



# Consultations of the Collaborative Process on Indian Registration, Band Membership and First Nations Citizenship



# Agenda

- 12:00 pm Welcome and Thanksgiving Prayer – Lunch Provided
- 12:45 pm Introduction- Purpose and Objectives of Session
- 1:00 pm Historical Overview and Background on Indian Registration and Band Membership  
Membership and Membership Code  
The continued federal role in determining Indian and Band Membership under the Indian Act.  
First Nations Citizenship  
First Nations jurisdiction to determine First Nations citizenship
- 3:00 pm Questions, Answers and Discussion
- 4:30 pm Closing Prayer



# Overview



- The Government of Canada has made a commitment to a collaborative process with First Nations and other indigenous groups on the broader issues relating to Indian registration, band membership and First Nation citizenship.
- The collaborative process on the broader-related issues will involve comprehensive consultations and joint work with First Nations and other indigenous groups on the issues that go beyond the *Descheneaux* decision, with the objective of identifying areas of future reform.



# The Purpose of the Consultation will provide a brief history and address the following 3 streams identified in the co-design:

- The removal of the 1951 cut-off from the *Indian Act*;
- Remaining registration/membership inequities under the *Indian Act*; and
- Discussions around how First Nations will exercise their responsibility for the determination of the identity of their members or citizens, and Canada getting out of the “business” of determining status under the *Indian Act*.

# History of Registration in the *Indian Act*

## **1850 – An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada.**

Canada enacted An Act for the better protection of the Lands and Property of the Indians in Lower Canada, the first act to define who is considered an Indian.

An “Indian” was defined as:

1. All persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in Lower Canada lands, and their descendants.
2. All persons married to such Indians and residing amongst them, and their descendants.
3. All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe or entitled to be considered as such.
4. All persons adopted in infancy by any such Indians and residing in the village or upon the lands of such Body or Tribe of Indians, and their descendants

# History Continued

## 1869 – Legal Modifications

Indian women who married non-Indians are no longer considered Indians and children of the marriage are also not considered Indians under the Act. Indian women who marry an Indian man become a member of their husband's band.

## 1876 – Indian Act

The first act to be clearly identified as an Indian Act in Upper and Lower Canada.

“Indian” was defined as:

- any male person of Indian blood reputed to belong to a particular band;
- any child of such person;
- any woman who is or was lawfully married to such person.

Involuntary enfranchisement for Indians who obtained a university degree or religious orders is introduced; wives and children are automatically enfranchised along with their husband/father. Bands are eligible for enfranchisement as a whole.

Voluntary enfranchisement is first introduced, allowing an individual to not be considered an Indian and removed from their band. An Indian who lived outside of Canada for a period in excess of five years without the permission of the department was enfranchised



# History Continued

## **1918 – An Act to Amend the Indian Act**

Unmarried women and widows, along with their minor unmarried children could seek voluntary enfranchisement beginning in 1918.

## **1919-1920 – An Act to Amend the Indian Act**

The provision to enfranchise Indians who acquired university education or religious orders was repealed in an amendment to the Indian Act in 1919-1920



# History Continued

## 1951 – An Act respecting Indians

The Indian Register was established to record all individuals entitled to registration.

The Indian Registrar can add or delete (if they are ineligible) names from the Register.

Individuals can protest additions or deletions from the Register.

When a male is added or deleted from the Register, his wife and children are also added or deleted.

Women who marry a non-Indian man are not eligible for registration, and they were removed from band lists upon marriage.

Individuals are eligible for voluntary enfranchisement if they meet specific requirements.

The wife and children of a man who is enfranchising must be clearly named on the order of enfranchisement to be removed from the Register; otherwise, they keep their status.

The Double Mother Rule was introduced to remove status from grandchildren at age 21, whose mother and paternal grandmother both acquired status through marriage to an Indian.



# History Continued

## **1985 – Bill C-31 - An Act to Amend the Indian Act**

Women do not automatically join their husband's band through marriage.

