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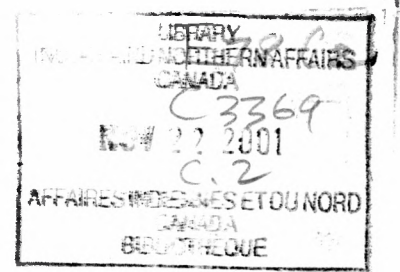
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**IDENTIFICATION AND REGISTRATION  
OF INDIAN AND INUIT PEOPLE**



Canada



## IDENTIFICATION AND REGISTRATION OF INDIAN AND INUIT PEOPLE

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# **EXECUTIVE SUMMARY**

## **INDIANS**

### **1. INDIAN LEGISLATION PRIOR TO 1985**

At first very broad, the definition of the term "Indian" has become narrower over time. The definition enacted in 1850 included any person deemed to be Aboriginal by birth or blood and reputed to belong to a particular band of Indians, their spouses, and persons adopted by Indians. In 1851 non-Indian men married to Indian women were excluded. In 1857 "enfranchisement" permitted Indians to give up Indian status voluntarily. Beginning in 1869, an Indian woman who married a non-Indian was not considered an Indian under the legislation.

Under the 1876 *Indian Act*, an Indian was defined as any male person of Indian blood who was reputed to belong to a particular band, any child of such a person and any woman who was or had been lawfully married to such a person.

In 1951 significant amendments to the *Indian Act* established the Indian Register as a centralized record of all persons registered under the Act, and established the office of the Registrar. Records such as treaty and interest distribution paylists and census records helped to establish the Register in 1951 and are useful now in determining the eligibility of persons to be registered as Indians.

The *Indian Act*, 1951 also codified more closely the registration criteria that had been previously applied. One amendment provided that a person, whose mother and paternal grandmother were not entitled to be registered as Indians before their marriage, could only be registered from birth until the age of 21 as an Indian.

### **2. THE INDIAN ACT SINCE 1985**

Amendments to the *Indian Act* passed on June 28, 1985, made major changes to the criteria for registration in accordance with three principles: eliminating discriminatory elements from the *Indian Act*; restoration of Indian status to persons who lost status under previous legislation; and the right of Indian bands to control their own membership.

### 3. IMPLICATIONS OF BILL C-31

- 3.1 **Impacts by Program:** Many Department of Indian Affairs and Northern Development (DIAND) programs provide funding for Indian persons for needs such as education, housing, social assistance and health benefits. These programs are affected by the increase in registered Indians resulting from Bill C-31. The number of individuals eligible for these programs has increased under this bill's provisions.
- 3.2 **Inequity Within the *Indian Act*:** Despite the changes made to the *Indian Act* in 1985, it is still seen to contain inequities. For example, children of women who lost status upon marriage to a non-Indian are less able to transmit status to the next generation than the children of Indian men who married non-Indian women. There is differential treatment of children born to unmarried non-Indian women and Indian men before April 17, 1985, depending on whether such children are male or female. Also, there can be situations where children of the same parents are registered under the different sections of the Act, depending upon the status of the parents at the time of their birth.

### 4. UNRESOLVED CLAIMS FOR REGISTRATION

#### 4.1 and

- 4.2 **The Federation of Newfoundland Indians (FNI) and the Grande Cache:** These groups represent two, as yet unresolved, claims for the registration as Indians of persons who are currently not considered to be Indians under the *Indian Act*.

#### 4.3 and

- 4.4 **New Band Requests and the Michel Band:** The *Indian Act* gives the Minister the authority to constitute new bands and amalgamate existing bands. There have been no recent requests for band amalgamation. Requests for the formation of new bands fall into three general categories: division of existing bands; recognition of a Native community as a band; and recognition of other groups as a band. The Michel Band, which enfranchised as a group in 1958, represents a special case of a claim for the creation of a new band.

### 5. COMMUNITY SELF-GOVERNMENT NEGOTIATIONS AND REGISTRATION

DIAND has always recognized that any community self-government arrangement must include a regime for the band to determine its membership in accordance with its own membership rules. Several bands have also been seeking the authority to determine Indian status for their members. In effect, they are asking that the concept of registration as an Indian be abolished and that all rights and benefits to Indian people flow through band membership.



## 6. CURRENT ISSUES

**6.1 Validity of Existing Indian Register Data:** Because the data on the Indian Register is used as the basis for funding or accessing benefits for registered Indians, it is essential that it be as accurate as possible. However, there are problems with the data, such as: the late reporting of births and the non-reporting of deaths, the unreliability of the on- and off-reserve residence indicators, and the lack of band membership information for bands that control their own membership.

### 6.2 and

**6.3 Programs Funding and Alternative Methods of Funding:**

The provision of programs such as Post-Secondary Student Support, Social Assistance and Non-Insured Health Benefits are examples of programs for which funding currently is linked to Indian Register data. Alternative methods of funding communities will be covered in other discussion papers to be submitted to the Royal Commission on Aboriginal Peoples.

**6.4 Impact of Registration and Membership Criteria on Population:** A report prepared for the Assembly of First Nations projected that the registered Indian population, as a result of the changes in eligibility criteria introduced in 1985, will peak at 800,000 in the year 2041 and fall back to its current level by the year 2091. During the same period, band membership could substantially rise or fall, depending on the principles used by bands in making membership rules.

## INUIT

### 1. HISTORY

**1.1 Early Identification System:** In the early 1900s, officials found it difficult to make positive identifications and keep accurate records of individual Inuit. At that time, Inuit had no surnames, and their names were either difficult for non-Inuit to pronounce and spell or were biblical names that were often duplicated.

In 1941, each Inuk was provided with a four-digit number stamped on a disc as identification. In 1945 the old discs were recalled and replacements bearing a district and regional designation and an individual four-digit identifier were issued.

**1.1.1 Project Surname:** The Government of the Northwest Territories discontinued the disc system in 1971 on completion of Project Surname, under which Inuit adopted family names capable of being written in Roman Script or English letters.

**1.1.2 Current Identification:** Inuit are now being identified through vital statistics records and uninsured benefits lists in the territories, provinces and nationally. All land claim agreements also spell out the criteria for eligibility and enrolment.

**1.2 The 1939 Supreme Court Decision:** In June 1939, the Supreme Court of Canada held that the term "Indians," as used in subsection 91 (24) of the *British North America Act, 1867*, included Eskimo (now called Inuit) inhabitants of the Province of Quebec.

## **2. FUNDING AND INUIT IDENTIFICATION**

Various programs may benefit Inuit, although the eligibility of recipients are often defined using criteria specific to each location. These programs include: Economic Development Agreements; transfer payments to the territorial governments; contribution agreements to northern Native associations; grants to individuals or organizations; contributions made to the provinces of Newfoundland and Quebec; and non-insured health benefits.

## **3. IDENTIFICATION OF INUIT BENEFICIARIES FOR LAND CLAIMS**

Native persons may be enrolled in only one Canadian land claim settlement for which they qualify. Somewhat differing definitions of identification are used in the various claims.

## **4. ISSUES**

While the 1939 Supreme Court decision clarified that the Inuit people are Indians within the meaning of subsection 91(24) of the *Constitution Act, 1867* (formerly known as the *British North America Act*), there is no clear definition of who qualifies as an Inuk. Various criteria are being asserted. In the case of community programs that benefit Inuit, this is probably of major concern, as individual beneficiaries are often not easily identified. In the case of services for individuals, the unevenness in defining eligibility of recipients could become a concern, particularly with programs such as non-insured health benefits where the value of the service is substantial.

## CONCLUSIONS

The definition of an Indian, for the purposes of the *Indian Act*, is precise and complex. Registration is a reactive rather than a proactive process. Despite Bill C-31 some inequalities in registration criteria remain.

Issues pertaining to Indian registration include unresolved requests for registration and band recognition from groups such as the Federation of Newfoundland Indians, Grande Cache and the former Michel Band. Also, several bands are attempting to gain authority to determine Indian status through the community self-government process.

Despite some limits to the validity of the data maintained in the Indian Register, much program funding is linked to that data.

In regard to the Inuit people of Canada, no formal national list has been established; nor is there one single definition of Inuit people. Self-identification and/or community recognition form the base for most definitions. Federal funding for Inuit is done primarily through transfer payments to territorial governments and contribution arrangements with the provinces.

## ***INTRODUCTION***

This paper was prepared by the Indian Registration and Band Lists Directorate, Department of Indian Affairs and Northern Development (DIAND), for submission to the Royal Commission on Aboriginal Peoples.

