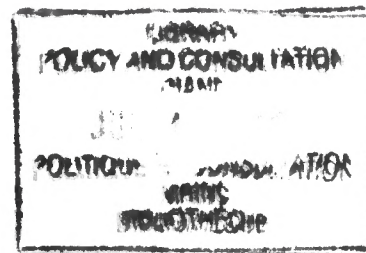
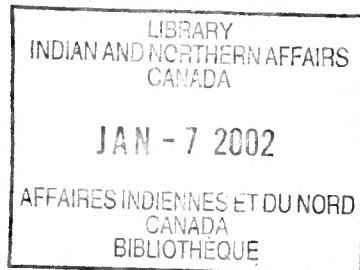


ENTITLEMENT TO REGISTRATION
AND BAND MEMBERSHIP
UNDER CURRENT LEGISLATION

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ENTITLEMENT TO REGISTRATION AND BAND MEMBERSHIP

UNDER CURRENT LEGISLATION

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	<u>PAGE</u>
4.1 Table of Contents	i
4.2 Introduction	1
4.3 Evidence, Types and Research	1
4.4 Research Methodology	4
4.5 Section 7: Applications and Procedures	6
4.5.1 Women Who Gained Status on Marriage and Subsequently Lost It	6
4.5.3 Women Who Gained Status on Marriage and Whose Subsequent Marriage Prior to April 17, 1985 Was Unreported	6
4.5.5 Children of Women Who Acquired Status by Marriage	7
CHART Entitlement of Children Born Prior to April 17, 1985 to Women Who Acquired Status on Marriage	7a
4.6 Adoption	7
4.6.1 Types of Adoption	8
4.6.2 Dealing with Applications Concerning Adoption	8
4.6.3 Adoption Policies	9
4.6.4 Indian Custom Adoption	9
4.7 Court Judgments	9
4.7.2 Ranville	11
4.7.3 Jock	12
4.8 Double-Mother Clause	13
4.8.1 Exemptions From the Former Subparagraph 12(1)(a)(iv)	13
4.8.2 Application of the Double-Mother Clause	14

	<u>PAGE</u>
4.9 Applications of the Death Rule in Subsection 6(3)	14
4.10 Enfranchisement	14
4.10.2 Wife and Children Not Included on Enfranchisement Order	15
4.10.3 Enfranchisement of Woman Who Gained Status Through Marriage	16
4.10.4 Children Born After Parents' Enfranchisement	16
4.10.5 Children Enfranchised as a Result of Mother's Marriage to a Non-Indian	16
4.10.6 Enfranchisement of a Woman as a Result of Marriage to a Non-Indian	17
4.10.7 Enfranchisement of a Professional	17
4.10.8 Enfranchisement of Bands	18
4.10.9 Enfranchisement to Join the Military	18
4.11 Foreign Residency	18
4.12 Illegitimate Children Born Prior to April 17, 1985	19
4.12.2 Births - August 14, 1956 to April 16, 1985	19
4.12.3 Births - September 4, 1951 to August 13, 1956	20
4.12.6 Births Prior to September 4, 1951	20
4.13 Legitimation	21
4.13.5 Presumption of Legitimacy	21
4.13.7 Documentation Required	21
4.14 Marriage	22
4.15 Protest	23
4.16 Scrip and Withdrawal from Treaty	26
4.16.1 History	26

	<u>PAGE</u>
4.16.6 <u>Indian Act Provisions Regarding Scrip and Withdrawal from Treaty</u>	27
4.16.12 Records of Scrip and Withdrawal from Treaty	28
4.17 Band Control	29
4.17.2 Band Lists Maintained in the Department	29
4.18 Band Membership - Children	30
4.18.3 Entitlement to Band Membership of Children of Women Who Lost Status Upon Marriage	31
4.19 Application of the Death Rules in Subsections 11(2)(b) and 11(3)	31
4.20 Member Only	31
4.21 New Bands	32
4.22 Register Only	33
4.23 ^s Transfers	33
4.23.1 To a Departmentally-Controlled Band	33
4.23.2 To a Band Controlling Its Membership Under Section 10	34

