



THE 1951 CUT-OFF FOR REGISTRATION

LEGAL AFFAIRS
AND JUSTICE





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The 1951 Cut-off Date For Registration

What is the “1951 cut-off”?

- The 1951 cut-off date is the result of one of the four requirements that must be met in order for someone to be entitled to registration under section 6(1)(c.1) of the *Indian Act*. This section was added to the *Indian Act* as a result of Bill C-3 (2011 amendments). It was done in response to the *Mclvor* decision under the *Gender Equity in Indian Registration Act*.
- Section 6(1)(c.1) states that, if an individual wants to be registered under 6(1)(c.1), that individual must have had a child, or adopted a child, on or after September 4, 1951. In addition, that individual must have a mother who lost entitlement because of her marriage to a non-Indian man. When an individual is entitled under section 6(1)(c.1), all their children would be entitled to registration (even if only one child was born or adopted after September 4, 1951). These children’s entitlement to registration could be under section 6(1) or under section 6(2) depending of the circumstances. If there is no child born or adopted after September 4, 1951, then the individual is not entitled. In other words, the birth or adoption date of a grandchild (or of a sibling of the grandchild) of a woman, who lost entitlement to registration due to a marriage to a non-Indian man, must happen after September 4, 1951. In that case, the grandchild will be entitled to registration. This could mean that two siblings born to the same parents (where the mother lost status due to marriage to a non-Indian man before their birth) could have different abilities to pass their entitlement to their descendants.
- This cut-off is important for cousins who share a grandmother, who lost entitlement due to a marriage to a non-Indian man. For example, it changes their ability to pass on entitlement to their descendants. Some of the cousins can pass on entitlement, while others cannot.
- Removing the 1951 cut-off extends entitlement to grandchildren born or adopted before September 4, 1951. It allows for entitlement to be passed down to their descendants. As a result, the cousins would have the same ability to pass on entitlement back to 1869.

Removing the 1951 cut-off

Canadian courts ruled that the 1951 cut-off did not have sex-based discrimination. Yet, the Government decided to address this issue under Bill S-3. This is a complex matter. There is a need to hold more consultations with First Nations to understand the impacts of removing this cut-off. Moreover, such consultations are required to identify practical solutions and the best ways to put them into action. As such, in line with the Government’s commitments for reconciliation and renewal of the Nation-to-Nation relationship, the removal of the 1951 cut-off is put in legislation under Clauses 2.1, 3.1, 3.2 and 10.1 of Bill S-3. Yet, it will come into force after consultations on a later date, which will be set by Order in Council.

- The amendments, which will 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 that woman marrying a non-Indian man. That situation was going back to 1869.
- These amendments will result in individuals, who were previously entitled under section 6(1)(c), to be re-categorized under section 6(1)(a.1). It will apply to the women who married out. Section 6(1)(a.3) will apply to their direct descendants if they were born before April 17, 1985 (or of a marriage before that date).
- Section 6(1)(c) and all its subcategories will no longer appear in the *Indian Act* after the amendments as outlined in Bill S-3.
- For anyone who is not already registered at the time when the amendments are made, their eligibility will be established 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.



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

When the 1951 cut-off is removed, a large number of people, who are currently registered under section 6(2), and who had children before September 4, 1951, will become eligible under section 6(1)(a.3). As a result, they will have 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 improved 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 suitable for registration and band membership. It may also result in pressures for First Nation communities with respect of resources, programs and services, and ethno-cultural integration.

As part of the Collaborative Process, the effects of removing the 1951 cut-off, as well as how it should be carried out, will be discussed. After the Collaborative Process, a plan will be prepared on how to enforce it. After that, the process will begin to bring the 1951 cut-off into force.

Projected Demographic Impacts

There is significant uncertainty around finding out how many people will be affected by the removal of the 1951 cut-off amendments. Right now, there is no information that can directly identify the number of individuals that could be affected.

In the 2016 Census, 750,000 to 1.3 million non-registered individuals self-reported to have North American Indigenous ancestry.

This reflects who may be entitled to, and who may be more likely to apply for Indian registration.

This does not necessarily reflect how many individuals would become registered. In addition, it likely overestimates the number of such individuals, as well.



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The following chart demonstrates how the 1951 cut-off works:

Hypothetical Situation to demonstrate the differences between the various amendments to the <i>Indian Act</i> when an Indian woman lost entitlement due to marriage to a non-Indian man.							
Annie and Sarah are siblings born to the same biological parents. Their mother Mary lost status before their births when she married a non-Indian man. After the Bill C-31 amendments, their mother got her status back under paragraphs 6(1)(c).							
			Birthdate	C-31 (1985)	C-3(2011)	S-3(2017)	S-3 (delayed) (removal of the 1951 cut-off)
Mary			Feb.15,1908	6(1)(c)	6(1)(c)	6(1)(c)	6(1)(a.1)
Child	Annie			6(2)	6(2)	6(2)	6(1)(a.3)
	Children	Sam	May 2, 1947	Denied	Denied	Denied	6(1)(a.3)
		Sally	Mar.17,1949	Denied	Denied	Denied	6(1)(a.3)
		Steve	Dec.1,1950	Denied	Denied	Denied	6(1)(a.3)
Child	Sarah			6(2)	6(1)(c.1)	6(1)(c.1)	6(1)(a.3)
	Children	Jane	Jan.11,1949	Denied	6(2)	6(1)(c.2)	6(1)(a.3)
	John	Nov.5,1950	Denied	6(2)	6(1)(c.2)	6(1)(a.3)	
	James	Feb.3,1953	Denied	6(2)	6(1)(c.2)	6(1)(a.3)	
					See Note 1	See Note 2	See Note 3

Note 1: Because James was born after September 4, 1951, he and all his siblings became entitled to registration as their mother now met the criteria to be amended from section 6(2) to 6(1)(c.1). James' other parent is not entitled to registration.

Note 2: As James was born after September 4, 1951, he and his siblings meet all the criteria required to be amended from 6(2) to 6(1)(c.2) as a result of Bill S-3. Annie's children however are not entitled as none of them were born on or after September 4, 1951.

Note 3: Once the changes to remove the 1951 cut-off come into effect, section 6(1)(a.1), and (a.3) will extend entitlement to descendants of children born prior to 1951.