DIAND is responsible for the registration of Indians and the identification of Inuit, and for the provision of services to these two groups.

The goal of this submission to the Royal Commission is to provide factual information on the registration of Indians and the identification of Inuit by the federal government, with some emphasis on the Indian Register as the major method by which the government's role is carried out.

It is hoped that the information provided herein will serve as a thought-provoking illumination of the issues related to the registration and identification of Indians and Inuit, and as a basis for further reflection upon these issues.

# **INDIANS**

## **1. INDIAN LEGISLATION PRIOR TO 1985**

The first legislation in Canada that attempted to define an Indian was passed by the legislatures of Upper and Lower Canada in 1850. From that date until 1985, when the revised *Indian Act* was passed, there have been many significant revisions and minor amendments to the *Indian Act*. The basic progression was from a very general and inclusive definition to a more restrictive and very precise definition of an Indian as recognized by the federal government.

### **1.1 Evolution of the Definition of an Indian from 1850 to 1985**

The legislatures of Upper and Lower Canada passed parallel legislation in 1850 that, for the first time, attempted to define the term "Indian" legally. The definition was broad and included any person deemed to be Aboriginal by birth or blood and reputed to belong to a particular band or body of Indians, any person married to any such Indian, and persons adopted by Indians.

In Lower Canada the definition of an Indian was amended in 1851. It specifically included only non-Indian women who married Indians, and their descendants, thereby indirectly excluding from legal status as "Indians" non-Indian men married to Indian women and living among the Indians.

In 1857, under the *Act for the Gradual Civilization of the Indian Tribes in the Canadas*, an "enfranchisement" provision was included for the first time. It permitted Indian men to give up Indian status and band membership voluntarily. The wife and children of an enfranchised Indian were also to be enfranchised with him.

This provision contained property and monetary inducements to encourage Indians to leave tribal societies and seek enfranchisement. An enfranchised person could receive land and a sum of money equal to the principal of the annuities and other yearly revenues received by the band. The intent of this legislation was that enfranchised Indians would continue to reside in the Native community but would have the same rights as non-Indian citizens. They and their descendants were no longer eligible for registration under the *Indian Act*.

Between Confederation and the passage of the consolidated *Indian Act* in 1876, there were several other important policy initiatives and legislative measures dealing with Indians. The *Indian Act* of 1868 provided for the organization of the Department of the Secretary of State of Canada, and for the management of



Indian lands and property and of all Indian funds. There were no substantive changes to the definition of an Indian.

Further amendments in 1869 for the first time introduced measures related to the status of Indian women after marriage to non-Indians or to Indians of other bands. On marriage to an Indian man, an Indian woman became a member of her husband's band. On marriage to a non-Indian, an Indian woman was no longer a member of her band and was not considered an Indian within the meaning of the *Indian Act*. Children of such a marriage were not entitled to be registered as Indians.

The *Indian Act* of 1876 consolidated all laws respecting Indians. Under the 1876 *Indian Act*, an Indian was defined as any male person of Indian blood who was reputed to belong to a particular band, any child of such a person and any woman who was or had been lawfully married to such a person. This definition of an Indian placed emphasis on male lineage and significantly narrowed eligibility for Indian status. The 1876 *Indian Act* also conditionally excluded from Indian status individuals residing in a foreign country for a period of more than five years without the permission of the Superintendent-General. Furthermore, Indian women married to non-Indian men, "half-breeds" in Manitoba who had shared in the distribution of "half-breed lands" and enfranchised individuals were all barred from Indian status.

Revised statutes and amendments issued in 1880, 1884, 1886, 1906, 1917 and 1927 did not make significant changes to the registration criteria. However, a significant change in enfranchisement provisions was made in 1918.

Before 1918, government efforts to promote enfranchisement had been thwarted by bands who refused to approve enfranchisement of Indians who lived away from their communities. The 1918 amendments provided that persons living away from their communities could enfranchise without such approval, and the wife and minor children of such persons were automatically enfranchised with them. These amendments also provided for the enfranchisement of unmarried women and widows. Minor children of widows were automatically enfranchised with their mothers, while minor children of unmarried women were enfranchised only if their name appeared on the enfranchisement order.

In 1951 significant overall changes were made to the registration and membership criteria of the *Indian Act*. These amendments established the Indian Register as a centralized record of all persons registered under the *Indian Act*. The Office of the Registrar was established to maintain the Indian Register and to determine the eligibility of individuals for registration as Indians in accordance with the *Indian Act*.

Accountability to Indian people took the form of a right of appeal (called a "protest") to the Registrar if it was believed that a decision was in error. Protests could be lodged by band councils and by individual band members.

As for the registration criteria, the 1951 *Indian Act* mainly codified more closely the criteria that had been previously applied. The most notable exception was subparagraph 12(1)(a)(iv), which became known as the "double mother" clause. Under this provision, a person whose parents married on or prior to September 4, 1951, whose mother and paternal grandmother were not entitled to be registered as Indians before their marriages, could be registered at birth but became ineligible for Indian status and band membership on his or her 21st birthday. For an overview of key court cases affecting the definition of an Indian, see Annex A.

## **1.2 Early Record Keeping**

The quality of early records concerning Indians varies widely.

Prior to 1951, records were maintained by the Indian Agent, a local representative of the federal government, who maintained a list of persons who were members of a band. Events such as births and deaths would be recorded and names added to or deleted from band lists in accordance with the provisions of the *Indian Act*. In matters of the addition of persons whose parents were not previously on a band list, the Indian Agent would investigate and make recommendations to the head office. No records held in the local federal offices have survived.

However, in the areas covered by the numbered and Robinson Treaties, good records have been preserved. Good records have also been preserved for bands that regularly distributed their funds.

### **1.2.1 Treaty Pay Lists**

Treaty pay lists are records of yearly payments made under the numbered and Robinson Treaties to individuals. They generally list members of a particular band and give details about family size, births, marriages and deaths. In the areas covered by these treaties, the persons who were recognized as being eligible for treaty monies were normally the same persons who were eligible for registration under the *Indian Act*. Consequently, these records are very useful in establishing Indian ancestry of individuals seeking registration as Indians.

### 1.2.2 Interest Distribution Pay Lists

The distribution of revenues generated by band funds to band members was recorded in interest distribution pay lists. These lists, like the treaty pay lists, generally give details of family size, births, marriages and deaths.

### 1.2.3 Indian Census Records

In British Columbia, the federal government maintained census records of Indians, primarily during the 1920s and 1930s. Unlike the treaty pay lists and interest distribution pay lists, the census lists had no financial purpose. However, they function as pre-1951 band membership lists in the same manner as the pay lists.

### 1.2.4 Other Indian Records

The three types of lists cited above are the most comprehensive historic lists of Indian people. DIAND has other records that provide limited information for bands, such as DIAND files on elections, estates, commutation and scrip. Where no early records of individual Indians are available, the process of confirming eligibility for entry in the Indian Register relies on other means, such as documentation linking an individual to persons identified in the records as registered Indians. Occasionally, where no documentation exists, information on these links must be obtained from community elders.

## 1.3 Centralization of Records in 1951

The need to determine exactly who came under the federal government's responsibilities for Indians gave rise to amendment of the *Indian Act* in 1951. This established the Indian Register as a centralized record which listed every person who was registered as an Indian.

The same amendments established the Office of the Registrar to maintain the Indian Register in accordance with the registration criteria laid out in the *Indian Act*. The Indian Register was to be continuously updated to record vital events based on reports from departmental offices and, later, by those bands which assumed those reporting responsibilities.

### 1.3.1 Posting of Band Lists in 1951

In order to begin the Indian Register, initial listings of members of all bands were required. In the late 1940s, these lists had been compiled by the local Indian Agents. Following the proclamation of the revised *Indian Act* on September 4, 1951, the Indian Agents arranged for the posting of each

membership list in a conspicuous place, where band notices were ordinarily posted, to ensure that all persons eligible for band membership were included. Protests concerning the inclusion, deletion or omission of persons, made by band councils or by individuals, were reviewed by the Registrar and a decision was rendered.

#### **1.4 Overview of Key Court Cases and Decisions Affecting the Definition and Interpretation of the *Indian Act***

John Martin, James David Jock and Jeannette Corbière Laval appealed, to the courts, the Registrar's decision to remove their names from the Indian Register. Sharon Lovelace filed a claim with the United Nations Human Rights Committee. A brief discussion of each case and its impact on the interpretation of the *Indian Act* can be found in Annex A.

