the Mi'kmaq people's grievances and struggles for land rights and environmental protection, painting them in a negative light and failing to convey the complexities of their situation. Polchies (2013) explains in the documentary that "it scared me but I didn't want to run away 'cause I didn't want them here...I don't want SWN [Southwestern Energy] here and I felt that making a stand was the only thing that was left because nobody was listening".<sup>223</sup> She describes her physical resistance as a response to an unresponsive government. In this context, Polchies could be understood as an embodiment of Indigenous people's resistance against the unwillingness of the nation-state to seriously take into account the will of a significant fraction of its people. In a country that values peace, order, and good governance, this moment stands in stark contrast, as it depicts a moment where the government works in conflict with its people instead of representing its interests.

Not only are people such as Polchies resisting the RCMP, but their non-violent tactics also accentuate the extent to which physical violence was unnecessary. Polchies articulates the intensity of these moments: "They're yelling 'Move back, move back'. So, we didn't move we stayed there, we linked arms and we stayed there

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<sup>223</sup> Ibid

and we were pushing against them and then all of a sudden pepper spray came out of nowhere and I looked back and I saw Doris she had gotten sprayed in the face and all she had was her rosary.” The actions of the protestors are directed toward the RCMP in that moment but are also perhaps symbolic representations of the broader resistance movements throughout Canada. In the face of the physicality and machinery of the RCMP (shields, guns, and pepper spray) the people stood still, wagering their presence was a force in itself against the RCMP. Crosby and Monaghan highlight how state surveillance often specifically targets Indigenous activists who are involved in advocating for their rights, protecting their lands, and resisting oppressive policies.<sup>224</sup>

As a journalist for *Indian Country Today Media Network*, Vincent Schilling states, “The image [of Polchies] is emblazoned in people’s minds as a symbol not just of the Mi’kmaq protest against potential fracking near Elsipogtog First Nation in New Brunswick, Canada, but also of what has been happening to Natives since Europeans first stepped onto Turtle Island’s shores”.<sup>225</sup> In this statement, the journalist is historicizing, and thus adding dimension to how the action of Polchies gained its notoriety. The action is recognized as a symbol of the larger resistance of Indigenous peoples against historical and ongoing state-sponsored occupation. Although people like Polchies are using non-threatening behavior, they are uniquely questioning the settler-colonial structure by expanding methods of participation and protest.

In the Elsipogtog protest, the land and water are presented as the focus of the Indigenous people’s actions as these resources ensure a distinctly indigenous

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<sup>224</sup> Crosby, Andrew, and Jeffrey Monaghan. *Policing indigenous movements: Dissent and the security state*. Fernwood Publishing, 2018.

<sup>225</sup> Schilling, V. (2013). Woman with the eagle feather: The photo ‘heard’ round the world. Retrieved from <https://indiancountrymedianetwork.com/news/first-nations/womanwith-eagle-feather-the-photo-heard-round-the-world/>

future.<sup>226</sup> The protesters often condemn the actions of the government, which they argue fails to consider the dangers of shale gas development namely, the potentially irreversible damage on future generations' land and water. This concern is made clear as protestors cite the necessity of protecting water for their children and/or grandchildren. Deborah McGregor, an Anishinaabek scholar with many works on women and water, argues that water is a foundation for Indigenous futures. She states "Waters are witness to our history and remember times long before contact, Our love for the waters will help the water recover from historical trauma, and in turn, the water will hopefully love and assist us in recovering from all our own trauma".<sup>227</sup> For instance, in the Al Jazeera (2013) documentary, Polchies describes the importance of water for multiple generations,

When I was a kid I got to go play in the woods I got to swim in fresh water. I'm breathing fresh air. Now that I have my own kid, I have my son I want him to experience the same thing I experienced. I want my grandkids to experience that too. I don't want to have them have to worry about going swimming in "oh this water is contaminated" because they're drilling 50 feet away.<sup>228</sup>

In this statement, Polchies' apprehension is twofold: she wants to protect the water for her children and grandchildren, and in this, she seeks to protect the experiences that are unique to the water. Polchies identifies the future (a future that Indigenous people are so often denied), as dependent upon the health of the natural

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<sup>226</sup> McGregor, D. (2005). Traditional ecological knowledge: An Anishnabe woman's Perspective. *Atlantis: A Women's Studies Journal/Revue d'Etudes Sur La Femme*, 29(2), pp.103-109.

<sup>227</sup> McGregor, Deborah. "Indigenous women, water justice and zaagidowin (love)." *Canadian Woman Studies/les cahiers de la femme* (2015).