4.0 ENTITLEMENT TO REGISTRATION AND BAND MEMBERSHIP UNDER CURRENT LEGISLATION.

4.1 TABLE OF CONTENTS

4.2 INTRODUCTION

The Membership and Entitlement Directorate is a relatively large organization with a specific mandate, part of which is the responsibility to register as quickly as possible and in accordance with the Indian Act, an estimated 100,000 persons who may qualify for reinstatement or first-time registration as a result of the amendments made to the Indian Act on April 17, 1985.

There is need for direction and advice as to the proper interpretation and application of the membership provisions of the Indian Act in discharging this responsibility. This direction is provided by the Registrar who is, as defined in the Indian Act, the officer of the department responsible for the Indian Register and the band lists maintained in the department.

The function of an entitlement officer is primarily to process applications for registration and band membership. This process involves an investigation into an applicant's entitlement; the acquisition of appropriate documentation to confirm relationships and vital events; the determination of entitlement and band membership in accordance with the Indian Act; the preparation of letters of authority and letters of confirmation or disallowance; and the observance of administrative procedures for the processing of applications.

This manual provides the instructions and guidance required by entitlement officers to ensure adherence to the Indian Act and to maintain the integrity of the Indian Register and band lists maintained in the department.

Entitlement supervisors and officers are invited to provide their comments or suggestions on the content or omissions herein. This manual will be distributed in a loose-leaf format so that changes or updates can be easily included. No changes or updates are to be made to the manual unless they receive the prior approval of the Registrar. All copies of the manual must be uniformly revised to ensure consistency.

4.3 EVIDENCE, TYPES AND SOURCES

4.3.1 Entitlement officers require appropriate evidence with which to determine the entitlement of persons to Indian status and band membership under the Indian Act. The evidence is usually in the

form of documentation. Since the Indian Act places the onus of applying for Indian registration and band membership on the applicant, it follows that the applicant is mainly responsible to provide the Registrar with the necessary proof upon which decisions on registration and band membership will be based.

4.3.2 The range of documents which an applicant may submit is large. Generally speaking, the most important documents will be official documents for the provincial Vital Statistics office. These include:

- long form birth registrations showing the names of parents
- death certificates
- marriage certificates
- change of name documents

In addition, there are court documents or court orders which are extremely important when applicable, such as:

- court orders deciding paternity
- adoption orders
- divorce decrees (Absolute or Decree Nisi)
- civil annulment orders

The following church and school records are also important.

- certificates of baptism
- certificate of marriage
- certificates of death
- school records (residential school, admission and discharge records)

Documents or information held by band offices or district offices of the department, such as:

- old family records
- old lists of band members
- records of band meetings
- old documents concerning band business

Libraries or Public Archives often have material which will reveal histories of families. This is a time-consuming job but worth the effort if the applicant discovers facts and dates otherwise unavailable.

Applicants also may have access to personal or business documents relevant to their application or their ancestors which contain information on the applicant's claim to Indian status and band membership. When requesting such documents, officers must advise applicants to copy them and not to send the originals.

- 4.3.3 Once the processing of the application has begun, an entitlement officer will examine it to determine which documents are included and which are still required. For example, if the applicant was not previously registered and has not included a birth registration, the officer will write requesting that document.

In all cases, the officer will search department records. These may include:

- computer searches (Indian Register and band lists maintained in the department);
- those books referred to as the "black registers". These constituted the Indian Register prior to conversion to computerization of the Indian Register and band lists;
- 1949-1951 membership lists (basis for the black registers);
- 1951 posted lists - these lists were posted in 1951 when the 1951 Act came into force representing the band population at that particular time;
- paylists (interest and annuity);
- enfranchisement records;
- commutation files - pre-1951 (lists of Indian women who married non-Indians);
- membership files (6000 series). These include correspondence from the band or band members in each band, as well as correspondence to and from department offices;
- scrip ledgers and files (R.G. 15 series) held at Public Archives and some microfiche records held in our Research Unit along with an index of scrip files;

