



# **In Hindsight: Half a Century of Research Discoveries in Canadian History**

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## **Episode 10: The Precursor of Today's Indian Act, Passed in Toronto in 1857, and John A. Macdonald's Role**

John A. Macdonald (1815-1891) began his political career in 1843 as a city alderman. The next year, he by then well-known lawyer handily won election as Kingston's Member of Parliament. Just two years earlier, the Act of Union had joined the two provinces of Lower Canada and Upper Canada, naming them Canada East and Canada West, respectively. Macdonald was a member of the Legislative Assembly when in 1844 the Royal Commission of Inquiry into the Affairs of Indians in Canada submitted its report. Mandated in October 1842 by Sir Charles Bagot, then governor general of the Province of Canada, the Commission held 15 months of hearings. The resulting voluminous document, known to historians as the "Bagot Report," recommended "that the true and only practicable policy of the Government" was "to endeavor, gradually, to raise the Tribes within the British Territory to the level of their white neighbours; to protect them to undertake the offices and duties of citizens."

The story of Sir John A. Macdonald and the First Nations is both very complex and very large. The contradictions of his Indian policy include his ruthless repressive measures immediately after

the unrest of 1885, when his administration ruled the North-West Territories as a police state. Deliberately his government withheld food rations to force uncooperative Plains First Nations to move onto reserves. In contrast, in 1885 Macdonald extended the federal franchise to adult male Indians in Central and Eastern Canada if they met the property requirement, without obliging them to give up their Indian status. Peter E. Jones, MD (Queen's), the third son of Peter Jones, served in 1885 as chief of the Mississaugas of New Credit. He congratulated the prime minister on the granting of the vote: "My Dear Sir John, – I should have written to you some time ago to thank you for making the Indian a 'person' in the Franchise Bill ... I now thank you on the part of the memory of my father and on the part of myself, as for many years we advocated and urged this step as the one most likely to elevate the aborigines to the position more approaching the independence of the whites." Macdonald wanted the male First Nations who met the property qualifications to become involved and have some influence on the laws and policies that affected them. Macdonald took a much milder approach in Central Canada than he did toward the First Nations on the Plains.

Only about 15,000 North American Indians were living in the Union of the Canadas in the early 1850s, representing less than 1 percent of the total population of approximately 2 million. The non-Indigenous population outnumbered the self-identified Indigenous by over a hundred to one. Many British colonists expected the Indians to disappear. For example, as the young Sandford Fleming, later to become known worldwide as the inventor of standard time, wrote in his diary in 1845, "They are dying away every year and it is supposed their race will soon be extinct." The pressure on their remaining lands became intense. Lord Bury, who served as the superintendent general of Indian Affairs in 1855, noted how the British Canadian settlers "forcibly squat upon their lands and plunder their timber."

In office as Attorney General of Canada West, Macdonald in at least one instance worked for recognition of a First Nations treaty right. Just a month and a half after the passage of the crucially important Gradual Civilization Act in June 1857, he gave his legal opinion of Treaty Twenty-Two, the British agreement of 1820 with the Mississauga for their three small reserves at Twelve Mile (Bronte) Creek, Sixteen Mile (Oakville) Creek, and the Credit River (the southern and northern sections of the Credit Reserve). When consulted that summer, Macdonald stated that these lands were not an outright purchase, but instead a surrender in trust to the government, and consequently, “The profits of the land until sold, and the amount of money received on sale of any portion of it must be expended for the benefit of the Indians, according to the terms of the Trust, as specified in such deed.” Thanks to his intervention to protect their revenues from an 1820 trust agreement, Macdonald would have some creditability in this Anishinaabe community.

Macdonald’s only real Indigenous contact before entering politics had been with the Mohawk community of Tyendinaga located on the Bay of Quinte between Belleville and Kingston. The young lawyer first met the Tyendinaga Mohawk in the winter of 1832-33 after his employer sent his legal apprentice to set up a branch law office in the village of Napanee, 50 kilometres west of Kingston. One of his earliest acquaintances was a Tyendinaga Mohawk culturally unrepresentative of his community. John Culbertson was the son of a Scottish fur trader and a daughter of John Deserontyon, the founder of the Iroquois settlement on the Bay of Quinte. John Culbertson’s wife was non-Indigenous, the daughter of a British Loyalist family. In 1836 the entrepreneurial Culbertson, totally fluent in English, convinced the lieutenant governor of Upper Canada to give him approximately 800 acres of the Mohawk Tract, thus using his knowledge of his mother’s culture and language for personal enrichment. Without paying a cent Culbertson obtained from the colonial authorities a huge

portion of his people's land for personal speculation. He then proceeded to have village lots surveyed for sale at a village site for non-Indigenous settlers, naming it "Deseronto" after his grandfather.