## **2. HISTORY 1985 TO PRESENT - BILL C-31**

### **2.1 Discrimination and the *Indian Act***

Important amendments were made to the *Indian Act* on June 28, 1985, when Parliament passed Bill C-31, an *Act to Amend the Indian Act*. These amendments made major changes to the eligibility criteria for registration as an Indian.

The 1985 amendments respect three fundamental principles:

#### **2.1.1 Eliminating Discriminatory Elements from the Registration Criteria of the *Indian Act*.**

Indian women no longer lose status upon marriage to non-Indians, and non-Indian women can no longer gain status through marriage to Indians. While some residual discriminatory elements remain, due to the acquisition of Indian status by non-Indian women who married Indian men under previous *Indian Act* legislation, the major objectives have been achieved by this provision.

#### **2.1.2 Restoration of Indian Status to Persons Who Had Lost Their Status Under the Previous Legislation.**

Both Indian women who had married non-Indians and lost their status under previous legislation and individuals who had voluntarily given up their Indian status in the past are now eligible for re-registration. Children of such persons are also eligible for registration as Indians.

The concept of enfranchisement, which permitted voluntary loss of status, was removed from the *Indian Act*.

### 2.1.3 Right of Indian Bands to Control Their Own Membership.

Indian bands now have the option to assume control of their membership.

## 2.2 Indian Status and Band Membership

Prior to the 1985 amendment of the *Indian Act*, entitlement to Indian status usually carried with it an automatic entitlement to band membership. However, the terms "band membership" and "Indian status" are not synonymous. While all members of a band are registered as Indians, all persons registered as Indians are not necessarily members of a band, since some persons were included in a separate list known as the General List.

The 1985 amendments to the *Indian Act* recognized the rights of Indian bands to determine their own membership. The same amendments stipulated that DIAND will continue to maintain band lists until a band assumes control of its membership. As a result, bands that have assumed control of their membership are responsible for maintaining their membership lists.

In cases where DIAND maintains a band list, individuals entitled to be registered in the Indian Register will also be entitled to have their names added to band lists. On the other hand, where a band has assumed control of its membership, the band will determine entitlement to band membership in accordance with its established membership rules.

## 2.3 Band Control of Membership

The 1985 *Indian Act* provides that the Minister of Indian Affairs and Northern Development must notify a band that it has control of its membership if the band can demonstrate that: the proposed membership rules protect the rights of those persons who had the right to be members of the band before the rules came into force; and if the Minister is satisfied that a majority of the band's electors have approved the rules.

After the Minister has given a band notice that it has control of its membership, the band is responsible for adding or deleting names from the band list and maintaining its own band list in accordance with its membership rules. Two hundred and thirty-six bands (40 percent of the total) have assumed control of their band membership.



## **2.4 Registration Since 1985**

By the end of June 1992, 160,592 individuals had applied for registration as Indians under the provisions of the *Indian Act* as it was amended in 1985. Of these applicants, 83,797 persons have regained their Indian status or have become registered for the first time.

In addition to such applications, the Indian Registration Program processes events such as births and deaths that affect the registered Indian population; 68,377 such events were recorded in 1991. Further details of the current registration program appear in Annex B.

## **3. IMPLICATIONS OF BILL C-31**

### **3.1 Impacts by Program**

#### **3.1.1 Post-Secondary Education**

DIAND makes available financial and instructional assistance to encourage and support the participation of eligible Aboriginal people in post-secondary courses of study. The program provides allowances for tuition (including registration fees), tutorials, initial professional certification and examination, books and supplies, and travel and living expenses. DIAND also provides funds to both regional and Indian post-secondary institutions for the design and delivery of post-secondary education programs.

Between 1985-86 and 1989-90, the number of Bill C-31 students increased from 446 (four percent of the total students using the program) to 3,562 (19 percent of the total). Expenditures for Bill C-31 students also rose from \$0.9 million to \$27.9 million over the same period.

#### **3.1.2 Housing**

Housing is the program reported to be most affected by Bill C-31. The potential ongoing demand for housing from Bill C-31 registrants is a major concern among bands.

Prior to the passage of Bill C-31, DIAND provided funding for about 2,400 new houses and 3,000 housing renovations annually. After 1985, additional funding was made available for Bill C-31 registrants. Funds for additional housing units are administered and delivered under DIAND's regular housing program.

DIAND provides capital subsidies to assist bands with the construction of new housing and the renovation of existing housing units through the On-Reserve Housing Program. DIAND also provides funding to bands in support of project management, planning, training and inspections.

Between 1986 and 1990, 13,374 funded housing units were constructed on reserves, of which 20 percent, or 2,698 units, were built with supplementary funds for Bill C-31. Total expenditures for on-reserve housing units rose from \$80 million in 1985-86 to \$138 million in 1989-90. In 1989-90, \$41 million in Bill C-31 supplements funded 1,353 new units, which represented 30 percent of the total on-reserve housing expenditures.

### 3.1.3 Social Development

DIAND provides support and assistance to individuals, families and communities in order to improve their quality of life and maximize the degree of independence, self-sufficiency and social stability of the community and its members. This support is provided through Social Development Programs. Bill C-31 expenditures on social development have increased appreciably from \$0.15 million in 1986-87 to \$27 million in 1989-90. This represents an increase from 0.1 percent to seven percent of total social development expenditures.

Some bands receive on-reserve social services through provincial agencies, with DIAND reimbursing provincial governments for associated operating and maintenance costs. Expenditures for social services programs in support of Bill C-31 registrants amounted to \$3.3 million, or 0.7 percent of the total \$450 million spent on social services for registered Indians, between 1986-87 and 1989-90.

### 3.1.4 Non-Insured Health Benefits

Registered Indians on reserve and off reserve are eligible for non-insured health benefits covering services not generally available to the public through provincial health plans or other government programs. These benefits include prescription drugs, eye care and dentistry. Persons newly registered under Bill C-31 are eligible for all non-insured health benefits from the date of their registration.

Under the Non-Insured Health Benefits Program, total expenditures made for Bill C-31 recipients have increased from \$2.5 million (two percent of a total of \$135 million) in the fiscal year 1985-86 to \$39 million (15 percent of a total of \$252 million) in 1989-90.

### 3.2 Inequity Within the *Indian Act*

Despite the changes made to the *Indian Act* in 1985, many people have identified inequities that still remain. The most common problems cited are discussed below.

#### 3.2.1 Application of Subsection 6(1) vs. 6(2) of the *Indian Act* (the "Second Generation Cut-Off Rule")

Indian women who had lost status as a result of their marriage to non-Indians are entitled to be restored to status in accordance with subsection 6(1) of the amended *Indian Act*. However, their children are entitled to registration only under subsection 6(2). There is no provision in the Act to register the children of persons entitled to registration under subsection 6(2) unless the other parent of such children is also entitled to registration. Therefore, the children of women who lost their status on marriage to a non-Indian man are less able to transmit status to the next generation than the children, registered under subsection 6(1), of Indian men who married non-Indian women.

There is also differential treatment under the *Indian Act* of children born to unmarried non-Indian women and Indian men, depending on whether the children are male or female. The male lineage element in the registration criteria in the previous legislation permits registration of all male children born before 1985 to Indian men and non-Indian women. However, females born to Indian men and non-Indian women between September 4, 1951, and April 17, 1985, only became eligible for registration as the children of one Indian parent after the 1985 amendments to the *Indian Act* came into effect.

Male or female children born since the passage of the 1985 amendments, whether born in or out of wedlock, are equally entitled to registration as Indians.

#### 3.2.2 Differing Categories of Registration in One Family Unit

The 1985 amendments to the *Indian Act* created several anomalies such as differing categories of registration within one family unit.

For example, consider a family that consisted of a husband, wife and one child at the time of enfranchisement, in which the wife was not an Indian prior to her marriage, and to which another child was born after the enfranchisement of the family. Under the 1985 *Indian Act*, the husband and the child who were enfranchised are eligible for re-registration under paragraph 6(1)(d) of the *Indian Act*. However, the woman is not eligible for re-registration as an Indian and, consequently, the child born after enfranchisement is eligible for

registration only under subsection 6(2) of the *Indian Act* because only one parent is an Indian.

This means that the first child can pass on Indian status to his or her children even if the other parent is not an Indian, while the second child will only be able to pass on Indian status to his or her children if their other parent is also eligible for registration as an Indian under the *Indian Act*.