- records concerning "Persons enfranchised - Province of Ontario" and "Indian Women who married non-Indians;
- band and district offices. These offices often have old census lists or band lists which should be examined;
- agency lists - these were prepared by Indian agents at different intervals;
- agency census lists - annual records kept by some Indian agents;
- agency census books - these are collections of different census lists;
- old census records held by Public Archives of Canada;
- adoption records (* not unless you are an adoptions officer);
- Indian Land Registry records (surrenders and sales of reserve lands); and
- orders in council (i.e. enfranchisements).

4.4 RESEARCH METHODOLOGY

The basic steps an officer should follow in researching an application or a group of related applications for registration under the Indian Act are as follows:

- 4.4.1 Examine the application(s) carefully taking note of the information provided as to band affiliation and grounds for registration. Identify, if possible, whether it is the applicant's parent(s) or grandparent(s) whose earlier registration must be confirmed. Prepare a family tree for applicants claiming entitlement to registration for the first time, to which information may be added as research progresses.
- 4.4.2 Verify from the computerized Indian Register or regional validation listings whether the applicant is already registered as an Indian. This can occur in the case of Ranville and Martin registrations or in the case of duplicate applications.
- 4.4.3 Consult the orange (completed applications) file and the blue (documentation requested) file for the band concerned where an applicant appears to be claiming entitlement to registration for the first time. It may be possible to locate completed applications from other family members. If so, copies of pertinent research notes and documents may be taken to attach to

the application under consideration. This step eliminates the possibility of duplicating sometimes lengthy research as well as the possibility of requesting documents already received. In some instances, relevant information may be uncovered that the applicant neglected to include in his application.

- 4.4.4 Identify the primary records to be consulted to confirm an earlier registration of the applicant or his ancestors. This will depend upon the completeness and accuracy of the information supplied in the application. If the information indicates a loss of status between 1951 and 1982, the black registers for the band concerned should be consulted. If the loss of status occurred prior to 1951, consult the computerized list for the identified band i.e. treaty and interest paylists, census records, and pre-1951 band lists. If the loss of status occurred between 1982 and 1985, consult the computerized Indian Register. Research should begin with the black registers if the application does not contain information on the grounds for registration or for the loss of status.
- 4.4.5 Photocopy the pertinent records page(s) from the black registers to attach to the application. Where information is extracted from the paylists complete Extract from Paylist forms.
- 4.4.6 If unsuccessful in locating a record of the applicant or his ancestors in the black registers, paylists, census records or pre-1951 band lists, consult secondary research materials such as records of enfranchisement, the Indian Women who married non-Indians volumes, records of scrip if appropriate, and membership files.
- 4.4.7 Organize your research findings and prepare a research note indicating in all cases the sources of the research findings. It is imperative that all sources of information searched be identified in the research note where no record of the applicant or his ancestors can be located.
- 4.4.8 Evaluate your research findings in relation to the provisions of the Indian Act. Refer to the present and past Acts when necessary. Determine whether all documentation required to establish relationships and dates of events has been received. Request direction from the unit supervisor if any uncertainty exists as to the sufficiency of documentation provided.
- 4.4.9 Prepare draft letters to the applicant and to the local reporting office responsible for the membership program if a registration is being authorized.

- 4.4.10 Submit the letter(s) in final form along with the application and research materials to the unit supervisor for approval. Letters requesting an applicant to provide additional information and documentation may be signed by the entitlement officer subject to the approval of his unit supervisor.

4.5 SECTION 7: APPLICATIONS AND PROCEDURES

4.5.1 Women Who Gained Status on Marriage and Subsequently Lost it

Paragraph 7(1)(a) and subsection 7(2) of the Indian Act stipulate that a non-Indian woman who gained status upon her marriage to an Indian man and who subsequently lost her entitlement to registration is not now entitled unless she was entitled to registration at some time prior to her marriage.