In 1839 Macdonald, then 24 years old, represented a Tyendinaga Mohawk named Brandt Brandt in a murder trial. John Culbertson acted as his Mohawk interpreter. In his cross-examination in the Kingston courtroom, the young lawyer cleverly extracted an important admission from the Crown's principal witness: the murder occurred in a darkened house when everyone was drunk, which made it impossible to be certain who held the knife used in the murder. The *Kingston Chronicle* described Macdonald's defence as "ingenious." Although the jury ruled manslaughter, the judge only imposed a six-month sentence on Brandt. No evidence exists that Macdonald had any further significant contact with Indigenous people from the 1840s to the mid-1850s.

Named attorney general of Canada West in 1854, John A. Macdonald continued his ascent of the top rungs of the ladder of Canadian political power. As the First Nations comprised only a tiny proportion of the total population—and did not have the vote—Macdonald paid them little attention. An indication of Macdonald's relative indifference to the First Nations was noted by Sarah Taekema in her 2020 M.A. thesis for the University of Victoria, "Sir John A. Macdonald's Influence on the Development of Canadian Indigenous Policy, 1844-1876" (page 89). As attorney general for Canada West Macdonald had great influence in making appointments. In early 1855 he had wanted fellow Conservative John Langton to take over the Indian Department, but Langton, who wanted a senior financial post, turned down the offer. Instead, he accepted to become the new chair of the Board of Audit. Attorney General Macdonald understood and wrote him on 6 February 1855 to say he was "worthy of a better office than

settling the quarrels of demoralized Redmen, with still more demoralized Whites.”

Two years later, in the spring of 1857, the member from Kingston rose in the Canadian Assembly then sitting in Toronto to introduce one of the most important bills in the history of Canadian Indian policy, the Act for the Gradual Civilization of the Indian Tribes in the Canadas. The legislature, which alternated between Quebec City and Toronto in the 1850s, was then in Toronto. The Parliament Buildings of the Union of the Canadas dominated the waterfront between “John” and “Simcoe” Streets, both named after John Graves Simcoe, Upper Canada’s first lieutenant governor, and founder of Fort York in 1793. The three undistinguished looking redbrick Georgian buildings stood in a wide-open space that fronted on Toronto Bay. Today thousands pass daily by and through the small park that now stands on the site of the legislature, immediately to the east of the headquarters of Canada’s national English-language broadcaster, the CBC, totally unaware of the creation on this site of the first consolidated Indian Act.

The Attorney General of Upper Canada or Canada West (now Ontario) presented the Act for the Gradual Civilization of the Indian Tribes. Neither he nor any other cabinet member had consulted any chiefs or Indian councils prior to the debate. The valued British allies of the War of 1812, now numerically a tiny minority, no longer merited consultation. The Gradual Civilization Act established the procedures by which Status Indians could become “enfranchised” or full citizens, assimilated into the broader society. Enfranchisement was presented as an honour. Voting rights, full status as British subjects, and ownership of a plot of land of 20 hectares (50 acres) of reserve land (the common size for a viable farm in Central Canada) were the reward for the First Nations’ abandonment of their Indigenous cultural identity. Any Status Indian adult male judged by a special board of examiners to be educated, free from debt, and of good moral character, could

apply. After a successful three-year trial period the applicant gained full ownership (fee simple) of his 50 acres that immediately ceased to be part of the reserve. They could be sold to a non-Indian. It was intended that the reserves would gradually disappear.

The Gradual Civilization Act passed with only one dissenting voice, that of William Lyon Mackenzie. All the major political parties and leaders endorsed it. In contrast, First Nations leaders denounced the Act, as they correctly saw it as a negation of the treaties, an attempt to seize their remaining land base and to end any form of self-government they still retained. With the Gradual Civilization Act, the new central dynamic for Indian policy became assimilation. A huge protest meeting was held at Onondaga on the Six Nations Territory, but neither Macdonald nor any other Canadian politician paid any attention to this event, and the press ignored it entirely. British Canada, both English- and French-speaking, had an unshakable confidence in the superiority of their society. Conservatives and Liberals did little to consult the First Nations. As Macdonald would clearly state in 1887, in his final year as Canada's minister of the Department of Indian Affairs, "the great aim of our legislature has been to do away with the tribal system and assimilate the Indian people in all aspects with the inhabitants of the Dominion, as speedily as they are fit for the change." As the distinguished Canadian political scientist Peter Russell has written in *Canada's Odyssey. A Country Based on Incomplete Conquests* (Toronto, 2017), "In Canada at this time, there was not an ounce of respect in either the political or judicial branches of government for Indigenous peoples' right to govern themselves" (page 189). Canada requested self-government, and simultaneously denied it for the Indigenous Peoples.

