

FREQUENTLY ASKED QUESTIONS

The Indian Trust Fund: Debunking Myths & Misconceptions



Learn more in Part One, How Canada Got its Economy
Cash Back: A Yellowhead Institute Red Paper

There is significant confusion, mythology and a lack of clarity around the Indian Trust Fund. Until the 1860s, trust funds and the lands and resources that made them grow were managed by a large set of institutions, both in the colonies and imperial Britain. This management guaranteed confusion and inefficiency and encouraged fraud.¹

Later on, the establishment of the Fund to its eventual absorption into the Consolidated Revenue Fund (CRF), the recording and transactions of the funds were haphazard. Much like many fiscal policies relating to First Nations, depending on the time and the bureaucrats in charge, record-keeping could be minimal and subject to miscalculations and theft. Here, we shed light on some of the key questions related to Indian Trust Fund.

THE BASICS

1) What is the Indian Trust Fund?

This fund is an account that holds all the moneys collected, received, or held by the Crown for the “use and benefit” of First Nations.

2) Where does the money come from and how is it spent?

The federal government holds Band, Individual, and other First Nations money that comes from the sale or lease of lands and from royalties and revenues from natural resources.

The Indian Trust funds are managed in accordance with the “Indian Moneys” sections of the Indian Act, which lay out the legal framework for how these funds may be collected, maintained, and accessed. The Fund is also managed pursuant to the Financial Administration Act and related regulations.

Historically, the government controlled the Trust and used it to pay for treaty annuities, agricultural implements, salaries for teachers, capital projects and many other things, including infrastructure for settlers — like canals and universities.

3) Where are the Indian Trust funds held?

The Indian Trust exists today within the Consolidated Revenue Fund (CRF) of Canada — the general account where *all* taxes and revenues are deposited. But this was not always the case: it used to be a separate entity.

4) When was the Indian Trust Fund created?

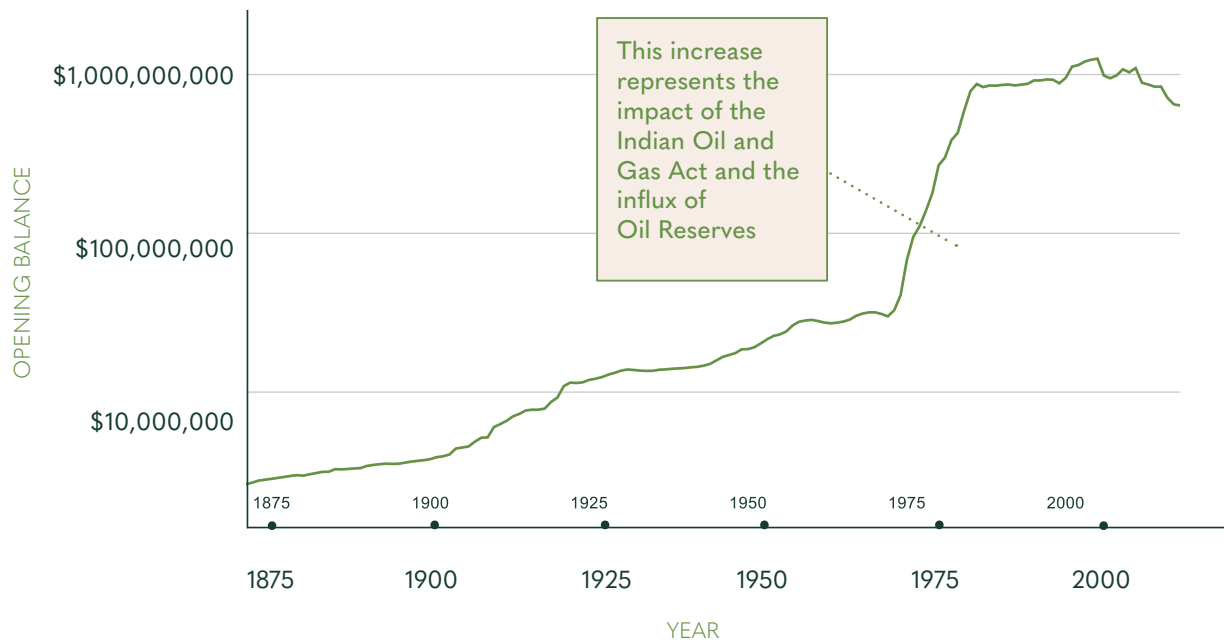
The Indian Land Management Fund (ILMF) came into existence on 1 April 1858. The Superintendent General deducted \$95,420 from trust funds held for individual trust funds¹ and consolidated them — 67 percent of which came from Six Nations alone.² This money was transferred into a single general trust account.