- 4.5.2 When you are considering an application for registration from a woman who gained status in accordance with paragraph 11(1)(f), you must determine whether she has an entitlement to registration in her own right. An investigation into her entitlement and/or her parents' entitlement will be conducted. If she has no prior entitlement, paragraph 7(1)(a) will apply and she will not be entitled to be registered as an Indian.

4.5.3 Women Who Gained Status on Marriage and Whose Subsequent Marriage Was Unreported

You will, on occasion, receive an application for registration from a woman who acquired status in accordance with paragraph 11(1)(f) and who subsequently married a non-Indian prior to April 17, 1985. This second marriage was unreported and the person's name was not removed from the Indian Register or the band list.

Section 6 of the Indian Act is subject to Section 7: therefore, because the individual lost her entitlement to registration at the time the marriage took place, she is not protected by paragraph 6(1)(a). The fact that she was not deleted is of no consequence. This presupposes, of course, that this person has no basis of entitlement other than paragraph 11(1)(f).

- 4.5.4 In summary, when processing the application of a woman who acquired status under the former paragraph 11(1)(f) and is registered, but who married a non-Indian before April 17, 1985, and failed to report that marriage, that applicant is not entitled to be registered. If she is presently on the Indian Register, she should be removed. This applies, notwithstanding the fact that she was on the Indian Register on April 17, 1985.

4.5.5 Children of Women Who Acquired Status

Paragraph 7(1)(b) stipulates that the child of a woman who acquired status under the former paragraph 11(1)(f) is not entitled to registration as an Indian if that child is also the child of a man who is not entitled. This requires you to investigate paternity in every case where paragraph 7(1)(b) applies or might apply to ascertain the entitlement of the father. This research must be done in addition to that into the mother's prior entitlement as required by subsection 7(3).

4.5.6 If you receive an application from a person whose mother acquired status on marriage with no other basis for entitlement and whose father is not entitled, the applicant's entitlement is subject to paragraph 7(1)(b) and the person is not entitled.

4.5.7 If a person is registered as the child of a woman whose only basis for entitlement is the former paragraph 11(1)(f) and whose father is not entitled, this person may be deleted from the Indian Register and from the band list as his or her entitlement is subject to paragraph 7(1)(b).

4.5.8 This discussion of Section 7 does not pertain to those women and children as described above who were registered and were entitled to be registered immediately prior to April 17, 1985. These women and their children are entitled to registration and band membership. They remain on the Indian Register and on their band lists unless removed as a result of a protest or an investigation where Section 7 applies.

4.5.9 The following chart will assist some guidance in determining the application of Section 7.

4.6 Adoption

The Indian Act criteria used to establish the entitlement to Indian status and band membership of all adopted persons is essentially the same as that used for all other forms of registration.

However, confidentiality must be maintained at all times when dealing with information about adopted persons. Special steps taken to ensure that the details of the adoptions of all persons registered as Indian are held in confidential registers available only to those persons responsible for adoption matters.

The department receives adoption information in different ways. Most adoption details are shared with the Registrar by Provincial Welfare officials and those native child care

agencies with an adoption mandate. Other sources of adoption information may be adoptive parents, departmental field offices, band offices and adoptees themselves.

4.6.1 Types of Adoptions

1. Legal Adoptions of a registered Indian by non-Indian parents.
2. Legal adoption of a registered Indian by Indian parents.
3. Non-Indian persons legally adopted by parents who are registered Indians.
4. Persons adopted by registered Indians in accordance with a recognized traditional band custom.

The Indian Act entitlement provisions in effect prior to April 17, 1985, did not allow for a change of status by reason of adoption. In view of this, Indian persons legally adopted by non-Indian parents did not lose entitlement to Indian status and band membership upon adoption. It therefore followed that those persons legally adopted by registered Indian parents had to have entitlement to be registered as Indians before their adoption in order to have entitlement to the Indian status and band membership of the adoptive parents. Adopted persons were automatically transferred between bands upon the department's receipt of their adoption details.