#### **4. UNRESOLVED CLAIMS FOR REGISTRATION**

##### **4.1 Federation of Newfoundland Indians**

The Federation of Newfoundland Indians (FNI) began a lawsuit against Canada in 1989. This followed several years in which they first tried to be recognized as eligible for services under a Canada-Newfoundland funding arrangement, and then to acquire registered Indian status and the direct federal services that would result.

The principal issue is whether the approximately 2,000 persons of Micmac ancestry represented by the FNI are entitled to be registered as Indians under the *Indian Act*. Questions to be answered include: whether there are significant differences between its members and registered members of the Miawpukek Band at Conne River, Newfoundland, or between its members and members of Micmac Bands in other provinces; and whether the failure to treat these groups equally contravenes section 15 of the *Canadian Charter of Rights and Freedoms*.

##### **4.2 Grande Cache**

In 1911, persons of Indian ancestry residing within the current boundaries of Jasper National Park were relocated to facilitate the establishment of the park. They were relocated, within their traditional territory, to Grande Cache.

When resource development began to open up the territory during the 1960s, an agreement was reached between the Grande Cache people and the Government of Alberta which permitted them to hunt as treaty Indians and provided them with a modest land base. The land was held in common through co-operatives, and held neither reserve nor Métis settlement status.

In 1984, a member of the settlement was charged with hunting out of season. The community was told that they had to prove their entitlement to treaty rights. Since that time, they have been unsuccessfully attempting to establish their entitlement to registration under the *Indian Act* as a means of achieving treaty recognition. Of several dozen individual applications for registration

from the Grande Cache community, only eight or 10 have resulted in registrations of individuals who established links to members of recognized Indian bands. Most persons were denied registration because of the extensive instance of scrip-taking in their ancestry, i.e., their ancestors shared in the distribution of "half-breed" lands or money.

DIAND has funded the Indian Association of Alberta to undertake studies that would identify the ancestral connections of the Grande Cache people in the hopes of uncovering evidence that might support their claim to Indian status. No such results have been forthcoming.

As an alternative, the Grande Cache group has suggested that it is not necessary to prove entitlement to Indian status in order to establish their claim to be treaty Indians. The Department of Justice has confirmed that there is no direct link between recognition as an Indian for the purposes of the *Indian Act* and recognition as a treaty Indian. DIAND is reviewing the position that treaty rights can arise independent of Indian status.

#### **4.3 New Band Requests**

The *Indian Act* gives the Minister the authority and discretion to constitute new bands and amalgamate existing bands when requested.

In recent years, there have been no requests for band amalgamation. Requests for the formation of new bands generally fall into three categories.

##### **4.3.1 Division of Existing Bands**

Groups belonging to a band but living in scattered communities where it is difficult for the band to provide their share of services may seek recognition as new bands. The band and the groups wishing to separate from it must agree to share the existing resources of the band, but that share is delivered directly to the new band.

##### **4.3.2 Recognition of a Native Community as a Band**

Communities composed of Native people affiliated with several bands and who are residing on Crown lands away from a reserve may wish to be recognized as a new, separate band. These communities tend to be in remote, poorly serviced areas, and want to receive a reserve land base and all the services normally provided to Indian reserves. Requests of this nature are reviewed on a case-by-case basis, but DIAND is not normally prepared to consider such requests unless it is possible to share resources, such as land and financing, with the bands with whom the members of the group are currently affiliated.



The principal exception is in the case of claims settlements or treaty or legal obligations.

#### 4.3.3 Recognition of Other Groups as Bands

Groups of people who normally reside off reserve in urban settings may request recognition as bands because they cannot obtain services and recognition from their original bands.

However, DIAND's community services are intended mainly for distinct, organized Indian communities, with the expectation that people living off reserve will receive services from the province and the municipalities within which they reside. The cost of establishing Indian reserves in urban areas, and many other considerations such as the need to meet provincial and local government requirements, do not permit formation of new bands for these groups.

#### 4.4 Michel Band

A special case is found in the former Michel Band. In 1928 a number of Michel Band members enfranchised through individual applications. In 1958 all remaining members of the band enfranchised as a group.

Former members of the Michel Band have submitted a specific claim that alleges improprieties in the 1928 and 1958 enfranchisements. However, DIAND has concluded that, on the basis of the information submitted, the claim cannot be accepted for negotiation. There remain two possible methods of creating a new Michel Band.

One would be through a Ministerial order under section 17 of the *Indian Act*. Under the provisions of paragraph 17(1)(b), the Minister may constitute new bands and establish band lists from the Indian Register or from existing band lists if requested to do so by persons proposing to form the new bands. However, this would not be satisfactory because nearly 50 percent of the former members of the Michel Band do not qualify for Indian status, and so could become members only if the recreated band assumed control of its own membership. In that case, the band could create membership rules permitting it to add additional persons to its membership who do not qualify for Indian status. However, these persons would still not be eligible for Indian status and the benefits that arise from registration under the *Indian Act*.

The other method would be to form the band through an Order-in-Council. By this method, the Governor in Council could include all Michel Band people in the membership of the band. However, the Department of Justice, in

responding to the Michel Band's specific claim in 1987, concluded that the claimants had not established a lawful obligation owed by Canada based on events surrounding the 1928 and 1958 enfranchisements.

The new band policy of DIAND requires that any new band have a reserve land base and that the source of all funding needed (to acquire this land, to provide capital facilities and band support, and to operate and maintain programs) be identified before the band is created. Furthermore, in the absence of a valid legal obligation on the part of DIAND, the funds must be available within the existing DIAND regional budget.

## **5. COMMUNITY SELF-GOVERNMENT NEGOTIATIONS AND REGISTRATION**

The *Indian Act* provides for persons to be registered as Indians and to be entered on band membership lists. DIAND recognizes that any community self-government arrangement must include a regime under which the band may determine its own membership in accordance with its own membership rules.

Several bands have been seeking the authority to determine Indian status for their members. These include the Westbank Band in British Columbia, the Siksika Nation in Alberta, and the North Shore Tribal Council and the United Indian Council in Ontario. In effect, they are asking that the separate concept of registration as an Indian be abolished, so that all rights and benefits to Indian people would flow through band membership.

Reasons put forward in support of such a proposal include:

- a) the bands, not the federal government, should be making all decisions on who is recognized as an Indian and a band member;
- b) some bands are already doing local registration work on behalf of DIAND; and,
- c) some bands wish to correct inequities in the 1985 amendments to the *Indian Act*, which unfairly deny some of their members Indian status and the benefits attached to it.

DIAND has responded by stating that it is not prepared to negotiate determination of Indian status by bands. Most funding for Indian people is based on the registered Indian population. In order to remain accountable to the Canadian public, the federal government cannot agree to a new basis for funding without knowledge of how much such a move would cost.

Another issue that would have to be addressed if the federal government were to relinquish control over the determination of Indian status is the need to protect the rights of individuals. Assurances would be needed that all groups and individuals would receive equal treatment from a reserve community that took over that function.

## **6. CURRENT ISSUES**

### **6.1 Validity of Existing Indian Register Data**

#### **6.1.1 Registration of Indians**

The Indian Register maintained by DIAND pursuant to the *Indian Act* is the only source of annual counts of the status Indian population. However, unlike provincial vital statistics databases, the Indian Register is not reinforced by legal obligations to report events to the Registrar as they occur. As a result, the year-end statistics generated by the Indian Register do not provide a "true" picture of the status Indian population. Late reporting of events, particularly births, is one of the largest problems with the Indian Register; births may be reported in excess of 10 years after they actually occurred. Although there are certain incentives to report births promptly (such as access to non-insured health benefits), reporting is still voluntary. The cost of a birth certificate may be a factor in late reporting.

#### *Effects of Late Reporting (Births)*

In order to use Indian Register data for demographic analysis, late-reported births must be reallocated to the year in which they actually occurred. Otherwise, they will appear incorrectly as an increase in the total registered population for the year in which they were reported. For example, Statistics Canada reported that the Indian population was 490,178 at the end of 1990. However, once births were reallocated, the national population was 511,382 or 4.3 percent higher nationally than the reported number. The reinstatement of Indians through Bill C-31 adds to the effect of late reporting.

#### *Effects of Late Reporting (Deaths)*

Late reporting of deaths also undermines the accuracy of the Indian Register, but a more important problem is the *under-reporting* of deaths. Some regions make special efforts to research provincial vital statistics records for certificates of death, and, in cases where estates are an issue, death certificates. In general, however, there is no obligation and no incentive to report deaths to the Registrar and this may explain why the Indian Register contains information on individuals aged well over 100 years. DIAND has started action to verify

whether older persons listed are still alive, and to remove those who have died from the Indian Register.

