YELLOWHEAD BRIEF #185 | APRIL 23, 2026

The Indian Act, Exit 150

by Hayden King

THIS SPRING marks 150 years since the *Indian Act* became law.

Passed in 1876, the Act consolidated years of previous colonial policies and aimed to coerce Nations into bands, dismantling First Nation laws and governance, culture, language and social organization. It attacked women and children, identity, and restricted freedom to move, trade, and even socialize. It was (and is) racist and deeply paternalistic.

Perversely, the model of assimilation the Act aimed to achieve ended up insulating First Nations from Canadian nation-building and society generally. Over time, this particular model of assimilation faltered, and insulation became useful. Re-organized Chief and Council systems and their laws and politics would come to exist in a liminal space, a borderland where provincial or territorial regulations had limited effect, no tax regime to speak of, and — paired with an evolving set of Aboriginal and treaty rights — a *de facto* local authority.

Harold Cardinal captured the Act's contradictions well when he said the *Indian Act* "is discriminatory from start to finish. But it is a lever in our hands."

Cardinal, like many other First Nation leaders, acknowledged the harms and challenges of the Indian Act but refused to scrap the legislation without an alternative that affirmed treaties and sovereignty.

So, despite many attempts by numerous Federal Governments to dissolve the legislation (St. Laurent, 1951; Pierre Trudeau, 1969; Mulroney, 1992; Chrétien, 2002, Stephen Harper, 2014; Justin Trudeau, 2018), it endures to the present. Sort of.

Life is a Highway: One Day Here and the Next Day Gone

After First Nations leaders rejected the 1969 White Paper on Indian Policy, the Federal Government began exploring alternatives to advance its agenda. This coincided with First Nations' desire to control education after the cataclysm of residential schools.

It would begin the era of "devolution."

After Canada transferred administrative control of education, it realized bits and pieces of the Indian Act could be isolated, new statutory frameworks created, and First Nations offered an exit from the Act into alternative processes. The new approach would be incentivized with funding, limited capacity development and a sales pitch for more authority. Tellingly, the long-time Indian fighter, Tom Flanagan, lauded the shift as a useful "off-ramp," given First Nations leadership's rejection of the wholesale removal of the Act.

By 1999, this model had emerged more clearly with the development of the *First Nations Land Management Act*, a law that allows communities to withdraw lands from the *Indian Act's* land management provisions and to pass their own local regulations. The *First Nations Fiscal Management Act*, paired with new finance policies, removes elements of finance from the *Indian Act*. There are also the *First Nation Election Act* and sectoral education self-government agreements. More recently, the *Child and Family Well-being Act* offered First Nations control over child welfare service delivery (adjacent to the *Indian Act* but with the same thrust). Today, conversations are accelerating around status and membership. While it is hard to imagine the Federal Government devolving control over status, they are required by the courts to address ongoing gender discrimination regarding status and have been encouraging communities to move toward

citizenship or membership laws outside the Indian Act.

According to the Crown-Indigenous Relations' 2024–25 Departmental Plans, First Nations are getting off the highway at increasing speeds. In 2020–21, "the percentage of First Nations that have opted into an *Indian Act* alternative" was 55 percent. By 2022–23, it had risen to 68 percent. The department had set a target of 71.5 percent by March 2025. More than two-thirds of First Nations have now moved at least one area of governance — land, fiscal management, elections, etc. — out of the *Indian Act*.

So while First Nations leaders have rejected every comprehensive attempt to repeal the *Indian Act*, they seem to have accepted the incremental approach. Whether these are the right directions is an ongoing debate.

The Unbundling

In 2018, Yellowhead published a report exposing this strategy as ideological, not simply an administrative shift but a map for First Nations "towards a narrow model of self-government outside of the *Indian Act*, premised on devolution of program and service delivery" — without addressing land rights, treaty obligations, or meaningful jurisdiction.

On the other hand, there are Indigenous-led initiatives like the Transitional Governance Project, which supports First Nations in the conversion, alongside numerous organizations trying to operationalize the various off-ramps out of the Act. Many First Nations themselves believe there are opportunities, in the inches being offered by Canada, to take miles.

Can these transitional processes actually be expanded, matriated, Indigenized, or decolonized?

The *Indian Act* wasn't created as a coherent piece of legislation 150 years ago. It was cobbled together from previous colonial laws and policies, and then, over the next few decades, dozens of amendments were added. Its modular creation mirrors its piece-by-piece demise. As it unfolds into something new and different, we ought to ask ourselves: who is at the wheel?

CITATION

King, Hayden. "The Indian Act, Exit 150," *Yellowhead Institute*. April 23, 2026. https://yellowheadinstitute.org/2026/the-indian-act-exit-150/