The first important change affecting adoptees introduced in 1985 with the passage of Bill C-31 is to allow for the acquisition of Indian status and band membership by non-Indian persons when adopted by registered Indian parents.

The second important change is the recognition of the entitlement to Indian status and band membership of these persons adopted by registered Indians in accordance with a recognized tribal custom.

However, in both of adoption circumstances, the adoptee must have been a minor (under the age of majority) at the time of the adoption process. This is because the Indian Act states that a "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom.

4.6.2 Dealing with Applications

1. Most applications from adoptees seeking registration as Indians should be forwarded and processed by an officer of the adoption unit.

2. However, there are now circumstances where applications from adoptees, or including adoptees in a family group, may be processed by all entitlement and research units. These situations are:
- applications received from adult non-Indian persons legally adopted as minors by registered Indian parents;
 - applications received from registered Indian adoptive parents on behalf of their legally adopted non-Indian child who is presently a minor; and
 - applications received from a head of household with one or more of his minor children being non-Indian children who were legally adopted as minors.

THE ABOVE SITUATIONS CONCERN ONLY THOSE NON-INDIAN APPLICANTS WHO HAVE ENTITLEMENT TO GAIN STATUS BY REASON OF ADOPTION

4.6.3 It Is Important to Note That

- It is essential that copies of Adoption Orders be provided by applicants as proof that a legal adoption has occurred.
- Copies of all correspondence received from an applicant as well as the letter of authority are to be provided to the adoption unit for recording purposes.
- It is the department's policy not to solicit information from adoptees or their parents. Therefore, whenever it appears an investigation must be made to obtain additional information about adopted persons to consider their entitlement to Indian status, these applications should be transferred to the entitlement officers of the adoption unit with a short memorandum explaining the situation.

4.6.4 Indian Custom Adoption

All applications received from persons who were adopted by Indian custom are to be processed only by the adoption unit.

4.7 COURT JUDGMENTS

Judgment handed down by the Supreme Court of Canada on March 24, 1983.

Particulars of the Case

John Martin, born on October 27, 1953 is the "illegitimate" child of a non-Indian woman, May Richards, and the late Richard Martin who, until his death, was a member of the Micmacs of Maria Band of Indians (Quebec).

Mr. Martin had made application for registration to the Registrar pursuant to Section 11(1)(c) of the previous Indian Act. This section states:

11(1) Subject to Section 12, a person is entitled to be registered if that person

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b).

Mr. Martin's application was refused by the Registrar on the grounds that Section 11(1)(c) applies only to persons who are direct male descendants in the legitimate male line of Indians despite the fact that the word "legitimate" did not appear in that Section. The Trial and Appeals Division of the Federal Court of Canada upheld the Registrar's decision, yet a further appeal by the complainant, through the Supreme Court of Canada, proved successful. The decision was based on the fact that the qualification of being legitimate should not have been read into Section 11(1)(c). Consequently, the Registrar was directed to register John Martin as an Indian.

Ramifications

The Registrar was obligated to register upon application all other "illegitimate" male persons whose fathers were registered Indians.

While this Supreme Court decision paved the way for those "illegitimate" male children previously denied registration as status Indians, the "illegitimate" sisters of those individuals remained "locked out" of registration because the Indian Act did not address the situation of illegitimate female children born to status males and non-status females.

This subsection has been repealed under the current Indian Act, but its effects persist. For example, if a male child has entitlement to status under old Section 11, he will be registered under subsection 6(1)(a) of the amended Indian Act. His sister, on the other hand will gain status pursuant to subsection 6(2).

Further, due to the second generation cut-off rule, transmission of her Indian status to her children can only be achieved if the father of those children is either registered as an Indian or entitled to be registered as such. On the other hand, her brother's Indian status will be automatically transmitted to his children regardless of the status of their mother.