#### *Effect of Bill C-31 on Other Events (Marriages)*

A recent study has shown that statistics on marriages are also affected by late reporting. As well, Indian Register data on marriages is affected by the series of different codes used to report marriages, and by the incompatibility of the year-end reporting system with 1985 amendments to the Indian Register system as a result of Bill C-31. The latter problem was corrected in 1989, but data for the period from 1985 to 1988 remain unreliable.

#### *On/Off-Reserve Residence Indicator*

In response to concerns about the quality of information on Indian residency on and off reserves, DIAND undertook a pilot project in 1992 to find the best way to collect and validate Indian population statistics annually using existing collection methods. The Indian Register was used as the primary source of information.

The study found a need for accurate information on the total on-reserve population, and identified two data quality issues. First, there is no standard set of procedures for collecting residency statistics across all regions. Second, there is a lack of formal verification of the residency codes implemented on a national basis.

#### 6.1.2 Provincial Variations in Provision of Vital Statistics

The vital statistics departments in the provinces of Manitoba and Saskatchewan and in the Yukon Territory provide DIAND regional offices with computer printouts of children born to persons who have indicated on the child's birth registration form that they are registered Indians. The Vital Statistics Office in the Northwest Territories provides documents free of charge upon request.

The Alberta Regional Office of DIAND currently has an agreement with Alberta Vital Statistics that allows regional Indian registration personnel to access provincial documentation. Ontario's Vital Statistics Office provides documents free of charge to bands. However, because they are free, response to these requests is low on the priority list, and the delay between receiving a request and supplying the necessary document can be months.

In British Columbia, New Brunswick, Nova Scotia and Newfoundland, the vital statistics offices charge DIAND for documents. However, because DIAND has no funds allocated for such expenditures, an Indian client who requests an

addition to or amendment of the Indian Register is asked to provide the required documents. With charges as high as \$25 a document in some provinces, this makes it a very costly process for DIAND's client group.

In Quebec, church records are used for reporting vital events, and there are no reported problems with obtaining such documents for the Indian Register.

#### 6.1.3 Data Base Differences for Bands That Control Their Own Membership

The eligibility criteria for entry in the Indian Register is the same for every individual who wishes to be identified as a status Indian. This is not true of band membership. Bands that have taken control of determining their own membership under the 1985 amendments to the *Indian Act* apply their own membership codes, which may vary from one band to another.

DIAND maintains membership lists for bands that have not assumed such control. The criteria for band membership that DIAND applies to bands that do not maintain their own lists are laid out in the *Indian Act*. When an individual with historical ties to one of these bands is registered in the Indian Register, he or she is automatically added to the membership list of that band.

There is no requirement for bands that have assumed control of membership to provide DIAND with a list of names of band members. Therefore, the Indian Register data base does not identify band membership for individuals belonging to these bands.

Because the data on the Indian Register is used as a basis for funding or accessing benefits for registered Indians, it must be as accurate as possible. One of the difficulties in ensuring the accuracy is the current lack of any legal requirement to report events affecting the Indian population.

### 6.2 Links Between Funding Programs and Indian Register Data

Every person registered as an Indian potentially draws on a funding program. This applies to programs intended for individuals, such as the Post-Secondary Student Support Program, and to those delivered to communities, such as elementary/secondary education. Most registered Indians are also band members. As a result, those who reside on a reserve may require community services. DIAND and Health and Welfare Canada (HWC) both use the data found in the Indian Register as one source of information on which they base funding for several programs for Indians. These programs are:



### 6.2.1 Post-Secondary Student Support

DIAND provides funding to Indians and Inuit under the Post-Secondary Student Support Program (PSSSP), within the limits of funds voted by Parliament. One of the essential criteria is that the recipient be an Inuk or a registered Indian. Whenever the number of eligible applicants exceeds the budget, applications are given priority according to DIAND's or the administering Aboriginal organizations' student priority categories.

### 6.2.2 Elementary/Secondary Education

DIAND's Elementary/Secondary Education Program supports schools and education services for on-reserve registered Indians, other students living on reserve for whom the Minister assumes responsibility, and Inuit living in Inuit communities in Quebec.

Education services are delivered to eligible persons either through band-run schools, DIAND-operated federal schools, or under bilateral or tripartite capital and tuition agreements with provincial school authorities which provide spaces in provincial schools for Indian students who reside on reserves or Crown land.

### 6.2.3 Social Assistance

In 1990, DIAND received specific authority from Treasury Board to adopt, for its social assistance programs on reserves, the qualifying requirements and assistance schedules of the general assistance program of the province or territory in which each individual client resides. Services are intended for Indian and Inuit peoples, and for any other people on reserves who are in need of assistance. Additional provisions are then applied to determine who in the target population actually receives social assistance and how much assistance is provided.

DIAND formulates an annual social assistance budget for each First Nation that administers the social assistance program for its own people. Changes to the funding level are based on DIAND policy and benefit schedule amendments, population increases in registered Indians and non-registered people on the reserve, dependency rates, and other demographic factors such as the family formation and migration rates. The Management Information and Analysis Branch at DIAND headquarters provides the medium growth projections that are the source of population data used by regional offices in formulating social assistance budgets.

#### 6.2.4 Non-Insured Health Benefits

Health and Welfare Canada (HWC) offers a limited number of health-related goods and services to status Indians and Inuit as part of the Indian and Northern Health program. The goal of this program is to deliver a range of health-care services which will help bring the health of Native people to a level comparable with the general Canadian population.

These non-insured health benefits (NIHB) include some drugs, medical supplies and medical equipment, vision care, medical transportation, and dental benefits. Benefits are provided to meet medical needs on the recommendation of medical, dental or other health professionals.

Those who are eligible through employer, private insurance plans or provincial programs for similar benefits are expected to use those plans as a first resort.

In order to be eligible to receive these benefits, status Indians must be registered with DIAND, and Inuit must meet certain established criteria. Registered Indians and recognized Inuit must also be eligible to receive provincial or territorial health benefits in their province or territory of residence.

As there is no central registry for the Inuit population, when Inuit request access to non-insured health benefits they must provide proof that they are Inuit. Individuals who do not have this information readily available are referred to their region of origin for verification as Inuit.

In order to support HWC in the delivery of these services to Indians, DIAND provides HWC with monthly updates of the Indian Register. HWC has entered into an agreement with a private agency to process the claims for NIHB, and has provided the required identification information to the agency.

### 6.3 Do Alternative Methods of Funding Communities Exist?

The possibility of using different methods for funding Native communities will be covered in other discussion papers to be submitted to the Royal Commission on Aboriginal Peoples.

### 6.4 Impact of Registration and Membership Criteria on Population

The 1985 amendments to the *Indian Act* fundamentally changed the criteria for determining eligibility for registration as an Indian. The question of how the new eligibility rules might change the number of persons eligible for future registration was considered by Stewart Clatworthy and Anthony H. Smith.

In a report titled *Population Implications of the 1985 Amendments to the Indian Act*, prepared for the Assembly of First Nations, Clatworthy and Smith projected that the registered Indian population would rise to about 800,000 by the year 2041. According to their findings, it would then begin to fall, returning to the current level of just under 600,000 by 2091.

The same study also estimated the impact of various principles found in membership rules on future band membership. The report suggested that if all bands were to adopt membership rules founded on the principle that membership can be passed on even if only one parent is a band member, the total band membership in Canada would rise to one million by the year 2061 and then remain constant. However, more restrictive membership rules would cause a marked drop in band membership. For example, if all bands were to require that both parents of a child be band members, the total band membership in Canada would drop below 100,000 by the year 2091.

# **INUIT**

## **1. HISTORY**

### **1.1 Early Identification System**

The process for identifying Inuit has progressed from a system of discs used in the early 1940s to the self-identification and community identification that is used today.

In the early years of this century, when the Royal Canadian Mounted Police and other government officials arrived in the North, they found it difficult to make positive identifications and keep accurate records of individual Inuit. At that time, Inuit had no surnames, and their names were either difficult for non-Inuit to pronounce and spell or were biblical names, often duplicated in the same general area.

In 1941, when the 10-year census was due, the decision was made to provide each Inuk with a four-digit number stamped on a thin fibre disc a little larger than a 25-cent piece. The disc had two small holes punched in it and could be worn around the neck or on the wrist if the individual chose; otherwise, it could simply be held in safekeeping.