All enfranchisement provisions, both voluntary and involuntary, are removed and provisions are created to allow individuals, especially women who had lost status, to be reinstated as status Indians.

Section 10 introduces the ability for Indian bands to determine their own membership codes/rules.

Children are treated equally whether they are born in or out of wedlock, and whether they are biological or adopted.

The definition of “child” included in section 2 of the Indian Act was modified to recognize a legally adopted child (not only a legally adopted Indian child) and child adopted in accordance with Indian custom.



# History Continued

## **2011 – Bill C-3 - Gender Equity in Indian Registration Act**

Came into force in response to the *Mclvor v. Canada* decision.

Addressed inequities relating to the removal of the Double Mother Rule under *Bill C-31* in 1985 which created an added benefit for the male line of a family.

Grandchildren of women who lost status due to marrying a non-Indian man prior to 1985 become entitled to registration for the first time.

Introduced the “1951 Cut-Off” under section 6(1)(c.1)(iv).



# History Continued

## **2017 – Bill S-3 - An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur general)**

Came into force in response to the Descheneaux c. Canada (Procureur general) decision.

Provisions related to siblings, cousins, omitted or removed minors, and unknown/unstated parentage came into force on December 22, 2017.

Provisions related to the removal of the 1951 cut-off will come into force at a later date after the consultation phase of the Collaborative Process. First Nations, Indigenous groups and impacted individuals will be consulted on how to implement the removal of the 1951 cut-off.

# Registration Categories Prior to Bill S-3

- **6 (1)(a)** - Person registered or entitled to be registered prior to April 17, 1985.
- **6 (1)(b)** - Persons who are members of groups declared to be new bands by the Governor in Council.
- **6 (1)(c)** - **\*Note: there are 4 subsections**
  - i Women who lost status by marrying Non-Indians.
  - ii – Children enfranchised as a result of their mother’s marriages to Non-Indians.
  - iii - Persons removed from the Register as a result of protests regarding Non-Indian Paternity. This includes the illegitimate children of Indian women born prior to August 14, 1956 who were omitted or deleted because of Non-Indian Paternity.
  - iv - Persons omitted or deleted from the Register under the double-mother clause.
- **6 (1)(d)** - Persons who had lost status due to enfranchisement.
- **6 (1)(e)** - Persons who had lost status due to foreign residency or higher education.
- **6 (1)(f)** - A person whose both parents are registered or entitled to be registered.
- **6 (2)** - A person with only one parent who is registered or entitled to be registered under Any provisions in 6 (1).



# Registration Categories Following Bill S-3

- 6(1)(a) Entitlement of person who was registered or entitled to be registered on or before April 17, 1985.
- 6(1)(b) Entitlement for individuals who are members of a group declared to be a Band after April 17, 1985.
- 6(1)(c) Reinstatement of individuals whose names were omitted or deleted from the Indian Register, or a band list prior to September 4, 1951, because of:
  - the “double mother” provision;
  - the person was a woman who married a non-Indian;
  - the person is a child omitted or removed due to their mother marrying a non-Indian; or
  - the person was removed by protest due to being the illegitimate child of a man who was not an Indian and a woman who was an Indian.

- 
- 6(1)(c.01) Amending the status of children whose parent was an enfranchised minor child.
  - 6(1)(c.02) Amending the status of children whose parent was enfranchised because of the “Double Mother Rule” and amending the status of children of an Indian grandmother who parented out of wedlock with a non-Indian.
  - 6(1)(c.1) Amending the status of children whose mother lost status due to marrying a non-Indian man.
  - 6(1)(c.2) Amending the status for children whose parent is registered under 6(1)(c.1).
  - 6(1)(c.3) Amending the status of children born female to Indian men out of wedlock.
  - 6(1)(c.4) Entitlement for children with a parent entitled under 6(1)(c.2) or (c.3).