<sup>228</sup> Al Jazeera (December 6, 2013). *Elsipogtog: The Fire Over Water* [Video File]. Retrieved from <http://www.aljazeera.com/programmes/faultlines/2013/12/elsipogtog-fire-overwater-20131249130589515.html>

environment. Her argument is not necessarily premised on the understanding that water is an important resource (economically or for survival), but that water is a source of knowledge and community building, a location of experience. The water becomes an important marker of experiential development, and thus cannot be replaced or neglected. Anderson and Robertson argue that Indigenous people “remain haunted by images of death and dying and disease, and their supposed cultural decline”.<sup>229</sup> Polchies’ statements counter these undercurrents of disappearance and cultural decline, with a determination for cultural survival and futurity via water. It is not a case of whether there will be a future for Indigenous peoples. Rather, what is under question is the type of future they will inhabit.<sup>230</sup>

As a consequence of settler policies, which forced generations of Indigenous peoples from their lands, the little land that remains in their care carries additional value. For residents, this reality that their cultural identity is tied to the natural environment, that this environment is under threat from the outside forces refusing to recognize its importance, and that their ability to develop relationships with the natural environment is increasingly tenuous results in a passionate commitment whose importance cannot be measured or countered through the economic interests of governments. Therefore, the impasse between the New Brunswick Government and Indigenous people grows more pronounced as each party defines its future according to radically different parameters. The Government sees its future as dependent upon economic growth achieved through shale gas, whereas Indigenous people’s conception of the future is dependent on the health and vitality of the natural environment in which they grow and live. In participating in protests, Indigenous

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<sup>229</sup> Anderson, Mark Cronlund, and Carmen L. Robertson. *Seeing red: A history of Natives in Canadian newspapers*. Univ. of Manitoba Press, 2011. PP 268

<sup>230</sup> Simpson, Leanne Betasamosake. *A short history of the blockade: Giant beavers, diplomacy, and regeneration in Nishnaabewin*. University of Alberta, 2021.

people make clear the dichotomy between their view that commitment to the land is unassailable and the government's position that economic stability will engender a better future.<sup>231</sup> Indigenous people articulate a vision of the future motivated by long-term existential health, rather than the economic motivations that are simply the result of imposed capitalist structures. In some ways it is a symbiotic future, where the people depend upon the water and the water depends upon the people.

### **Reclaiming tradition: protest is protection**

Indigenous people are at the center of defining their identity against settler colonial misrepresentations. They emphasized responsibility, belonging, and resistance which are alternatives to ones offered by settler logic. During acts of protest, these alternative descriptions appear as a response to the nation-state's attempt to quash Indigenous rights. One such recurring theme is that of the 'protector' that is presented within a narrative of responsibility that the Indigenous people express regarding water. However, there is more to this self-identification as this narrative connects to both the water and the future. It was Doris Coupage who first brought my attention to this narrative; she stated, "I want to call it 'protect,' rather than 'protest' we are here to protect our water, our land".<sup>232</sup> In this statement Coupage is problematizing her subject position as a 'protector', instead preferring to be called a 'protector.' Thus, Coupage is not there to counter the government; she is there for the water. Another shale gas activist and once-incarcerated protestor, Annie Clair, furthers the protector narrative. In an open letter to the Halifax Media Co-Op, Clair calls for her son's release from prison. In the letter she states,

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<sup>231</sup> McGuire, Patricia D. "Wiisaakodewikwe Anishinaabekew Diabaajimotaw Nipigon Zaaga'igan: Lake Nipigon Ojibway Métis Stories About Women." *Canadian Woman Studies/les cahiers de la femme* (2008).

<sup>232</sup> Troian, Martha. "Mi'kmaq anti-fracking protest brings women to the front lines to fight for water." *Indian Country Today*. November 10 (2013).

As PROTECTORS, we stay strong and do our best to protect our children, families, and elders from these huge companies & industries that are destroying our lands and water & gardens where we grow our food for our families. We can't drink oil or gas and grow money. The huge companies or the government don't care but the People do.<sup>233</sup>

This statement articulates a concern for, and consideration of, futurity and the natural environment's importance within it. With the lexical choice of repeating "we", "we stay strong," and "we grow our food," she cements her responsibility to protect, together with others, not only her own family but also her community. Again, as a woman of the community, she is articulating what needs to be protected. It is a responsibility that extends beyond corporations and the government, as it depends on protecting the land and water from these powerful forces. Clair delegitimizes the efforts of these companies to invest in land and water development by reminding the reader about the insecurity of profit; it never lasts and is a fictitious creation of mankind. In later interchanges with the press regarding her possible arrest, Clair states, "I didn't do this to be famous. I am doing this to protect the water, the air, the land".<sup>234</sup> Understandably, though it was not Clair's intention to receive attention for her efforts, her voice appears to echo the need to protest to protect. Given their respective proclivities and motivations, Clair, as well as other Indigenous people and communities, may be justifiably wary of any partnership with the government or large companies; instead, the land and water are the only immutable constants that ensure them a future that is vital and that reflects their cultural identity. Both Coupage and Clair reiterate a simple, yet stark reality: you cannot eat or drink money, nor can you