For a variety of reasons, this initial system did not prove a complete success. An improved method was introduced when the Family Allowance Program was implemented in 1945, and the old discs were recalled. The new discs, of the same material and design as the original ones, bore a district and regional designation as well as an individual four-digit identifier (e.g., E9-4220).

The numbers were particularly convenient and popular for marking Inuit carvings. However, Inuit and government officials began to express doubts about the system. The Government of the Northwest Territories moved to discontinue it.

#### **1.1.1 Project Surname**

In 1970 Northwest Territories Commissioner Stuart M. Hodgson asked Abe Okpik, the Territorial Secretary, to visit all of the Inuit in the Northwest Territories to introduce and explain "Project Surname." Participation was voluntary and involved choosing a surname and first name, with the goal of getting rid of the numbered disc system.

Although Inuit families may already have had surnames, the name chosen under Project Surname had to be one that could be written in Roman Script, or English letters. Inuit people throughout the territory were presented with a booklet developed by the Territorial Secretary, and asked to fill in a form at the back of it with their newly chosen surname and mail it to him.

The Territorial Secretary would then change the birth and marriage records at the Department of Vital Statistics and school records. After the registration was completed, a magistrate would visit each community and hold court to make the new names legal and issue new birth certificates. All Inuit concerned were registered in Yellowknife and the data was fed into the national system. This paved the way for Inuit to receive Social Insurance Numbers.

#### 1.1.2 Current Identification

Inuit are now being identified through vital statistics records and uninsured benefits lists in the territories and provinces and nationally. All land claim agreements also spell out the criteria for eligibility and enrolment.

### 1.2 The 1939 Supreme Court Decision

The question of which level of government, federal or provincial/territorial, was responsible for the Inuit was a topic of discussion for decades. Then, by Order-in-Council on August 31, 1927, the charge of Inuit Affairs was transferred to the Commissioner of the Northwest Territories.

Inuit status was not clarified, and the Inuit continued to be viewed mainly as Canadian citizens. However, they were not treated as ordinary Canadian citizens in all instances. For example, as Canadian citizens Inuit should have been allowed liquor but the Northwest Territories decided it was not in the best interests of the Inuit to issue them liquor permits for medicinal purposes.

The Depression of the 1930s, coupled with a decline in caribou populations, brought the Inuit to the point of starvation, especially in Quebec. The federal government and the Quebec government reached an agreement in 1929, where the federal government agreed to provide relief for the Inuit in Quebec, with Quebec then reimbursing the federal government. This agreement lasted for three years, after which the province began to question its responsibility for the Inuit in the province.

The Quebec government asked the federal government if the Inuit were included in the term "Indians" in subsection 91(24) of the *British North America Act*. The federal government responded negatively.



The Government of Canada stated that Inuit were originally citizens of the province and not wards of the Crown, like Indians. There were discussions, but no agreement was reached. In 1939, after Quebec made a final payment under the agreement, the Government of Quebec and the Government of Canada asked the Supreme Court of Canada the following question:

Does the term "Indians," as used in subsection 91(24) of the *British North America Act, 1867*, include Eskimo inhabitants of the Province of Quebec?

The case reached the Supreme Court in June 1939. The Court responded that, yes, in subsection 91(24) of the *British North America Act*, the term "Indians" did include Eskimos (now called Inuit).

The federal government considered appealing the decision to the Judicial Committee of the Privy Council but decided not to pursue the question during the crisis of World War II. In 1949, when the Supreme Court of Canada was made the highest court in the country, an appeal became impossible.

The implications of this decision are that DIAND also considers the rights of Inuit when it considers the rights of Indians.

## **2. FUNDING AND INUIT IDENTIFICATION**

Various programs may benefit Inuit, although the identified recipients are often defined by criteria based on their location.

### **2.1 Economic Development Agreements**

These are negotiated with each territory. Economic development proposals, such as training, employment, participation of local business and equity participation, are analyzed with the objective of maximizing benefits to all Northerners.

### **2.2 Transfer Payments to Territorial Governments**

A transfer payment program provides grants to assist the governments of the Yukon and the Northwest Territories in providing a full range of public services for all their residents.

### **2.3 Contribution Agreements With Northern Native Associations**

These contributions allow associations to carry out research and consultation to develop their positions on a wide variety of political, economic and social issues.

### **2.4 Grants to Individuals or Organizations**

Such grants are made for a wide variety of purposes, including the advancement of Indian and Inuit culture, northern scientific activities, conservation of the natural resources of the territory and assisting all persons interested in searching for mineral deposits.

### **2.5 Contributions to the Province of Newfoundland**

These are made for the provision of programs and services to Native people in Newfoundland and Labrador.

### **2.6 Contributions to the Province of Quebec for Northern Quebec Inuit**

Northern Quebec Inuit receive services directly from the provincial government under the provisions of the James Bay and Northern Quebec Agreement.

### **2.7 Non-Insured Health Benefits**

In the absence of a recognized authority on Inuit identification, Health and Welfare Canada (HWC) assumes responsibility for establishing eligibility criteria for Inuit recognition and registration. In Labrador, HWC has made arrangements through the Labrador Inuit Association (LIA) to use LIA membership lists for the purpose of providing these Inuit with non-insured health benefits. In order to provide benefits to Inuit in the Northwest Territories, HWC relies on the operational practice of Inuit registration used by the Government of the Northwest Territories. Discussions have also been held with the Inuvialuit Enrolment Authority in Inuvik and the Tungavik Federation of Nunavut, the national Inuit organization, in Ottawa.

## **3. IDENTIFICATION OF INUIT BENEFICIARIES FOR LAND CLAIMS**

Native persons may be enrolled in only one Canadian land claim settlement for which they qualify. The following is a review of definitions used in various claims.

### **3.1 Inuvialuit Final Agreement**

A person is eligible to be enroled as a beneficiary under the Inuvialuit Final Agreement if, as of the date of the settlement legislation, that person was a living Canadian citizen and:

- (a) was on the Official Voters List used for approving this agreement;
- (b) was of Inuvialuit ancestry or considered by reason of Inuvialuit custom or tradition to be Inuvialuit, and was accepted as a member of an Inuvialuit community corporation;
- (c) produced evidence satisfactory to the Enrolment Authority and he or she had one quarter or more Inuvialuit blood, and
  - (i) was born in the Inuvialuit Settlement Region or Inuvik, or
  - (ii) had been a resident of the Inuvialuit Settlement Region or Inuvik for a total of at least 10 years, or
  - (iii) if under 10 years of age, was ordinarily resident in the Inuvialuit Settlement Region or Inuvik; and
- (d) was an adopted child, under the laws of any jurisdiction or according to Inuvialuit custom.

### **3.2 Tungavik Federation of Nunavut Agreement**

A person shall be eligible to be a beneficiary of the Tungavik Federation of Nunavut claim settlement if that person:

- (a) is alive;
- (b) is a Canadian citizen;
- (c) is an Inuk as determined in accordance with Inuit customs and usages;
- (d) identifies himself or herself as an Inuk; and
- (e) is associated with a community in the Nunavut Settlement Area.

A person who is enroled on the Inuit Enrolment List shall be entitled to benefit from the agreement so long as he or she is alive and his or her name is enroled thereon.

### **3.3 James Bay and Northern Quebec Agreement**

A person shall be entitled to be enroled as a beneficiary under the James Bay and Northern Quebec Agreement and be entitled to benefit from it if, on November 15, 1974, he or she was:

- (a) a person of Inuit ancestry who was born in Quebec or was ordinarily resident in Quebec, or, if not ordinarily resident there, was recognized by one of the Inuit communities as a member; or
- (b) a person of Inuit ancestry who was recognized by one of the Inuit communities as having been, on that date, a member; or
- (c) the adopted child of a person described in subparagraphs (a) or (b); or
- (d) a person who was a legitimate or illegitimate descendant, in the male or female line, of a person entitled to be enroled; or
- (e) the adopted child of a person described in subparagraph (d), provided such child was a minor at the time of the adoption; or
- (f) the lawful spouse of a person described above.

Starting six months after the posting of the initial official lists of persons described above, an Inuit community may, from time to time and at its discretion, direct the Secretary General to add to the list. To be added to the list as a beneficiary under the agreement and as a person entitled to benefit from it, a person must be of Inuit ancestry and must:

- (a) have been born in Quebec; or
- (b) be ordinarily resident in the territory; and
- (c) have been entitled to be enroled with his or her descendants, but was, inadvertently or otherwise, omitted from the official lists of beneficiaries.

