

**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 Canada (CIRC) 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.

The Collaborative Process will involve at least two, possibly three, phases on further legislative and/or policy reforms:

- 1) The removal of the 1951 cut-off from the *Indian Act* – Pursuant to Clause 15(2) of Bill S-3, Parliament delayed the enforcement of amendments that grant Indian Status to all descendants of Indigenous women who lost Indian status upon marrying a non-Indian man between 1869 and 1985 (the

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1951 “cut off”). Consultations will focus solely on when this provision will come into force.

- 2) Remaining inequities related to registration and membership under the *Indian Act* – consultations will focus on all remaining non-sex based discrimination in the Indian Registry. These topics include: adoption; the second-generation cut-off; enfranchisement; etc.
- 3) Devolution of the responsibility for determining membership/citizenship of First Nations – Finally, Canada intends to consult on options for First Nations to have exclusive responsibility for the determination of the identity of their members or citizens at a later date. These consultations will take place once 1 and 2 above have been completed.

The consultation process has a number of separate facets:

- a) Call for proposals - First Nations and Indigenous groups were able to apply for funding to organize their own consultation activities. A total of 179 funding proposals have been approved for a total of \$3.55 million. First Nations started consultation activities in October 2018.
- b) Information gathering – From September 2018 to March 2019, CIRC will hold a number of engagement sessions across Canada:

- Yellowknife, NWT – January 8-9, 2019
- Toronto, ON – January 21-22, 2019
- Ottawa, ON – January 24-25, 2019
- Quebec City, QC – January 30-31, 2019
- Winnipeg, MB – February 4-5, 2019
- Halifax, NS – February 13-14, 2019
- Edmonton, AB – February 25-26, 2019
- Calgary, AB – February 28-March 1st, 2019
- Nanaimo, BC – March 7-8, 2019
- Vancouver, BC – March 11-12, 2019
- Prince George, BC – March 14-15, 2019
- Thunder Bay, ON – March 25-26, 2019

To support these activities, a consultation guide will be made available in selected Indigenous languages and discussion papers by third-party experts and academics will be prepared and offered to meet participants.

- c) CIRC issued a call for academic and scholarly papers on December 10, 2018, with the objective to gather papers from First Nations and Indigenous academics and scholars. The intent is to award 8 papers from each stream for a total of 24 papers. The deadline for proposals was January 4, 2019.
- d) At the conclusion of the consultation process in March 2019, an analysis and report outlining recommendations to Parliament will be tabled in June 2019.

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.