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<sup>233</sup> Ibid

<sup>234</sup> Stuart, Alyse. "Frack'turing Canadian settler narratives: the Elsipogtog shale gas protests and indigenous women's resistance." PhD diss., Memorial University of Newfoundland, 2017.

survive without water and land. Thus, protecting the water and land must take precedence over everything.

In Elsipogtog, as the people knelt, lifted feathers, and marched together with beating drums, they articulated their strength and resilience against the colonial system that attempted to take away their rights, voices, and eventually, their humanity. For the people I emphasized throughout this work, protest is not exclusively about standing up to the government. Instead, these people articulate the need to protect the water and land to ensure they will still be around long after they are gone protecting against protesting. Most of the people interviewed for the Al Jazeera documentary cite the responsibility they have as people to protect the water.<sup>235</sup> The connection these people describe goes beyond mere concern for water due to the dangers of human interaction: they respect water as a being. When water is understood as an entity, a living thing that requires respect, then the people entrusted with its protection may be willing to sacrifice themselves for its future. Understanding that the people enmeshed in the protests were not only willing to face possible imprisonment (as many did) but also physical danger is critical in beginning to understand these people's protest narratives.

The Indigenous people interviewed in the Al Jazeera (2013) documentary are discrediting, disenchanting, and deconstructing settler logic. Through social media, independent media, and other non-mainstream sources, the Indigenous people are able to participate in large-scale storytelling and resistance.<sup>236</sup>

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<sup>235</sup> Al Jazeera (December 6, 2013). Elsipogtog: The Fire Over Water [Video File]. Retrieved from <http://www.aljazeera.com/programmes/faultlines/2013/12/elsipogtog-fire-overwater-20131249130589515.html>

<sup>236</sup> Kovach, Margaret. *Indigenous methodologies: Characteristics, conversations, and contexts*. University of Toronto press, 2021.

Andrew Crosby's research in "Policing Indigenous Movements: Dissent and the Security State" provides crucial insights into the dynamics of state surveillance, security discourses, and policing tactics that intersect with Indigenous activism. Crosby's work sheds light on how state surveillance is often used as a tool to monitor and control Indigenous activists, creating challenges for communities striving to redefine themselves and resist settler colonial narratives.<sup>237</sup> By understanding the impact of state surveillance on Indigenous movements, we gain a deeper appreciation of the obstacles faced by Indigenous peoples in reclaiming their narratives and asserting their agency.<sup>238</sup>

The narratives shared by Indigenous communities through social media, independent media, and non-mainstream sources represent a form of resistance that challenges imposed representations and fractures the restrictions of settler citizenship in Canada. Crosby's exploration of security discourses can help us understand how Indigenous resistance is framed as a threat to national security, legitimizing increased surveillance measures and policing responses aimed at controlling dissent.

By sharing their stories of protest and challenging imposed representations, Indigenous people can continue to fracture the restrictions of settler citizenship in Canada and reimagine belonging in the nation state. Dian Million describes this as "Indigenism is to define ourselves rather than be defined. That is an active doing, the imagining and revisioning of an Indigenism that is never, never static".<sup>239</sup> Despite the constant attempts of the settler state to make Indigenous people singular relics of the past through historical narratives that erase their contributions, Indigenous people

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<sup>237</sup> Crosby, Andrew, and Jeffrey Monaghan. *Policing indigenous movements: Dissent and the security state*. Fernwood Publishing, 2018.

<sup>238</sup> Ibid

<sup>239</sup> Million, Dian. "There is a river in me: Theory from life." *Theorizing native studies* (2014): 31-42.

refuse to submit. The efforts of the people protesting in Elsipogtog can be understood as a testament to this unyielding spirit in the face of settler tactics of systemic conquest. Of course, just as there are no static 'Indigenous people,' the people who continue to be a large part of the ongoing struggle against shale gas in Elsipogtog are changing as protestors/protectors. Thus, the narratives are expanding and growing with each person's interpretation of the struggle.