First Nations opposed this transfer and demanded control over the fund itself, but were denied.³

The Colonial Office transferred authority over Indian Affairs to Canada a couple of years later in 1860, but the colony had no money to pay for the new administration.⁴ So, it was decided that the Trust would finance the Department through a quasi-tax that peeled off interest from the fund.

However, as the Superintendent knew, to generate enough interest to pay for Indian Affairs’ day-to-day operations, the ILMF would need close to \$200,000 more than it received.⁵ Therefore, the fund was mismanaged and drained by Indian Affairs from the start.

Indian Trust Fund Log Scale: Opening Balance from 1864 - 2018



THE CASH

5) How much money is in the Indian Trust Fund today?

At present, the Indian Trust balance sits at over **\$634 million**.⁶

This money is mostly divided into two types of Indian Moneys held in trust:

- **\$400 million in Capital Moneys:**
All money that comes from the sale of surrendered lands or capital assets. Capital assets can be stuff like property, investment properties, royalties, stocks, bonds, or revenues from sale of timber, oil, gas, gravel, or other non-renewable resources.
- **\$179 million in the Revenue Moneys:**
Basically, anything else that is not Capital Moneys, like interest earned on Band capital and proceeds from sale of renewable resources (e.g. hydroelectric power).

Approximately \$50 million is also held in Indian Estate Accounts and Indian Savings Accounts. Indian Moneys are also held in trust on behalf of individuals, such as on-reserve minors, adoptees, "dependent" adults, and missing heirs' estates

6) Does every First Nation have money in the Indian Trust Fund?

The most recent data we have is from 1997, when the government reported that 608 Bands held 1,216 Trust Accounts.⁷ By 2019, the Public Accounts no longer report this figure.

Today, the majority of the fund exists in accounts for Bands in Alberta and Saskatchewan. The introduction of First Nations Oil and Gas and Moneys Management Act (S.C. 2005, c. 48) has led to significant deposits from First Nations located in oil-rich regions.

7) How can I find out if my First Nation has money in the Trust?

To find out, first you have to crack the organizational code of the Trust. In the 1880s, the Trust Fund was reorganized and each Band account was assigned a number. So, for example, you could be *Chippewas of Nawash Account No. 3*.

Since 1985, all of the trust funds are managed through the Trust Fund Management System (TFMS) and are available electronically to local Department agents. But requests for information on a Band's account history must be made through Access to Information Requests — unless the information is requested by someone working on behalf of Indigenous Services Canada for research or litigation purposes.⁹

8) How much First Nation money has flowed through the Trust?

Between the mid-1850s and the early 1870s, the funds held in trust for First Nations grew nearly sevenfold. The Fund continued to grow and shrink in fits and starts until the present day.

From 1864 to the present day, a sum of the closing balance totals over \$36 billion, but this is only the known amounts — total moneys that flowed through the Trust could be much higher.

THE RELATIONSHIP

9) Who controls the Trust Fund?

Most of the ongoing and daily management of Indian Moneys has been delegated to regional Indigenous Services offices.¹⁰ First Nations can access money they invested in the Fund, following the procedures laid out in Sections 61–64 of the *Indian Act*.

Historically, the Department of Indian Affairs, under its many names, has managed the Indian Trust Fund. Through amendments to the *Indian Act* from 1880–1906, the authority and power of the Governor in Council increased in power to control the Fund.

For example, in 1895, the Department could spend Band money on capital works for First Nations through proceeds from their sold lands. The *Indian*

Act amendment in 1905 raised from 10 to 50 percent the distribution of funds to First Nations from their sold lands as an incentive to surrender them to the Crown. When funds were accepted, agents then forced Bands to use them to supply their own agricultural implements, saving the Department money.

10) What is the relationship between the Trust and Treaty?

