

application of which Indian status can be determined with some degree of certainty.

According to the dictionary definition a North American Indian is a member of the aboriginal race native to the North American continent. This conception of an Indian was probably what the Fathers of Confederation and the Imperial Parliament had in mind when responsibility for Indians was allotted to the Federal authority by the British North America Act, though this conception of an Indian was probably modified somewhat by certain previously existing statutory definitions of an Indian which were at the time included in the Colonial Statutes.

In Lower Canada, for example, there was a very broad and somewhat detailed definition of an Indian, which is found in the Statutes of Lower Canada prior to 1867.

In the Statutes of Upper Canada there was also a definition of sorts, though much more indefinite.

These definitions pretty well exhaust the subject as at Confederation, though in the Provinces of New Brunswick and Nova Scotia Indians had been recognized as such and had actually been allotted lands in those Provinces prior to Confederation.

Therefore, there must have been other considerations such as local repute and common acceptance of Indians in other jurisdictions now included in Canada where Indians had been recognized as such long before Confederation.

It would appear to follow, therefore, that the term Indian as used in the British North America Act should be interpreted to include all persons of the aboriginal race as well as all others who, by the Colonial Statutes, were recognized as Indians as at the date of Confederation and those outside Upper and Lower Canada who were recognized as Indians by common repute to be so closely associated with the aborigines that any other racial origin had been lost sight of.

The actual conception of who was an Indian at the date of Confederation must, therefore, have been much broader than that contemplated by the definition as it presently appears in the Indian Act. As a matter of fact in 1868 the definition of an Indian as it stood in the Statutes of Lower Canada was copied almost word for word into the Federal Statute of that year and was not again changed until the new definition as at present was substituted for it in the Indian Act of 1876.

It might be contented that, by alteration of the definition of Indian by the Statute of 1876, the Dominion very substantially reduced the number of people for whose welfare it was responsible and by that action passed the responsibility on to the Provinces for thousands of people who, but for the Statute of 1876, would have been a Federal responsibility for all time.

The actual effect of the Statute of 1876 was to enfranchise all persons previously accepted as Indians who could not qualify as Indians under the new definition written into that Statute.

For eighty years successive administration heads have struggled to find a satisfactory application of the present definition and without much success. The present result in trying to apply the process of logic, in seeking legal opinions and seeking light from the decisions of the Courts (very few) and in trying to reconcile conflicting precedents, is a certain amount of confusion and has resulted in an attitude of bewilderment as to who is or who is not an Indian in the Canada of to-day.

It is submitted, therefore, that a new definition of an Indian must be found and written into the Statute and a series of axioms or principles formulated and established, by the application of which the administrative officers can advise and the Superintendent General decide who is of Indian status within the jurisdiction of the Branch and who is of white status and outside that jurisdiction.