

Consultations on Indian Registration, Band Membership and First Nation Citizenship

The *Truth and Reconciliation Calls to Action*¹ and the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*² support the elimination of the *Indian Act*, which is outdated and reflects 19th century colonial assumptions about First Nations. The Government of Canada wants to work with First Nations on a nation-to-nation basis to find the best way to get rid of the *Indian Act* and transfer the exclusive responsibility back to First Nations for the determination of their members or citizens.

Since the implementation of the first *Indian Act* in 1876, the federal government gradually took control of determining who was an Indian under legislation. The 1951 amendments to the *Indian Act* under *An Act Respecting Indians* created the Indian Register and gave the Indian Registrar exclusive authority over registration of Indians under the *Indian Act*. Eligibility for Indian registration was based on the male genealogy line, which created a number of sex-based inequities within the *Indian Act*. Despite the amendments to the *Indian Act* in 1985 (Bill C-31) and 2011 (Bill C-3), some sex-based inequities remained.

Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship

In August 2015, a decision was rendered in the *Descheneaux* case by the Superior Court of Quebec. It declared key provisions of the *Indian Act* inoperative as they unjustifiably violated equality rights under the *Canadian Charter of Rights and Freedoms*. These provisions perpetuated sex-based inequities in eligibility for Indian registration between male and female descendants. The *Descheneaux* decision highlighted residual sex-based inequities in Indian registration following the 1985 and 2011 amendments to the *Indian Act*. It also brought to light long-standing broader issues relating to Indian registration, Band membership and First Nation citizenship.

In July 2016, the Government of Canada launched its approach to respond to the *Descheneaux* decision. It includes two parts:

1. *Legislative changes to immediately amend the Indian Act*. Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, received Royal Assent on December 12, 2017.
2. A Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship, launched on June 12, 2018.

The Collaborative Process is in line with Canada's commitment to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples and is an opportunity to discuss the best ways to address these issues and to end the role Canada plays with respect to Indian registration, Band membership and First Nation citizenship.

Through these consultation events, Crown-Indigenous Relations and Northern Affairs Canada is seeking input on three consultation discussion streams including:

¹ http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf

² https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

1. The removal of the 1951 cut-off from the *Indian Act*

Discussions will focus on the implementation of the delayed coming-into-force clauses in Bill S-3 relating to the removal of the 1951 cut-off. First Nations are being consulted on how best to implement the changes, the timeline for the implementation, resources that are required and how the Government can address concerns and any unintended consequences.

Once in force, all descendants born prior to April 17, 1985 (or of a marriage that occurred prior to that date) of women who were removed from Band lists or not considered Indians because of their marriage to a non-Indian man will be entitled to 6(1) status. This will include circumstances prior to 1951 and will remedy inequities back to the 1869 *Gradual Enfranchisement Act*.

The removal of the 1951 cut-off will significantly increase the number of individuals eligible for Indian status and Band membership. This could result in significant pressure on First Nation communities' resources, programs and services, and culture.

2. Remaining inequities related to Indian registration and Band membership under the *Indian Act*

Removing remaining residual inequities related to First Nation registration and Band membership could be dealt with through legislative reform while the Government and First Nations work together toward the ultimate goal of removing Government of Canada authority to define First Nations.

The courts have generally dealt with sex-based inequities in the *Indian Act*. Other issues were identified during the Parliamentary debates on Bill S-3 that impact First Nations in regard to Indian registration, Band membership and First Nation citizenship.

Discussions will focus on issues such as, but not limited to, the following issues and the related issues of resources and impacts on communities:

Second-generation cut-off	Voluntary de-registration
Enfranchisement	Categories in Indian registration
Adoption	Cross-border issues
Unknown/unstated paternity	Children of same sex parents
Gender Identity	

3. First Nations' exclusive responsibility for determining membership /citizenship (moving beyond the *Indian Act*)

Discussions will focus on how First Nations will exercise exclusive responsibility for the determination of the identity of their members or citizens without the Government determining who is or is not registered under the *Indian Act*.

Currently, under the *Indian Act*, the Government of Canada has exclusive control over the registration of status Indians. Bands also have the option to either have the Indian Registrar maintain their Band list by adding people automatically when they are registered under section 11 of the *Indian Act*, or to determine their own membership under section 10 of the *Indian Act*. First Nations have previously expressed that control over Indian registration, Band membership and citizenship should be under First Nation authority and not under control of the *Indian Act*.