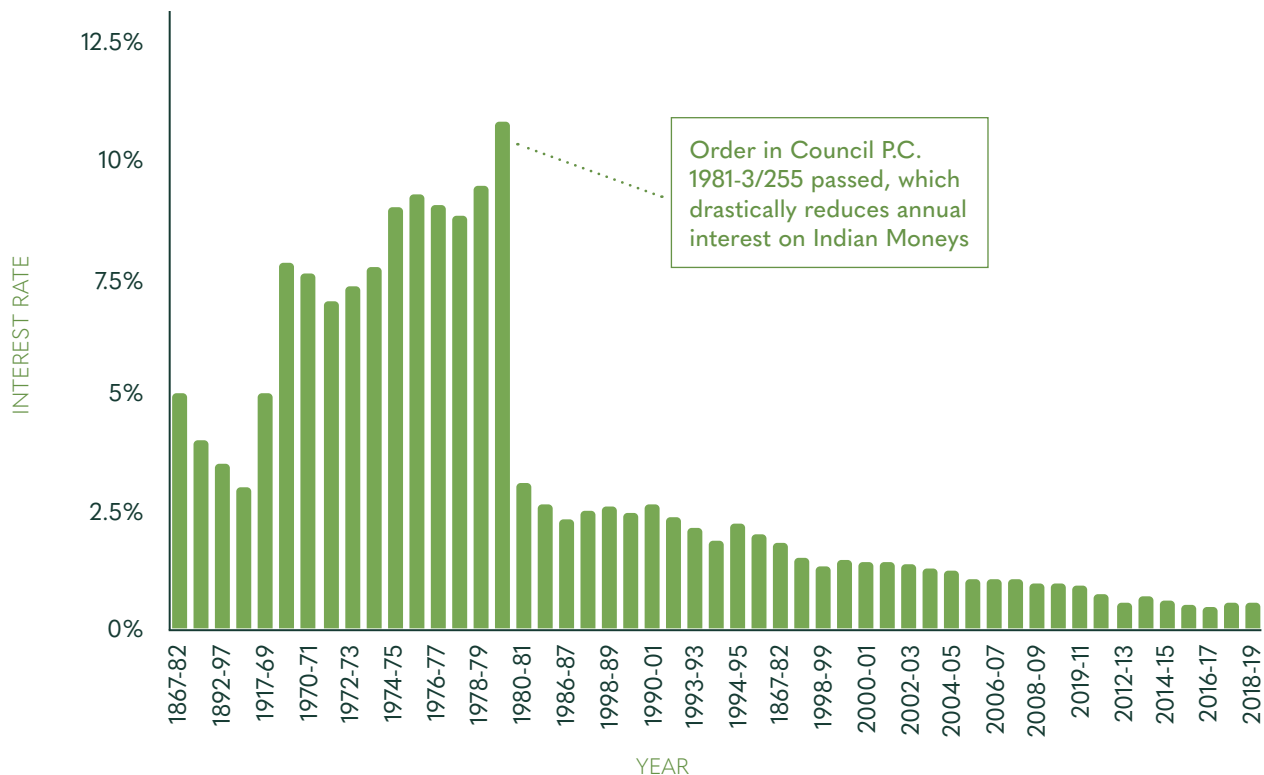
The Trust was not only financing the Department of Indian Affairs — First Nations were also paying for the Crown's internationally-binding Treaty obligations, including annuities. Annuities are annual cash payouts to treaty signatories.

For example, the funds were used to subsidize First Nations education as early as the mid-1870.¹¹ They were being used to fund medical expenses, to which the Nakota people of Carry the Kettle angrily protested, since these were a Treaty 4 obligation.¹² The Trust was also used to pay for schools and teachers' salaries, which are directly identified as Crown obligations in the numbered Treaties.

Restrictions on Trust money spending also radically violated the promises that ensured the protection of Indigenous livelihood made in the historic or numbered (1–11) Treaties. For example, provisions of the *Indian Act* controlled First Nations' abilities to buy items on credit without consent of the Agent with their own funds!¹³

In 1951, the *Indian Act* was amended, and the Indian Moneys provisions changed in response to the establishment of the *Financial Administration Act*, moving the Trust money to a general account and switching annuities payments from treaty descendants to *status* Indians. The move reflected deeper changes between Treaty nations and the state from a nation-to-nation relationship to one of wardship. There were several reasons for this timing, including the messy state of the treaty rolls at the time coupled with the need for a more efficient surveillance bureaucracy.¹⁴

Annual Interest Rate on Indian Moneys



11) Who were the main non-First Nation beneficiaries of the Trust?

Some of the main beneficiaries of this Trust Fund theft have included: the City of Toronto, Law Society of Upper Canada, Montreal Turnpike Trust, Desjardins Canal, York Roads, Grand River Navigation Company, Grand River Bridge, and the Consolidated Municipal Loan Fund for Upper Canada, a fund that allowed municipalities raise money for roads, bridges, railways, bridges, and other improvements.

A more thorough examination of individual Band accounts would be the only way to uncover the possible loss of funds — some of which was no doubt lost to sticky fingers in the Department.

12) Have any First Nations successfully sued to get some of their Trust money back?