- 
- 
- 6(1)(c.5) Entitlement for grandchildren whose grandmother is entitled under 6(1)(c.3) and a parent is entitled under 6(1)(c.4).
  - 6(1)(c.6) Entitlement for a child whose parent is entitled under 6(1)(c.02) and grandparent was removed by protest due to being the illegitimate child of a man who was not an Indian and a woman who was an Indian.
  - 6(1)(d) Reinstatement for an individual who was enfranchised by voluntary application prior to April 17, 1985.
  - 6(1)(e) Reinstatement for an individual that was enfranchised prior to September 4, 1951 for reasons of living abroad for 5+ years without the consent of the Superintendent General or becoming ministers, doctors, lawyers (“professionals” – only until 1920).
  - 6(1)(f) Entitlement for children with both parents entitled to registration.
  - 6(2) Entitlement for children when only one parent is entitled to registration under 6(1) and the other parent is not entitled to registration.



# Bill S-3 Amendments

## **What are the Major Changes that came into effect in December 2017?**

The changes that came into force in December 2017 ensure that eligible grandchildren and great-grandchildren of women who lost status as a result of marrying a non-Indian man become entitled to registration in accordance with the Indian Act.

It also ensures children born female and out of wedlock would be entitled to registration as well as their descendants going back to 1951.

## **What are the amendments that will take effect after consultation?**

The amendments that will come into force at a later date following consultation, relate to the removal the 1951 cut-off from the registration provisions in the Indian Act. Once these delayed provisions are in force, all descendants born prior to April 17, 1985 (or of 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 prior to 1951 will be entitled to status, allowing the ability to further transmit entitlement to their children. This will remedy inequities back to the 1869 *Gradual Enfranchisement Act*.



# What is the “1951 cut-off”

- ▶ Added to the Indian Act as a result of the Bill C-3 amendments in 2011. The *Gender Equity in Indian Registration Act*.
- ▶ To be registered under Section 6(1)(c.1) you must have had a child or adopted a child on or after September 4, 1951 and have a mother who lost her status through marriage to a non-Indian man. All of their children will be status. They would be a 6(1) or 6(2) depending on the circumstances. However, if there is no child born or adopted on or after September 4, 1951 that person is not entitled.
- ▶ This could mean two siblings born to the same parents would have different abilities to pass on their status. This cut-off means cousins who share a grandmother who lost entitlement due to marriage to a non-Indian man can pass on entitlement while their cousins cannot.
- ▶ Removing the 1951 cut-off extends entitlement to grandchildren born or adopted prior to September 4, 1951 and can be passed to their descendants resulting in the cousins having the same ability too pass on entitlement back to 1869.



# Removing the “1951 cut-off”

- ▶ This is a complex issue and there is a need to consult to understand the impacts and identify the practical remedies and implementation options.
- ▶ The amendments that come into force at a later date will remove the 1951 cut-off from the Indian Act for determining eligibility of entitlement for a woman, and her descendants, who were removed from band lists or not considered an Indian due to marrying a non-Indian man, going back to 1869. These amendments will result in individuals previously entitled under section 6(1)(c) to be re-categorized under section 6(1)(a.1) for the women who married out and section 6(1)(a.3) for their direct descendants if they were born prior to April 17, 1985 (or of a marriage prior to that date). Section 6(1)(c) and all its subcategories will no longer appear in the Indian Act following the amendments as outlined in Bill S-3. For anyone who is not already registered at the time the amendments are made, their eligibility will be determined under the Indian Act in force at that time.
- ▶ It is important to note that the second-generation cut-off continues to be applied after 1985.



# Why the removal of the 1951 cut-off is important

- ▶ When the 1951 cut-off is removed, a significant number of individuals currently registered under section 6(2) who had children before September 4, 1951 will become eligible under section 6(1)(a.3) resulting in further entitlements for their direct descendants under 6(1)(a.3), 6(1)(f) and 6(2). This will increase the number of individuals benefitting from new or enhanced entitlement. Once the 1951 cut-off is repealed, sections 6(1)(c.2) and (c.4) will be repealed.
- ▶ Such a measure will automatically and significantly increase the number of individuals eligible for registration and band membership and may result in pressures for First Nation communities with respect of resources, programs and services, and ethno-cultural integration.
- ▶ Following the Collaborative Process, an implementation plan will be prepared, and the process will begin to bring the 1951 cut-off into force.



