



What is the history of this issue and how does it impact First Nations?

First Nations inherently hold the authority to define who does and does not “belong” to their Nations, pursuant to our own laws and legal systems stretching back to time immemorial. Starting in the 1850’s, colonial governments, in what is now called Canada, began to create and forcibly impose their own systems of regulation and law that sought to define which ‘Indian’ belonged to which First Nation. These colonial practices manifested legally with the 1869 *Gradual Enfranchisement Act* and with the implementation of the 1876 *Indian Act* and have created a system of defining who is a ‘Status Indian’ and who is a citizen of a given Nation ever since.

Gender-based discrimination remains inherent in these imposed legal structures and systems. Decades of First Nations advocacy, led by First Nations women, has culminated in a series of successful court cases addressing embedded and remaining gender-based discrimination, most recently the [Mclvor](#) case of 2009 and the [Descheneaux](#) case of 2015. Canada has been forced to create amendments to the *Indian Act* as a result, forcing the creation of Bill C-3, *Gender Equity in Indian Registration Act* in 2011 and, after a successful challenge in *Descheneaux*, 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)* in 2017.

Bill S-3 is rolling out in two phases with an overall intent to remove all gender-based discrimination in the *Indian Act* as it relates to Indian registration. In 2017, the federal government established a collaborative process to address additional amendments to the *Indian Act*. In 2019, Bill S-3 obligated the Minister of Indigenous Services Canada to follow up on key issues relating to adoption, unstated paternity, enfranchisement, and the federal government’s role in determining Indian Status and Band membership. This included the full consideration of the *Charter* and the *Canadian Human Rights Act*. In response to Ministerial mandate, the Minister tabled his [report](#) in late December of 2020.

As noted by the government itself, it is estimated that the full implementation of Bill S-3 could result in 270,000 to 450,000 newly registered individuals in total. To date, more than 10,000 individuals have been newly registered. In addition, 57,000 individuals who were already registered and were unable to pass on their entitlement to their descendants are now able to do so due to category amendments made between 2019 and 2020. The increase in the number of registered Indians has significant implications not only for First Nations governments, but all governments. The Chiefs-in-Assembly have identified numerous issues associated with this issue, including critical resources to support these individuals, particularly regarding critical

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infrastructure and a host of individuals and some groups claiming to be Indian, Aboriginal or Indigenous falsely.

How has the AFN's recent advocacy affected this area?

First Nations advocacy, led by First Nations women, forced Canada to confront the gender-based discrimination inherent in the Indian Act regarding "Indian registration" leading most recently to Bill S-3. As a national advocacy organization the AFN is not a rights-holder and instead focuses its advocacy on priorities mandated by the Chiefs-in-Assembly through the process of resolutions. Resolutions regarding First Nations citizenship and registration have mandated the AFN's work in this area, such as mandates from resolutions 36/2015, *Indian Status Application Process*; 53/2015, *The Right of First Nations to Determine their individual and Collective identities*; 59/2016, *First Nations Citizenship*; 71/2016, *Ducheneaux Decision: First Nation jurisdiction on Citizenship and Identity*; and 30/2017, *Inherent Authority to Define Citizenship*. Therefore, the AFN is focused on providing outward facing discussion papers to bring awareness to this long-standing issue and generational impacts.

Where do we hope to go in the future?

The Government of Canada claims that sex-based discrimination in Indian registration has been eliminated, but now it must also engage with residual impacts from the preceding decades of those discriminatory policies as well as other non-gender-based inequalities within the *Indian Act*. Registration and definition of "Indians" by the Government of Canada is inherently problematic; the implications of registering another 270,000-450,000 "Indians" are systemic and complex.

First Nations must lead the process of 'standing up' our own laws and legal systems to define who belongs to our Nations and how that belonging interfaces with colonial governments and their obligations to respect our inherent and Treaty rights, our rights affirmed in Section 35 of the *Constitution*, as well as our rights affirmed the *UN Declaration on the Rights of Indigenous Peoples*.

The Rights Sector continues to focus upon existing mandates to engage First Nations laws, governance, and jurisdiction as a process for First Nations to lead the way on identifying who is First Nations. Our current mandated work will continue to provide information to update Chiefs-in-Assembly on active processes undertaken by government and may lead to future resolutions as well as undertaking ongoing communication, via AFN Regional Offices, on the intersection

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between Bill S-3 and membership codes/capacity to change membership codes, and gathering of information on First Nations community experience with impacts of Bill S-3. Future and current support for existing and new materials and outward facing products prepared by AFN will further support First Nations in understanding and charting their own paths, as the rights-holders, in the intersection between Bill S-3, band membership/membership codes, and capacity to change membership codes we inherently hold as First Nations.

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