

**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-

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Indian man between 1869 and 1985 (the 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 beginning September 2018. The deadline to submit proposals was August 17, 2018. A total of 164 proposals were submitted as follows: 131 from First Nations; 15 from political and territorial organizations (PTOs); and 18 from Tribal

Councils. A second call for proposals was announced on August 27, 2018. The deadline for First Nations to submit proposals for the second round is October 5, 2018.

- b) Information sharing – from June to September 2018, CIRC will provide informational materials to First Nations on the Indian Act registration provisions.
- c) Information gathering – From September 2018 to March 2019, CIRC will hold a number of engagement sessions across Canada:
 - Community Sessions - proposal-based and government-organized.
 - Regional Events - up to 15 events will be held across Canada.
 - Online Consultation – conducted through an online survey.
 - Expert panel(s).

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 participants.

- 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.

UPDATE

- 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.