# Second-Generation Cut-Off

- ▶ Was introduced in 1985 as part of the Bill C-31 amendments through the creation of two general categories of Indian registration (sections 6(1) and 6(2)) and the related ability to transmit entitlement to children. After two consecutive generations of parenting with a person who is not entitled to registration (a non-Indian), the third generation is no longer entitled to registration; entitlement is therefore cut-off after the second-generation. In other words, an individual will not be entitled to Indian registration if they have one grandparent and one parent who are not entitled to registration.
- ▶ It was written because of concerns raised by First Nations in respect to resource pressure and cultural erosion. It was an attempt to balance individual and collective rights with a view to protecting First Nation culture and traditions. It is applied without any consideration to the individual or the family's circumstances, some community members were unfairly subjected to the second generation cut-off even though they had always been connected to the band and community.
- ▶ It is a gender neutral transmission rule for individuals born after 1985. Entitlement is only carried forward if conditions are met. With no such rule, there would be no way for an Indian parent to transmit his/her status to children born after 1985.



# Unknown or Unstated Parentage

- ▶ Unknown Parentage is when an individual person who is applying for registration does not know, is unable or is unwilling to provide information about a parent, grandparent or ancestor.
- ▶ Unstated Parentage is when an individual parent, grandparent or ancestor is known but is not listed on their proof of birth document.
- ▶ These types of situations on an application for registration could negatively impact entitlement. The policy on Unknown or unstated parentage has been recently revised.
- ▶ In the *Gehl* decision it was determined the registrars policy in respect to unstated or unknown parentage was unreasonable because it demands evidence not required by the Act. In response to the *Gehl* decision a new provision was added which provides flexibility in the types of evidence that can be submitted and balance of probabilities of having a parent, grandparent or ancestor entitled to status. It requires the Indian Registrar to draw from any credible evidence and make every reasonable inference in favour of applicants in determining eligibility for registration in situations of an unknown or unstated parent, grandparent or other ancestor.

# Enfranchisement

- ▶ Prior to the Bill C-31 amendments in 1985, enfranchisement resulted in an individual no longer being considered an Indian under federal government legislation. Indians who were enfranchised were removed from their band lists before September 4, 1951; or lost Indian status if enfranchised after September 4, 1951. When an individual was no longer considered an Indian, the individual lost all associated benefits that resulted from being on a band list (pre-1951) or a status Indian (post-1951). It also meant all their descendants were not considered Indian and could not obtain any related benefits. This impact is still felt by current generations.

Prior to Bill C-31, there were three ways Indian men, women and children could be removed from a band list or lose Indian status through enfranchisement.

1. From 1869 to 1985, an Indian woman marrying a non-Indian man would be enfranchised.
2. Previous Indian Acts (1876-1920) contained enfranchisement provisions where individuals were removed from their band lists if they:
  - a. attained a university degree and joined the medical or legal profession,
  - b. attained any university degree and met the “fit” or “civilized” enfranchisement requirements,
  - c. became a priest or minister, or
3. From 1876 to 1985, individuals could submit an application to be enfranchised by showing they were “fit” for enfranchisement and entering Canadian society.

# Enfranchisement continued

- When a woman was enfranchised due to marriage to a non-Indian man, any children she already had, or would have, were considered non-Indians. When a man enfranchised, his wife and children would also be enfranchised.
- Enfranchisement as described in Items 1 and 2 above was considered involuntary, meaning that enfranchisement occurred without the consent of the person(s) concerned. Item 3 above was considered voluntary. This was done by application where Indian men or women had to prove they were “civilized” and able to take care of themselves without being dependent upon the government. This process included submitting a report and getting approval from their band. If all the requirements were met, they would receive a letter (called Letters Patent), that declared them enfranchised and no longer Indians.
- From 1869 to 1951, an enfranchised individual could receive land after proving within 5 years he could be independent. From 1951 to 1985 land was still available by making compensation to the band.
- From 1876 to 1951 they would receive a percentage (or per capita) of what their band would receive from the government. From 1951 to 1985 they would receive an amount equal to 20 years of treaty payments. This is financial compensation.