By acknowledging the legacy of exploitation, land loss, and cultural loss, but also the role of the Indigenous people in healing the community they were expressing their narratives, on their terms. However, it is not these damages that define them: it is their resilience, continuing resistance, and rejection of the gendered implications of settler colonialism. I argue that in Elsipogtog, the people protesting were doing just that shifting towards their desire for an Indigenous future. In Elsipogtog, the protestors were not only resisting immediate threats to their land and water but also challenging the governance structures outlined by the Indian Act. By taking a stand at the blockade, the community was actively rejecting the imposed colonial frameworks that have long constrained Indigenous autonomy and self-governance. Their resistance symbolized a refusal to be bound by a system that has historically undermined Indigenous rights, traditions, and land tenure.

The actions at Elsipogtog exemplified a profound shift towards asserting Indigenous sovereignty and reclaiming control over their own governance processes. By challenging the authority of the Indian Act and its legacy of control, the protestors were advocating for a future where Indigenous communities have the power to shape their own destinies, make decisions that align with their values, and uphold their inherent rights to self-determination. This resistance not only highlighted the

injustices perpetuated by colonial governance structures but also underscored a collective effort to forge a path towards a more just, equitable, and self-determined Indigenous future. By acknowledging the legacy of exploitation, land loss, and cultural loss, but also the role of the people in healing the community they were expressing their narratives, on their terms. However, it is not these damages that define them: it is their resilience, continuing resistance, and rejection of the gendered implications of settler colonialism.

## Chapter Four

### Conclusion

This thesis provided an analysis of the evolution of Indian Act policy, and how it further created categories of Indigenous men and women specifically women that were deemed “less Indian” than others. However, throughout this thesis the strength and resilience of Indigenous people that have continued to fight for over 50 years to reinstate status for themselves and their descendants disproportionately affected by gender-based discrimination within registration provisions of the present-day Indian Act have also been articulated.

The events surrounding the shale gas protests in Elsipogtog provide a lens to explore both the subtle and overt ways that the processes of settler control manifest against Indigenous people. As my work shows, the Elsipogtog blockade is a testament of how the Indian Act has altered the land tenure system of Indigenous people in New Brunswick. Protest also produces a rare opportunity to understand how marginalized groups are resisting representations.

The repercussions of the Indian Act on Indigenous land rights in New Brunswick during the 1880s are deeply profound and continue to shape the socio-political landscape of Canada today. The Act, with its assimilationist policies and measures of control, not only deprived Indigenous communities of their ancestral lands but also ushered in a period of economic marginalization that has had enduring consequences for generations to come.

The systematic dispossession of Indigenous lands through the reserve system and other mechanisms laid bare the extent to which colonial authorities sought to undermine Indigenous sovereignty and autonomy. By relegating Indigenous peoples

to limited reserves and encroaching upon their traditional territories, the Act not only stripped them of their primary means of sustenance but also eroded the cultural fabric that was intricately woven into the land itself.

Economic marginalization further exacerbated the plight of Indigenous communities in New Brunswick, as restrictions on land use and resource management hindered their ability to engage in traditional economic activities. The resulting dependency on government assistance and the loss of economic self-sufficiency perpetuated cycles of poverty and socio-economic disparities that continue to impact Indigenous populations to this day.

The legacy of the Indian Act serves as a stark reminder of the enduring impact of colonial policies on Indigenous peoples and the urgent need for meaningful reconciliation and redress. It underscores the ongoing struggle for recognition of Indigenous rights, self-determination, and land sovereignty, highlighting the necessity for a paradigm shift in how Indigenous land rights are respected and upheld in Canada.

As I reflect on the consequences of the Indian Act in New Brunswick, it becomes evident that the path to reconciliation and justice lies in acknowledging past injustices, honoring Indigenous knowledge and traditions, and fostering genuine partnerships built on mutual respect and understanding. It requires a commitment to decolonization, restitution, and the empowerment of Indigenous communities to reclaim their lands, cultures, and identities.

The historical ramifications of the Indian Act have significantly shaped Indigenous land tenure in Canada, perpetuating a system of control and dispossession

that continues to impact communities like the Mi'kmaq of Elsipogtog. Through its provisions, the Act has limited Indigenous peoples' autonomy over their lands, leading to ongoing conflicts such as the Elsipogtog blockade. This blockade, born out of a deep-rooted struggle for sovereignty and self-determination, exemplifies the enduring resistance against colonial impositions on Indigenous territories. By connecting the dots between the Indian Act and the Elsipogtog blockade, we witness a poignant narrative of resilience, asserting the urgent need for reconciliation, decolonization, and the honoring of Indigenous rights and sovereignty.

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