



WHAT IS BILL C-31 AND BILL C-3?

LEGAL AFFAIRS
AND JUSTICE





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Bill C-31

- In 1985, Bill C-31 was used to amend the *Indian Act* to conform with the equality rights guaranteed by s.15 of the *Canadian Charter of Rights and Freedoms (Charter)*. When introduced, the amendments were thought to be neutral with respect to a person's gender or marital status.
- The amendments allowed women who previously lost their Indian Status to regain their status, as well as their children's status.
- In addition, after Bill C-31 was adopted, a person's marriage could no longer affect his or her receiving or losing Indian status.

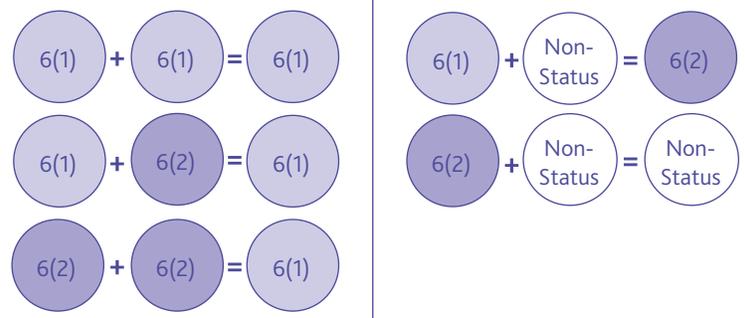
Bill C-31 brought about several changes, such as:

- Indian women, who married a non-Indian man, no longer lost their Indian status;
- Indian women, who lost their Indian status before because of their marriage to non-Indian men, were allowed to apply to have their Indian status returned to them. Their children were also given the same right;
- non-Indian women could no longer get Indian status by marrying Indian men;
- non-Indian women, who got their Indian status through marriage before 1985, did not lose their status;
- the process of enfranchisement was completely removed. In addition, the Indian Registrar could no longer remove those people from the Indian Register who had the right to registration; and
- individuals, who were voluntarily or involuntarily enfranchised under the *Indian Act* before, were allowed to apply for the return of their Indian status.

The federal government continued to have control over Indian registration. Also, new categories of registered Indians were created in the *Indian Act* through sections 6(1) and 6(2).

Bill C-31 Issues

- While Bill C-31 was meant to eliminate sex based discrimination, the amendments created new forms of discrimination.
- For example, the second-generation "cut-off" was introduced. It meant that after two generations of parenting (one generation after the other) with a person who had a right to Indian registration, and another person who did not have that right (that person was a non-Indian), then the third generation would not be entitled to register for Indian status.



- The amendments to Bill C-31 tried to create equality between men and women when it came to transferring status to children. They did it by creating a standard that was not dependent on the gender of the people who were involved in it. In addition, these amendments considered financial concerns voiced by First Nations. Moreover, it considered protecting their nationhood and integrity of traditions. An attempt to balance individual and collective rights was the reason why the second-generation cut-off was introduced.

Bill C-31 – Band Membership

- Bill C-31 introduced new authorities to regulate band membership. It was done under sections 10 and 11 of the *Indian Act*.
- Section 10 let Bands create and control their membership lists if they meet certain conditions.



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- Under Section 11, the Indian Registrar maintains the band lists for those bands that do not control their membership lists under Section 10.
- The introduction of two membership systems has created a new relationship between Indian registration and band membership. There are situations which can be present when an individual doesn't have Indian status, but that individual is on Section 10 band membership list and is recognized as a Band member. The opposite situations can occur when an individual has a federal Indian status but does not appear on a band's Section 10 list.

Funding

Bill C-31 allowed more than 174,500 people to become eligible for registration. The federal government did not provide enough funds to cover this great number of people. As a result, Band Councils faced funding issues and could not provide adequate services to the new Band members who received Indian Status. For example, not all new registrants could not get housing on reserve or receive post-secondary funding.

Bill C-31

Soon after Bill C-31 was passed, Women started to challenge the registration provisions of the *Indian Act* under the *Canadian Charter of Rights and Freedoms*. They argued that sex-based discrimination continued to exist. They also thought that the certain registration rules in the Indian Act were still unfair. The first challenge was initiated by Sharron McIvor in 1987. Sharon McIvor lost her Indian Status when she married a non-Indian man. After the 1985 amendments to the Indian Act were introduced, her right to Indian registration was returned to her using section 6(1)(c). Her son, Jacob Grismer, had only one Indian parent, and he had the right to have Indian registration under section 6(2). Yet, he couldn't transfer his Indian status to his children because he parented with a non-Indian woman. On the other hand, Jacob's cousins in the male line, who were born to a man who married a non-Indian woman before 1985, could pass their Indian status on to their children. The status of the other parent did not matter there.

The *McIvor* case was decided by the British Columbia Court of Appeal (BCCA) in 2009. In its decision, the BCCA widened the definition of who an "Indian" was. It was done through the *Gender Equity in Indian Registration Act* (Bill C-3). Bill C-3 resulted in

the following changes: individuals registered under section 6(2), such as Mr. Jacob Grismer, were entitled to register under section 6(1)(c.1) provided they met all of the following conditions.

- Have a mother who had lost her right to registration because she married a non-Indian man before April 17, 1985;
- have a father who does not have a right to be registered, or, if he is no longer alive, did not at the time of death have the right to Indian registration;
- were born after the date of his/her mother's marriage that led to that mother losing her right to Indian status, and prior to April 17, 1985 (unless his/her parents were married before that date); and
- were a child on or after September 4, 1951 of a person who did not have the right to Indian registration on the day when that child was born or adopted.

Since amendments changed registration rules for these people under section 6(1)(c.1), their children were then allowed to register under section 6(2) of the *Indian Act*. For that, they have to meet certain requirements. For example, they need to have:

- a grandmother who lost her entitlement because she married a non-Indian man;
- a parent entitled to be registered under section 6(2); and
- a birth date or they had a sibling who was born on or after September 4, 1951.

As a result, in the period from 2011 to 2017, Bill C-3 allowed more than 37,000 people to get registered as a Status Indian.

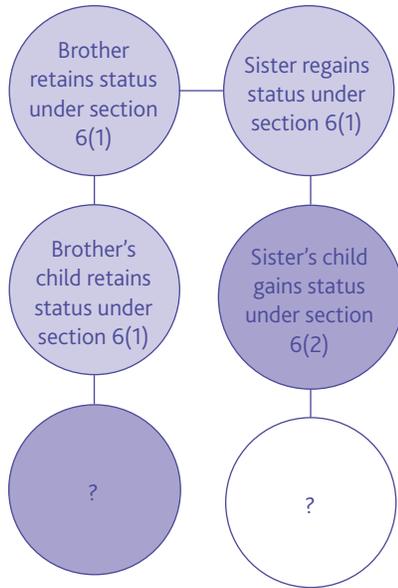
The charts below show the difference in the rights of siblings to Indian status – siblings are represented by a brother and a sister. These differences took place when the sister got her right to Indian registration back after she married a non-Indian man before April 17, 1985. This was under Bill C-31. Then, the chart shows the same situation after Bill C-3 was passed – the *Gender Equity in Indian Registration Act*. Now, section 6(1) allows children of both brother and sister to have registration. Their grandchildren are also entitled to registration under section 6(2).



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Bill C-31 – Amendments (1985)



Bill C-3 Amendments (2011)