The provisions of this paragraph do not prevent any person omitted from the official lists of beneficiaries from exercising his or her right to appeal.

In the event a person mentioned above is absent from the Territory for 10 continuous years and has lived outside the Territory, such a person is not entitled to exercise his or her rights until he or she has re-established residence there.

The James Bay and Northern Quebec Agreement also provides for the enrolment as beneficiaries of members of eight Cree Indian Bands in Quebec. Although many members of these bands are registered under the *Indian Act*, registration as an Indian is not required for enrolment as a beneficiary under the James Bay and Northern Quebec Agreement. Some members of these bands may be entitled to enrolment as beneficiaries under the Agreement, but not to registration under the *Indian Act*.

This Agreement is discussed here as an example of the ways in which Inuit people are identified. Therefore, the enrolment criteria for the Cree Indian bands has not been touched upon, particularly since Indians in general are covered by the registration provisions of the *Indian Act*.

### **3.4. The Labrador Inuit Association**

Because the details of the enrolment criteria and the process to be used by the LIA are still being negotiated, information is not being made available. However, it is not unreasonable to assume that beneficiary criteria will be approximately the same for LIA as for other claims.

## **4. ISSUES**

While the 1939 Supreme Court decision clarified that the Inuit people are Indians within the meaning of subsection 91(24) of the *Constitution Act, 1867* (formerly known as the *British North America Act*), there is no clear definition of who qualifies as an Inuk. Various criteria are being used. In the case of community programs that benefit Inuit, this may be of major concern, as individual beneficiaries are often not easily identified. In the case of services for individuals, the unevenness in defining eligibility of recipients could be a concern, particularly with programs such as non-insured health benefits where the value of the service is substantial.



## **CONCLUSIONS**

From the foregoing, we can conclude that the definition of an Indian has evolved from a general and inclusive one to a more restrictive and precise one as a result of past legislative amendments, court decisions and Bill C-31. We can also see that the registration process is complex and reactive as opposed to proactive.

It is also clear that although the intent of Bill C-31 was to ensure that all persons are treated equally, some inequities in the application of the *Indian Act* still persist, due to the differential treatment of men and women in the past.

Other issues concerning the identification and registration of Aboriginal peoples include unresolved requests for registration and band recognition (such as the Federation of Newfoundland Indians, Grande Cache and the former Michel Band), and attempts by several bands to seek authority to determine Indian status through the community self-government process.

There are also limits to the validity of the data maintained by DIAND in the Indian Register, even though program funding is currently linked in a variety of ways to that data.

Identification of the Inuit is especially difficult. No formal national list has been established, nor is there one single definition of an Inuk. Self-identification and/or community recognition form the basis for most definitions. Funding for Inuit individuals and communities is achieved primarily through transfer payments to territorial governments and contribution arrangements with the provinces.

## AN OVERVIEW OF KEY COURT CASES AFFECTING THE INTERPRETATION OF THE *INDIAN ACT*

### 1.1 The Martin Case

John Martin, born on October 27, 1953, was the illegitimate child of Robert Martin, a member of the Micmacs of Maria Band, and May Richards, a non-Indian. When he applied for band membership, the Registrar declined to register him as a member of his father's band.

In his decision, the Registrar concluded that John Martin was not eligible for registration because paragraph 11(1)(c) of the 1951 *Indian Act*, which permitted registration of a male person who was a direct descendant, in the male line, of an Indian male, did not include individuals born out of wedlock.

The Trial Division of the Federal Court of Canada upheld the Registrar's decision and concluded that the word descendant in paragraph 11(1)(c) of the *Indian Act* was intended to include only the legitimate children of an Indian male.

The Federal Court of Appeal dismissed John Martin's appeal without reason. As a result, he appealed his case to the Supreme Court of Canada.

On March 24, 1983, the Supreme Court of Canada held that paragraph 11(1)(c) included illegitimate as well as legitimate male children of an Indian male, and that John Martin was therefore entitled to be registered as an Indian.

### 1.2 The Jock Case

James David Jock's name was deleted from the St. Regis Band list under subparagraph 12(1)(a)(iv) of the *Indian Act* because his mother was a non-Indian prior to marriage and his paternal grandmother was an American Indian of the St. Regis Tribe in New York. He protested his deletion from the band membership list and the case was referred to the County Court of the United Counties of Stormont-Dundas and Glengarry.

The St. Regis Indian Reserve is unique, as it straddles the boundary between Canada and the United States of America (the Canadian side of the reserve is now known as

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Akwesasne). The residents on either side of the border consider themselves to be part of a homogeneous group sharing common ancestry.

The court concluded on February 29, 1980, that James David Jock's paternal grandmother was a member of the Canadian St. Regis Band in her own right and, as a result, subparagraph 12(1)(a)(iv) of the *Indian Act* did not affect his entitlement to registration as an Indian in Canada.

Thereafter, recognized members of the St. Regis Mohawk Tribe of Indians in the United States who applied for registration under the *Indian Act* were registered as Indians in Canada.

### 1.3 <sup>Lavelle</sup> The Laval Case

Jeannette Corbiere Laval was a member of the Wikwemikong Band. The Registrar deleted her name from the band list when she married a non-Indian. She appealed the Registrar's decision, claiming that paragraph 12(1)(b) of the *Indian Act* is contrary to the *Canadian Bill of Rights*. She contended that this section of the *Indian Act* discriminated against Indian women, since Indian men did not lose their Indian status on marriage to non-Indians.

The County Court determined that paragraph 12(1)(b) of the *Indian Act* was not rendered inoperative by the *Canadian Bill of Rights*.

The case was then appealed to the Federal Court of Appeal, which concluded that these provisions did violate the right of an Indian woman as an individual to equality before law and the *Canadian Bill of Rights*.

On August 27, 1973, the Supreme Court of Canada reversed the judgment of the Federal Court of Appeal, holding that paragraph 12(1)(b) of the *Indian Act* was not rendered inoperative by the *Canadian Bill of Rights*.

### 1.4 The Lovelace Case

<sup>Sandra</sup>  
Sharon Lovelace was a member of the Tobique Band. She had lost her entitlement to registration and band membership when she married a non-Indian.

On December 29, 1977, she filed a claim with the United Nations Human Rights Committee that she was being discriminated against on the grounds of sex and that her loss of Indian status was in violation of her rights as a minority as found in Article 27 of the *United Nations Covenant on Civil and Political Rights*. The United Nations

Human Rights Committee did not make any finding on the grounds of sexual discrimination, but ruled in her favour on Article 27.

This finding contributed to the movement that had begun with the Laval case to remove discriminatory elements from the *Indian Act*.

## REGISTRATION PROCESS AND PROGRAM

### 1.1 The Indian Register

The *Indian Act* states that an Indian Register shall be maintained in DIAND, and that the name of every person who is entitled to be registered as an Indian under the *Indian Act* shall be recorded in it.

The Indian Register is a central record, begun in 1951. It lists every person in Canada who has been confirmed to be eligible for Indian status. It shows all formally reported births, marriages, deaths, and changes of status within every registered Indian family since that date.

The Indian Register contains the names of over 500,000 registered Indians. For every individual listed, the register page indicates: the name of the band with which he or she is affiliated; the name under which the person is registered and his or her registry number; his or her date of birth, recorded aliases if any, and marital status; and the names of any registered children of that individual. If DIAND maintains the band list for the band with which the individual is affiliated, the Indian Register indicates whether he or she is a band member.

The Registrar maintains the Indian Register, but has no means of identifying persons in the general Canadian population who are not registered as Indians, but who may qualify. Therefore, anyone who wishes to be registered as an Indian must take the initiative of making an application to the Registrar. The Registrar may, at any time, add to the Indian Register the name of a person who, in accordance with the *Indian Act*, is entitled to be registered, or delete from the Register the name of a person who is not entitled to be included.

### 1.2 Eligibility Requirements

The *Indian Act* sets out criteria by which a person may be registered as an Indian. In order to confirm entitlement to Indian status, the applicant must supply sufficient information to permit the Registrar to establish a right of registration. Basically, this requires the establishment of a linkage with a person who is, or was, recognized as a member of a band or body of Indians in Canada.



## ANNEX B

### 1.2.1 Documentation

Linkage to an individual or individuals who are Indian must be verified through birth, death and marriage documents. The basic principle is that the evidence must be the best that is available. Documentation will be considered in the following priority:

#### *Provincial Vital Statistics Documents*

- long form birth registration showing parents' names;
- marriage certificates;
- death certificates; or
- change of name documents (if the person's name was legally changed).