# Enfranchisement continued

- ▶ Enfranchisement had an impact on all subsequent generations of people. Regardless of whether an individual was voluntarily, or involuntarily enfranchised, subsequent generations could not appear on band lists or on the Indian register as a status Indian.
- ▶ Bill C-31 removed both voluntary and involuntary enfranchisement provisions. Individuals who enfranchised, along with their children, could be reinstated or became eligible for registration
- ▶ The 2017 amendments (Bill S-3) corrected sex-based inequities for women, and their descendants, when the woman involuntarily lost entitlement to registration due to marriage to a non-Indian man. Bill S-3 brings entitlement to descendants of women who married a non-Indian man in line with descendants of individuals who were never enfranchised. However, the descendants of individuals who were enfranchised for other reasons (both voluntary and involuntary) remain at a disadvantage in comparison. These remaining inequities within the Indian Act continue to have an impact.

# Adoption in Indian Registration

- ▶ According to the Government of Canada, there are three recognized types of adoption in relation to registration under the Indian Act.
- ▶ **Legal Adoption:** An adoption under provincial/territorial adoption laws, including private adoptions through an accredited third party (may include international adoptions if the agency is recognized by a Canadian authority).
- ▶ **Custom Adoption:** A clear parent-child relationship is established with all the related legal, financial and other benefits and burdens of an adoption, but that is not processed according to provincial/territorial adoption laws.
- ▶ **De Facto Adoption:** Where a child has been in the care of the adoptive parent(s) but the legal adoption happens after the person is an adult.
- ▶ Under 1985 amendments to the Indian Act, the definition of a child includes a legally adopted child and a child adopted in accordance with Indian custom.
- ▶ Adoptees must have been a minor at the time when they were taken under care. Adoptees may be eligible for entitlement to registration under the Indian Act, either through their birth parent(s) or through their adoptive parent(s). At least one parent, either adoptive or birth, must be registered or entitled to be registered under section 6(1) of the Indian Act for the adoptee to be entitled to be registered.



# Cross Border Issues

- ▶ Under section 19 of the Immigration and Refugee Protection Act, individuals able to satisfy a CBSA officer that they are registered Indians may (re-)enter and remain in Canada. The Secure Certificate of Indian Status (SCIS) and the Certificate of Indian Status (CIS) are documents that the CBSA accepts to establish one's right of entry on the basis of registered Indian status.
- ▶ For its part, the United States (US) explicitly recognizes a right of entry to the US – for the purposes of employment and residence – to “American Indians born in Canada.” This right is conditional however, upon an individual being able to demonstrate that, under the terms of the US law, this individual must “possess at least 50 per centum of blood of the American Indian race”.
- ▶ Key challenges include registration, membership, identity and identity documents also, mobility rights, the Jay Treaty, immigration laws and experience crossing the border.
- ▶ From the 2017 engagement process with First Nation communities the Government will re-engage with First Nations to discuss next steps in addressing these issues.



# De-registration, Gender Identity and Same-Sex Parents

- ▶ **De-registration:** If implemented, would involve an individual requesting to have only their name removed from the Indian register, but would maintain their entitlement to being registered without impacting subsequent generations.
- ▶ **Gender identity:** Since entitlement to registration is determined by genealogy/lineage, there is a legislative need to record birth-assigned sex in the Indian Register. Registration currently only refers to sex as identified on official proof of birth documents and does not account for gender identity, especially when it may differ from an individual's recorded sex designation as male or female. The sex indicated on the application forms for registration as a Status Indian or for the Secure Certificate of Indian Status (SCIS) must match the sex indicated on an applicant's proof of birth document.
- ▶ **Same-Sex parents:** At least one parent, either adoptive or biological, must be registered or entitled to be registered under section 6(1) under the Indian Act in order for the child to be entitled to be registered. Applications received from children of same-sex parents are assessed on a case-by case basis.