Documentation Requirements

1. Birth registrations, or baptismal certificates if the applicant is born in Quebec, are required in all cases.
2. Where the birth registration lists the names of both parents and the father can be identified as a person who is a registered or entitled to be registered as an Indian under paragraph 6(1)(a) of the Indian Act, registration can ensue.
3. Where the birth registration provides the name of the mother only, a statutory declaration will be required from the natural father admitting paternity before a determination as to entitlement can be made.

CAUTION: In all cases, check the computer Indian Register to eliminate the possibility that the applicant may already be registered. Local reporting offices have the authority to report the births of such persons if born after September 4, 1951. Registration may also have been authorized by the Registrar as a result of correspondence and documentation received from a local reporting office.

4.7.2 Ranville Case

Judgment handed down by the Supreme Court of Canada on September 28, 1982, which upheld the decision by Judge J. Drew Hudson of the County Court of York, on September 5, 1979.

Particulars of the Case

The Ranville case involves two children born after August 13, 1956 who were removed from band membership following receipt of documentary confirmation that their births were legitimated by the marriage of their mother to a non-Indian. The deletion of their names from the Fort Alexander band list was protested by their mother and referred to the courts for review.

The Judgment by Judge J. Drew Hudson held that the Ranville children were entitled to be registered as Indians and included in membership in the Fort Alexander Band under Section 11(1)(e) of the Indian Act as it stood and provincial legislation concerning legitimation could not deprive them of Indian status acquired under the Indian Act. This Judgment was confirmed by the Supreme Court of Canada.

Ramifications

The onus was on the Registrar to identify and, subsequently, re-register all those persons born after August 13, 1956 who were removed from the Indian Register under circumstances identical to those of the Ranville children.

With the occasional exception, these persons have now been re-registered. It should be noted that steps were not taken to identify and register those persons who were refused registration by the Registrar because of legitimation. The onus is on these individuals to apply.

When determining the entitlement of applicants who were deleted or omitted from the Indian Register by the Registrar under circumstances identical to those of the Ranville children, their entitlement to registration as Indians is under paragraph 6(1)(a) of the Indian Act subject to paragraph 7(1)(b). In the case of females who married non-Indians previous to April 17, 1985 their entitlement is under paragraph 6(1)(c) of the Act subject to paragraph 7(1)(b).

Documentation Requirements

It is not necessary to request additional documents where a decision was made by the Registrar to omit or delete the name of a person from the Indian Register under circumstances identical to the Ranville children. In most cases, Registrar's decisions were based on evidence including birth registrations and statutory declarations. A marriage certificate will be required, however, in the case of a female who married a non-Indian prior to April 17, 1985.

4.7.3 Jock Case

Judgment dated February 29, 1980 by Judge E.E. Smith of the County Court of the United Counties of Stormont, Dundas and Glengarry, Province of Ontario.

Particulars of the Case

The decision of the Registrar to delete the name of James David Jock from the Iroquois of St. Regis band list based on Section 12(1)(a)(iv) of the former Indian Act (the double-mother clause) was protested and referred to the above-mentioned court for review. Judge E.E. Smith concluded that James David Jock's paternal grandmother, Catherine Jock, nee Herne, was a full-blooded Mohawk Indian who was born and lived on the American side of the St. Regis Tribe Indian Reserve until 1924 and as such she was a member of the band in her own right under Section 11(1)(b) of the former Act. Consequently, James David Jock was not affected by Section 12(1)(a)(iv) and was entitled to be registered as an Indian and as a member of the Iroquois of St. Regis Band.

Ramifications

Recognized members of the St. Regis Mohawk Tribe of Indians in the U.S. who applied for registration under the former Indian Act were registered as Indians and members of the Mohawks of Akwesasne Band in Canada under Section 11(1)(b) with the exception of women who had married non-Indians and whose entitlement was lost under Section 12(1)(b).

Under the current Indian Act persons who were recognized members of the St. Regis Mohawk Tribe in the U.S. prior to April 17, 1985 are entitled to registration as Indians under paragraph 6(1)(a) based on their entitlement to registration under Section 11(1)(b) of the former Act. In the case of women who married non-Indians prior to April 17, 1985, their entitlement to registration is derived from paragraph 6(1)(c) of the current Act.