Indigenous issues occupied little of John A. Macdonald's attention after 1857 onward to the Confederation debates. The index to the printed volume of his letters for the years 1858 to 1861 includes

only two references to Indians. This suggests that politicians were convinced that the Indian question in the Canadas was over. The passage of the Gradual Civilization Act provided the solution, namely, the imminent assimilation of the First Nations. During the Confederation Debates at Charlottetown and Quebec in 1864, the politicians drafted a constitution—later called the British North America Act, 1867—without consulting any of the First Nations. In the thousand pages of the 1864 *Confederation Debates in the Legislature of the Union of the Canadas*, only three references appear relating to Indians, and as the historical geographer John Warkentin summarizes, “Completely engrossed as they were with other matters, aboriginal peoples seemed not to exist.” (“Geography of Confederation,” Department of Geography Discussion Paper No. 57, York University, Toronto, October 2004, pages 16-17.) The Royal Proclamation of 1763 declared that Indians “should not be molested or disturbed” on their historic hunting grounds, yet the Fathers of Confederation ignored this ruling. The British North America Act simply states, in Section 91(24), that “Indians, and Lands reserved for Indians” are a federal responsibility.

Evidence exists that Macdonald initially had no desire to expand the Canada of 1867 westward from the Atlantic to the Pacific, expanding it ten-fold in territory. At the time of Confederation 175,000 First Nations and Métis lived in what is now known as Western Canada. Non-Indigenous settlement would require displacement of the Indigenous peoples on the Prairies. Macdonald confessed to Edward Watkin, the British railway magnate, “I would be quite willing, personally, to leave that whole country a wilderness for the next half-century but I fear if Englishmen do not go there, Yankees will...” (quoted by P.B. Waite, *The Life and Times of Confederation* (Toronto, 1962), page 307).

Immediately after Confederation, pressures for assimilation increased. The First Nations remained opposed. Between 1857 and

1876 there was only one example of enfranchisement under the Gradual Civilization Act. Hector Langevin, one of Macdonald's senior Cabinet ministers from Quebec, introduced in Parliament in 1869 the Government of Canada's first major piece of legislation relating to Indians, the Gradual Enfranchisement Act of 1869. It drew heavily on the 1857 Gradual Civilization Act but was made much stricter. It confirmed that Indigenous women lost their legal Indian status when they married non-Indians. The Gradual Enfranchisement Act built on the 1857 Gradual Civilization Act. In turn The Indian Act of 1876, passed eight years later by the Liberal administration of Alexander Mackenzie, Canada's second prime minister, completed the legislative framework for assimilation. Accepted by John A. on his return to power in 1878, after five years in opposition, the Indian Act of 1876 was adapted from the 1857 and 1869 Acts. This legislation is still essentially in effect today. The passage of the Gradual Civilization Act in Toronto in 1857, we now see in hindsight, set Canada on the wrong road of assimilation.

John A. Macdonald is a very complex individual. His use of a starvation policy in the early 1880s to force the Plains First Nations onto reserves constitutes one of the greatest failures of his career. The contradictions of his policies include the ruthless repression of the Plains First Nations after the unrest of 1885. What is now Alberta and Saskatchewan were administered in 1885 as a police state. Yet that same year Macdonald extended the federal franchise to adult male Indians who met the property qualification in central and eastern Canada, without obliging them to give up their existing rights as Status Indians. Thirteen years later Wilfrid Laurier and the Liberals abolished this right (it was only granted to Status Indians again without loss of status in 1960).

Unquestionably, John A. Macdonald was the most important Canadian politician in the formation of Canadian Indian policy after Confederation. In keeping with British tradition, the federal



government between 1871 and 1877 negotiated seven treaties with the First Nations from Northwestern Ontario and the prairies to the Rockies. The Conservative prime minister instigated the first three treaties, and his Liberal successor Alexander Mackenzie the next four, the last being Treaty Seven in what is now southern Alberta. In some circles Macdonald's and Mackenzie's decision to make treaties proved controversial, as it was not universally accepted. Both leaders acted contrary to the opinion of Oliver Mowat (1820-1903), premier of Ontario from 1872 to 1896, who argued there was no need to make treaties, as the First Nations had no legal title to their lands. The government of British Columbia agreed entirely.

