



BILL S-3 – AMEND INDIAN ACT: DESCHENEUX VS CANADA

OVERVIEW

On December 12, 2017, S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada* received royal assent. This enactment will enable individuals to obtain Indian status who fall under the following:

- Individuals whose grandmother lost status due to marriage to an unregistered man, when that marriage occurred before April 17, 1985.
- Women who were born out of wedlock of registered fathers between September 4, 1951 and April 17, 1985.
- Minor children, who were born of registered parents or of a registered

mother, but lost entitlement to Indian Status because their mother married an unregistered person after their birth, and between September 4, 1951 and April 17, 1985.

- Children of the above individuals.

The amended legislation also requires the Minister of Indigenous Services Canada (ISC) to initiate consultations on issues related to registration and band membership and to conduct reviews on sex-based inequities under the Indian Act, and to report to Parliament on those activities. Consultations are set to begin in early 2018.

UPDATE

Crown-Indigenous Relations and Northern Affairs (CIRNA) estimates that between 28,000 and 35,000 individuals will initially become eligible for Indian status as a result of Bill S-3.

Descendants of the individuals who gained Indian status under Bill S-3 will also be eligible to register under the amended rules set out in the Indian Act. Thus, the number of additional individuals who will gain Indian status as a result of Bill S-3 will increase in the decades to come. Children of those registered under Bill S-3 will gain status under 6(1) if their other

parent also had status. Otherwise, they will gain status under 6(2).

The federal government has committed to a comprehensive phase of consultations with Indigenous peoples and organizations before implementing further amendments to correct discrimination in the registration provisions of the Indian Act.

Under Section 11 of Bill S-3, the Minister must initiate consultations with First Nations and other interested parties in order to address other discriminatory issues raised by the

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provisions of the *Indian Act* related to registration and Band membership, including consultations on:

- a) issues relating to adoption,
- b) the 1951 cut-off date for entitlement to registration,
- c) the second-generation cut-off rule,
- d) unknown or unstated paternity,
- e) enfranchisement,
- f) the continued federal government role in determining Indian status and Band membership, and

- g) First Nations' authorities to determine band membership.

The federal government is in the process of developing its consultation framework on the broader issues of discrimination relating to Indian status registration. Upon completion of the design phase, comprehensive consultations on the broader issues relating to Indian registration, Band membership and First Nations citizenship is expected to commence in the spring of 2018.

NEXT STEPS

- The Assembly of First Nations (AFN) will continue to provide updates on developments and continue to support First Nations in exercising their inherent jurisdiction over all aspects of First Nations identity.
- The AFN will continue monitoring developments on Bill S-3 and will relay information to First Nations governments once Canada begins consultations of further reforms to Indian status.
- The AFN has developed a template citizenship law for interested First Nations.
- The AFN will continue to advocate for the removal of federal policy barriers for First Nations women and girls.

