Killing Canada's Most Colonial Legislation: A Short History of Attempts to End the Indian Act

Yellowhead Institute

Read the Yellowhead Brief, *The Indian Act, Exit 150* by Hayden King to learn more.

In recent Canadian history, there has been a Prime Ministerial pre-occupation with removing the *Indian Act*. Every 10-20 years, from Liberal or Conservative governments, a new approach to breaking down the Act is introduced. While those approaches have differed by degrees, the philosophy has been remarkably similar through time and rejected by First Nations as too narrow, too paternalistic, too rushed. Learning from previous mistakes, Canada's most recent strategy to remove the Act now seems to be working.

1951 Louis St. Laurent

- In 1951, Louis St. Laurent's Liberal government consulted First Nation leaders on the Act's removal. Unfortunately they could not reach a consensus in approach. So, while St. Laurent removed cultural and mobility restrictions from the Act, his government also created the Indian registry system and formalized severe gender-based discrimination. St. Laurent's efforts would end up entrenching the *Indian Act*.

1969 Pierre Trudeau

- Like St. Laurent, Pierre Trudeau consulted with First Nation leaders for a year on a transition out of the Act. But this attempt resulted in a betrayal. The 1969 White Paper proposed sweeping changes, including ending Indian Status, dissolving the Department of Indian Affairs, and transferring responsibility for Indigenous services to the provinces. The plan also proposed converting reserve lands into private property and gradually removing treaty rights – along with the Act itself.
- First Nation leaders rejected the proposal, captured in The Red Paper, led by Indian Chiefs of Alberta, and called out the proposal as assimilationist, forcing the government to withdraw it.
- Resistance throughout the 1970s, like the Constitution Express Movement, pushed later governments to develop a narrow vision of Aboriginal and Treaty Rights in Section 35 of the *Constitution Act, 1982*.

1992 Brian Mulroney

- Attempting to expand on the rights affirmed in the constitution, and compelled by the activism of Indigenous women to remove gender discrimination from the Act, Mulroney held constitutional discussions with Indigenous leaders (something Trudeau started) to create a rights-based approach to self-government outside of the Act. Challenged by Elijah Harper's refusal to support a constitutional amendment and the Siege on Kanehsata:ke (Oka Crisis) yet another constitutional amendment was proposed that more clearly defined a path away from the Act. It was ultimately opposed by many First Nations and by Canadians generally.

2002 Jean Chrétien

- Chrétien, having served as Indian Affairs Minister under Pierre Trudeau during the White Paper, continued to push for the removal of the Act. Picking up Mulroney's work, Chrétien's government created a new self-government policy in 1995 and then later introduced the 2002 First Nations Governance Act, which aimed to transition First Nations out of the Act and into a lite version of self-government. Once again, First Nation leaders felt the proposal didn't go far enough to protect their rights and authority and rejected it.

2014 Stephen Harper

- Harper's tenure resulted in numerous conflicts with Indigenous people including changes to the natural resource regime that would lead to the Idle No More movement. In the midst of this conflict, his government proposed *Bill C-428*, the *Indian Act Amendment and Replacement Act*. The proposed legislation would strike down several sections of the *Indian Act* including removing sections regarding education, wills and estates and band bylaws, and would lower the thresholds to surrender reserve lands. Under the pretense of removing red-tape and "empowering" First Nations, the legislation was instead seen as encroachment into First Nation governance. And given the contentious relationship with Indigenous people, the Bill did not proceed.

2018 Justin Trudeau

- Drawing on previous models to remove the *Indian Act* (notably the *Royal Commission on Aboriginal People*, "devolution", and the *First Nation Governance Act*), Trudeau attempted another "rights-based" transition away from the Act. It was a comprehensive strategy that moved First Nations toward self-government by encouraging a piece-meal devolution of administrative powers from the Federal (and in some cases provincial) governments to First Nations. It also encouraged the First Nation assumption of service delivery and more finance powers. The centrepiece in Trudeau's reconciliation agenda, the approach was ultimately rejected for its narrow understanding of First Nation jurisdiction. The proposed legislation was never introduced.
- Despite First Nations rejection, the model that Trudeau re-assembled from previous examples through time, is now the approach being taken by Carney's government and is apparently being increasingly accepted by First Nations.