As he was in the opposition from 1873 to 1878, Macdonald did not bring forward the Indian Act of 1876—that was Mackenzie's work—but back in office he approved it and created the Department of Indian Affairs to administer it. He served as Superintendent General of Indian Affairs from 1878 to 1887. Authorized by the Indian Act, his government in 1883 created the modern Indian residential school system. He and others felt it was the best way to introduce the First Nations to new economic conditions. Canada's first prime minister believed the First Nations were culturally, not biologically, inferior and that a European education would eliminate the cultural inferiority. Looking back, *The Final Report of the Truth and Reconciliation Commission of Canada, vol 1. The History, Part 1. Origins to 1939* (2015) summarizes the enormous shortcomings in the residential school program.

Neither Macdonald nor any other Canadian politician, Conservative or Liberal, paid any attention to First Nations protests after the bill's passage. As noted above, British Canada, both English- and French-speaking, had an unshakable confidence in the superiority of their society. Macdonald and his political contemporaries wanted the First Nations to become like Euro-Canadians and to forget their distinctiveness. Canada's second

prime minister, Alexander Mackenzie, soundly endorsed the idea of total assimilation of the First Nations. The draconian Indian Act of 1876 allowed the federal government to control many aspects of Status Indian life, aiming to bring them into the majority society, and ending their special legal position.

## **Bibliography**

My chapter, “John A. Macdonald and the Indians,” in *Seen but Not Seen. Influential Canadians and the First Nations from the 1840s to Today* (Toronto, 2021), pages 3-38, provides an overview of Canada’s first prime minister’s outlook toward the First Nations. For an in-depth look at the entire nineteenth century see E.A. (Elsbeth A.) Heaman, *Civilization. From Enlightenment Philosophy to Canadian History* (Montreal and Kingston, 2022). It merits close examination. In her recent M.A. thesis, “Sir John A. Macdonald’s Influence on the Development of Canadian Indigenous Policy, 1844-1876” (University of Victoria, 2020), Sarah Taekema, looks at the critical period in Macdonald’s career that precedes the establishment of the federal Indian residential school system. J.R. Miller reviews Canada’s first prime minister’s record with the First Nations, in “Macdonald as Minister of Indian Affairs: The Shaping of Canadian Indian Policy,” in *Macdonald at 200: New Reflections and Legacies*, ed. Patrice Dutil and Roger Hall (Toronto, 2014), pages 311-340. J.M.S. Careless provides an overview of the period in *The Union of the Canadas, 1841-1857* (Toronto, 1967). Two biographies summarize well two First Nations professionals’ relationships with Macdonald: Allan Sherwin, *Bridging Two Peoples. Chief Peter E. Jones, 1843-1909* (Waterloo, Ontario, 2012); and Keith Jamieson and Michelle A. Hamilton, *Dr. Oronhyatekha. Security, Justice, and Equality* (Toronto, 2016).

An 1855 anecdote best hints at the complexity of the individual who 12 years later become Canada's first prime minister. Twice Lord Bury, our subject in the previous episode, returned to Canada: in 1858 and in 1883. On his October 1883 visit, he travelled with his wife and two of their daughters and visited Ottawa. Twice he met with Sir John A. Macdonald, who in addition to serving as Prime Minister was now also Superintendent General of Indian Affairs (from 1878 to 1887). Macdonald had become one of the foremost statesmen of the British Empire. Three decades earlier, Bury recalled, he had managed his cabinet portfolio as Attorney General quite informally. On occasion, what Macdonald biographer Richard Gwyn has called "his best-known personal habit" (Richard Gwyn, *John A. The Man Who Made Us* (Toronto, 2007), page 420), caused him to go completely out of control. Bury recalled that one day Governor General Head dispatched him to find Attorney General Macdonald who had not been seen for a week. Bury located him, pushed his way past the old housekeeper, and walked into Macdonald's bedroom where he found him sitting on his bed, reading a novel with a decanter of sherry on the table beside him. Bury said, "Mr. Macdonald, the Governor-General told me to say to you that if you don't sober up and get back to business, he will not be answerable for the consequences." Macdonald fired back: "Are you here in our official capacity, or as a private individual?" "What difference does that make?" replied Bury. "Just this," snapped the inebriated politician, "if you are here in your official capacity, you can go back to Sir Edmund Head, give him my compliments, and tell him to go to hell; If you are here simply as a private individual, you can go yourself!" (Sir John Willison, *Reminiscences Political and Personal* (1929), page 180.)