As the province of Quebec uses a somewhat different registration system, baptismal certificates are acceptable for births which took place in that province.

#### *Court Orders or Court Documents*

- court orders deciding paternity;
- adoption orders;
- divorce decrees (Decree Nisi and Decree Absolute before 1985; Divorce Judgment and Certificate of Divorce after 1985); or
- civil annulment orders (annulments granted by a religious denomination are not acceptable for registration purposes).

#### *Church Records*

Births that are documented by church records will be considered if it is demonstrated that Division of Vital Statistics documents are not available. Church marriage and death documents are also accepted.

#### *School or Census Records*

Births, deaths and marriages that are documented by other sources, such as school or census records, will be considered if it is demonstrated that Division of Vital Statistics and church documents are not available.

#### *Band or Other DIAND Records*

- old family records;
- old lists of band members;

- records of band meetings; or
- old documents concerning band business.

### *Affidavits*

Sworn affidavits establishing relationships and Indian ancestry will be considered if no documentation from the period of the birth of the applicant is available. Normally, there should be affidavits from two or more persons who have a personal and specific knowledge of the event. The affidavits should include the deponent's relationship to the applicant or the applicant's family, and indicate the circumstances under which the deponent acquired the specific knowledge of the event.

### 1.2.2 Legislative Criteria

Entitlement to registration in the Indian Register and the addition of individuals' names to a departmentally controlled band list are subject to sections 6, 7 and 11 of the current *Indian Act*.

The provisions of section 6 of the *Indian Act* have established the criteria used in determining the eligibility of individuals for registration in the Indian Register. Paragraph 6(1)(a) is the paragraph under which persons who were registered or entitled to be registered in the Indian Register at birth under a former *Indian Act* are eligible. Paragraph 6(1)(b) is the paragraph under which persons are registered when a new band is created. Generally speaking, paragraphs 6(1)(c), 6(1)(d) and 6(1)(e) are the paragraphs under which persons who were previously registered in the Indian Register, but who lost their status under a provision of a previous *Indian Act*, may be reinstated.

Paragraph 6(1)(f) and subsection 6(2) of the *Indian Act* are the sections under which children of registered Indians are registered. The difference between the two provisions is that persons registered under subsection 6(2) have only one registered Indian parent, while persons registered under paragraph 6(1)(f) have two registered Indian parents. All persons registered under any of the 6(1) subsections can pass on Indian status on their own to their children. However, individuals registered under subsection 6(2) of the *Indian Act* cannot pass on Indian status to their children unless the other parent of their children is an Indian.

Section 7 of the *Indian Act* defines who is not entitled to registration under the Act. This section bars from reinstatement non-Indian women who gained Indian status upon their marriage prior to 1985 to a status Indian man, but who subsequently lost Indian status under one of the provisions of the *Indian Act* previous to the 1985 amendments.

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This section also bars the children of these women from registration if the father is a non-Indian.

The criteria used in adding the names of individuals to DIAND-controlled band lists are set out in the provisions of section 11 of the *Indian Act*.

### 1.3 The Application Process

Any individual wishing to be listed in the Indian Register must forward to the Registrar's Office a completed, signed application or a letter requesting that they be registered and added to a band list.

#### 1.3.1 Initial Decision

In response to the application, DIAND searches departmental and archival records for primary information to support the claim of the applicant to Indian descent. After completing the required research, the research officer will make one of three recommendations to the Registrar:

- (a) a request for further information and/or documentation;
- (b) registration of the applicant in the Indian Register; or
- (c) denial of registration in the Indian Register.

When an individual is either registered or denied registration, he or she is then informed by letter of the Registrar's decision, and of his or her right under section 14.2 of the *Indian Act* to protest that decision.

A protest is the statutory right of an individual or a band council to make a formal objection to any addition to, or omission or deletion from, the Indian Register or band list by the Registrar. Section 14.2 of the *Indian Act* clearly sets out the conditions under which a protest can be made and the procedures for dealing with it. It also sets a three-year time limit for lodging a protest. The three-year time limit begins from the date that a person's name is added to, or deleted or omitted from, the Indian Register or band list.

### 1.3.2 Protests

Under the provisions of section 14.2 of the *Indian Act*, the following persons or groups may lodge a protest concerning the Indian Register or a band list.

- (a) The person whose name was added to, or deleted or omitted from, the Indian Register and/or a band list, or that person's representative, may protest the decision.
- (b) A band council may protest the decision to add a name to, or delete or omit a name from, its band list. A band council does not have the right to protest a decision regarding the Indian Register.
- (c) A member of a band who is not the person or a representative of the person about whom the decision was made has the same rights of protest as his or her band council.

When a protest is received, the Registrar's Office investigates the protest. Approximately 50 percent of the protests received are invalid, for one or more of the following reasons: the three-year time period has elapsed; an adult is protesting on behalf of another adult; or, an adult is protesting that his or her child(ren) cannot be registered, but has never applied for the registration of the child(ren). The protest officer, when informing the protester the reason that the protest is ruled invalid, will respond to any issues that may have been raised.

Up to 40 different sources of information are available for review before the Registrar makes a decision on a protest. The decision can be to:

- (a) request further information or documentation; or
- (b) uphold or deny the protest.

### 1.3.3 Preliminary Findings and Decision

Before the Registrar reaches a final decision to reject a protest, or where there are opposing parties to a protest (e.g., an individual or a band council), a letter is written to the parties indicating the Registrar's preliminary findings, and offering a period of 30 days to rebut the preliminary findings of the Registrar.

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### 1.3.4 Appeals

Under subsection 14.3(1) of the *Indian Act*, the protester may, by notice in writing within six months following the Registrar's decision on a protest, appeal the decision to the appropriate court, depending upon the province in which the protester resides.

When there is an appeal of the Registrar's decision, the Registrar will be provided with a copy of the appeal. The Registrar then provides the court with a copy of the decision being appealed, together with all documentary evidence considered in arriving at that decision.

After hearing an appeal, the court may affirm, vary or reverse the decision of the Registrar, or refer the subject matter of the appeal back to the Registrar for reconsideration or further investigation.

## 1.4 The Vital Events Process

The Indian Register includes the names of all individuals registered in accordance with the *Indian Act*. In order to keep the record current, a network including both headquarters and regional offices of DIAND and band offices shares the responsibility for discovering, documenting and confirming events that affect the Indian Register.

### 1.4.1 DIAND Headquarters

DIAND Headquarters establishes registration policy and administers the protest provisions of the *Indian Act*. It also enters into the Indian Register events that have not been delegated to the regions. When it is confirmed that an individual is entitled to be entered in the Indian Register, and in a band list where the band does not control its own membership, DIAND headquarters electronically inserts the name of the person into the Indian Register and, if applicable, the band list. A paper copy of the person's new Indian Register record is printed in the regional office, and is transmitted to the field administrator to whom the newly registered person is referred.

### 1.4.2 DIAND Regions

DIAND regional offices have the delegated authority to enter most births, deaths and marriages of registered Indians into the Indian Register. Regions obtain the necessary documentation directly from individuals, or through field administrators carrying out registration functions. Also, where regional DIAND offices do not themselves perform the function of field administrator, they support and audit the field administrator.



### 1.4.3 Field Administrators

Whenever possible, the field administrator is a band office. This office has a complete, up-to-date paper copy of the Indian Register Record for each person within its area of responsibility. Whenever the field administrator has the documentation required to change someone's record, the documentation is sent to a DIAND regional office, and the region enters the data into the electronic Indian Register. Each month the documentation of those persons affected by changes in the previous month are sent to the field administrator to update the copy of the Indian Register held in that office.

The field administrator typically deals with changes including name changes, marriages, changes of residence, deaths and births. The field administrator also assists persons who believe that they are entitled to registration to document their claims, and issues Certificates of Indian Status.

## 1.5 Devolution

DIAND has devolved to 388 bands, or 62 percent of all bands, the administration of local Indian registration functions. The total cost of this devolution for the 1992-93 fiscal year was \$3,620,150. The region-by-region breakdown of the costs is as follows:

Atlantic	\$229,876
Quebec	\$417,926
Ontario	\$736,349
Manitoba	\$620,786
Saskatchewan	\$428,475
Alberta	\$471,679
British Columbia	\$715,059

No bands administer the registration functions in the Northwest Territories or the Yukon.