# Band Membership



- ▶ The 1985 amendments recognized the rights of bands to determine their own membership. As a result persons may possess Indian status, but not be members of a band. Section 10 enables First Nations to enact their own membership or citizenship codes, according to procedures set out in the Indian Act. Once the band controls its own membership list, Indigenous Services Canada (ISC) has no power to make additions or deletions, and no further responsibilities regarding the band list.
- ▶ However, ISC still maintains control over who is registered as an Indian. The purpose of Indian registration is to enable the government to clearly identify who is entitled to federal programs and funding.
- ▶ The Anishinabek Nation and the Government of Canada have been negotiating the Anishinabek Nation Governance Agreement since 1995. These negotiations are now nearing completion. A ratification vote by the citizens of the Anishinabek Nation member First Nations is expected to take place next summer.



# Anishinabek Nation Governance Agreement Negotiations

- Been in negotiations since 1995.
- Will allow the First Nations, the legal power and authority to enact their own laws and how they like to elect their Chief and Council.
- Will determine for themselves who their citizens will be.
- Will determine how they will manage and operate their First Nation Government.
- Will determine how they will protect and promote the Anishinaabe language and culture.
- Once negotiations are completed, there would be required a ratification vote by the affiliated First Nations.



# Government Transition and how it relates to its role in determining Indian status and band membership

- ▶ On August 28, 2017, the Government of Canada announced the creation of two departments:
- ▶ Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC)  
Indigenous Services Canada (ISC)
- ▶ These departments replace the Department of Indigenous and Northern Affairs Canada. This change was described as a **step towards ending the Indian Act** with mandates intended to accelerate self-government and self-determination agreements based on new policies, laws and operational practices. Canada hopes to tear down the outdated and paternalistic structure that supported the Indian Act in favour of a true nation-to nation relationship based on recognition and respect for the right to self-determination. This will require complete reform of many policies. It will involve discussions on many issues including urban groups, treaties, and land agreements in addition to defining who is and is not an Indian.



# Consultation Questions



# The Removal of the 1951 cut-off from the Indian Act

How will the removal of the 1951 cut-off impact our community?

How can the impacts of the removal of the 1951 cut-off be addressed for our community?

How can the Government of Canada assist in addressing the impacts of the removal of the 1951 cut-off?

How soon would you want to see the removal of the 1951 cut-off implemented?



# Remaining inequities related to Indian registration and band membership under the *Indian Act*

- Adoption
- Second-generation cut-off
- Unknown/unstated paternity
- Enfranchisement
- Voluntary de-registration
- Categories in Indian registration
- Cross-border issues
- Children of same sex parents
- Non-cisgender identities as it relates to Indian Registration and band membership



# Inequities:

Which of these issues do you think is of concern for our community?

Is there an inequity related to this issue?

Why do you think that there is an inequity for this issue?

How can this inequity be addressed or fixed?

Are there other inequities that need to be discussed? What are they?

What would you recommend for the next steps going forward?



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

Should First Nations take on the exclusive responsibility for determining their membership/citizenship? Why or why not?

What are the responsibilities, issues and concerns that are part of defining membership/citizenship in our community?

How do you think that our community should take on the responsibility for defining membership and citizenship (if this is not already happening)?

When could First Nation communities begin to take on this responsibility?

What would you recommend as the next steps going forward?



# Questions to ISC – issues identified in our co-design

Why is there an expiry date on the SCIS/CIS cards?

Why is de-facto adoption considered in Ontario when it is not considered in any other provinces?

Are you working on a new cross-border card for registered status Indians in Canada to cross/work in the US?

With all of the new registrations will core dollars be enhanced?  
Examples increases for post-secondary education, health, land etc.



*Chi Miigwetch*

**For more information please contact:**

**Marjorie Robert**  
**Membership Clerk, Red Rock Indian Band**  
**Phone: 807-887-2510**  
**Email: [marjorie.robert@rrib.ca](mailto:marjorie.robert@rrib.ca)**