Numerous audits and evaluations over the years have shown significant issues with the Indian Trust. For example, a leaked internal Department of Indian Affairs report in 1982 revealed that the Department broke provisions in two federal acts in the way it manages Indian trust accounts.¹⁵

In 2009, the Samson First Nation and the Ermineskin First Nation sued Canada for the loss of millions of potential income due to the Crown's abysmal investment of their moneys in Trust. The Treaty 6 Bands alleged that Ottawa was using the Indian trust account as a low-cost source of loans. Half the Trust was their money at that point and if managed by a private sector administrator, they would have banked in interest.¹⁶ The Supreme Court of Canada unanimously ruled, however, that Canada is not liable when it fails to make money on First Nation deposits through investment and, in fact, that the *Indian Act* makes this kind of investment illegal.

END NOTES

¹ For instances of fraud, see Daniel J. Brock, "Clench, Joseph Brant" in Dictionary of Canadian Biography 8 (University of Toronto, 1985), http://www.biographi.ca/en/bio/clench_joseph_brant_8E.html, B.E. Hill, "The Grand River Navigation Company and the Six Nations Indians," Ontario History 63, no. 1 (1971): 31–40, and David Shanahan, "Tory Bureaucrat as Victim: The Removal of Samuel Jarvis, 1842-47," Ontario History 95, no. 1 (2003): 38–64.

² These "Sundry Tribes" included Chippewas of Lakes Huron and Simcoe, Chippewas of the Thames, Iroquois of St. Regis (now Mohawks of Akwesasne), Mississaugas of Alnwick, Mississaugas of Credit, Mississaugas of Rice and Mud Lake, Mohawks of the Bay of Quinte, and the Wyandottes of Anderdon.

³ See: Historical Financials of Canada.

J. R. Miller, "Macdonald as Minister of Indian Affairs: The Shaping of Canadian Indian Policy," in *Macdonald at 200: New Reflections and Legacies*, ed. Patrice A. Dutil and Roger Hall (Toronto: Dundurn Press, 2014), 318–19.

⁵ *The Transfer to Canada of Indian Affairs and The Management of Indian Lands and Property Act* (SC, 1860).

⁶ Brain Gettler, *Colonialism's Currency: Money, State, and First Nations in Canada, 1920-1950* (Montreal and Kingston: McGill-Queen's University Press, 2020)

⁷ Other Liabilities: Deposit and Trust Accounts, Government of Canada, December 2020, <https://www.tpsgc-pwgsc.gc.ca/recgen/cpc-pac/2019/vol1/s6/pssfs-lblts-eng.html#sh16>

⁸ Joan Holmes Associates Inc., Guidelines Manual for Conducting, Research into the Management of Pre-Confederation Indian Land and Annuity Funds and Post-Confederation Capital and Interest Accounts. Assessment and Historical Research Directorate Indian and Northern Affairs Canada, March 2009.

⁹ Aboriginal and Northern Affairs Canada - Individual Affairs Branch Resolution and Individual Affairs Sector, *Manual for the Administration of Band Moneys, Indian Moneys, Estates and Treaty Annuities (IMETA)*, (2012).

¹⁰ Indian and Northern Affairs Canada - Audit and Assurance Services Branch, *Audit of Trust Accounts, Internal Audit Report, Project #2009/088 V4.0* (May 2010).

¹¹ S. D. Grant, "Indian Affairs Under Duncan Campbell Scott: The Plains Cree of Saskatchewan 1913–1931," *Journal of Canadian Studies/Revue d'études canadiennes* 18, no. 3 (Fall 1983): 21-39. On this point, Grant cites: D.C. Scott, "Indian Affairs, 1867-1912," in Adam Shortt and A.G. Doughty, *Canada and Its Provinces*, VII (Toronto: Glasgow Brook and Company, 1914), 613, 625-26.

¹² Peggy Martin-McGuire, *First Nation land surrenders on the Prairies, 1896-1911 / Peggy Martin-McGuire ; prepared for the Indian Claims Commission*, (Ottawa: The Commission, 1998), 9.

¹³ S. D. Grant, "Indian Affairs Under Duncan Campbell Scott: The Plains Cree of Saskatchewan 1913–1931," 32.

¹⁴ John Leslie, "Assimilation, Integration or Termination? The Development of Canadian Indian Policy, 1943-1963," (PhD diss., Carleton University, 1999).

¹⁵ Native funds mismanaged, report says. *Special to the Globe and Mail*. Feb 1, 1983, p. 54.

¹⁶ [Ermineskin Indian Band and Nation v. Canada, 2009 SCC 9](#)

CREDITS

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