Documentation Requirements

1. A birth registration or birth certificate is required in all cases.
2. Confirmation in writing from the St. Regis Mohawk Tribal authorities in the U.S. is required in all cases confirming that the applicant is an enrolled member of their Tribe.
3. Marriage certificates are required for women who married.

4.8 DOUBLE-MOTHER CLAUSE

Subparagraph 12(1)(a)(iv), otherwise known as the "double-mother" clause was implemented when the following conditions were met:

- i) The individual was the legitimate child of a marriage which took place on or after September 4, 1951;
- ii) Had attained the age of twenty-one; and
- iii) Mother and paternal grandmother were non-Indians prior to marriage.

4.8.1 Exemptions from Section 12(1)(a)(iv)

Many bands received an exemption from the provisions of this Section (see Appendix) prior to the 1985 amendments to the Indian Act and registration and band membership was restored to those individuals who had been removed.

Reinstatements: An individual who was removed in accordance with subparagraph 12(1)(a)(iv) from a band which subsequently obtained an exemption and is now applying for reinstatement will be entitled to registration and band membership pursuant to the provisions of paragraphs 6(1)(a) and 11(1)(a) of the Indian Act as amended June 28, 1985 based on paragraph 11(1)(d) of the Indian Act as it read immediately prior to April 17, 1985.

First-time Registrants: When you are considering the entitlement of a first-time registrant affiliated with a band to which the exemption applied, you need not to give consideration to the "double-mother" clause but will determine entitlement in accordance with other Sections of the Act.

4.8.2 Application of the "Double-Mother Clause"

Reinstatement: An individual who was removed in accordance with subparagraph 12(1)(a)(iv) from a band which did not obtain an exemption is now entitled to registration and band membership pursuant to the provisions of paragraphs 6(1)(c) and 11(1)(c).

First-time Registrants: When you are determining entitlement in accordance with paragraph 11(1)(d) of the former Indian Act (legitimate child) you must determine whether or not the mother and paternal grandmother were non-Indian prior to marriage. If they were not, and the applicant's parents were married after 1951 and the applicant attained the age of twenty-one prior to April 17, 1985, the applicant would have lost his entitlement to registration and band membership pursuant to the provisions of subparagraph 12(1)(a)(iv). The applicant would now be entitled to registration (and band membership) in accordance with paragraphs 6(1)(c) and to band membership under 11(1)(c) of the Indian Act if the band list is departmentally maintained.

4.9 Application of the Death Rule in Subsection 6(3)

All of the death rules, subsection 6(3), 11(3) and 11(2)(b) are presently on hold. Therefore all applications, whether the death rules result in disentitlement or in a downgrading of entitlement, must be held in abeyance until further notice.

4.10 ENFRANCHISEMENT

4.10.1 While provisions for the enfranchisement of Indians appeared in the first consolidated Indian Act passed in 1876, the modern concept of enfranchisement stems from legislation passed in 1918, 1951 and 1956.

Section 109 to 113 of the 1951 Indian Act as amended on August 14, 1956 provided the means whereby an Indian could give up his Indian status and band membership under certain conditions.

Enfranchisement was granted, upon application, to an adult who could meet the qualifications required under Section 109(1) of the Indian Act -- that he be capable of supporting himself and his dependents. The applicant's wife and unmarried minor children were to be enfranchised with him and their names were to appear on the enfranchisement order. If, however, the wife of the applicant was living apart from the husband, she and any minor children living with her were not included in an enfranchisement order unless she also applied for enfranchisement or resumed living with her husband.

Where the names of all family members are listed on an enfranchisement order each will now be entitled to registration as Indians pursuant to the provisions of paragraph 6(1)(d). The wife's entitlement, of course, will be subject to Section 7. (See Section 4.5)

4.10.2 Wife and Children Not Included on Enfranchisement Order

a) Pre-1951:

Prior to 1951 the wife and minor children of a married Indian man were held to be enfranchised with him even though their names may not have appeared on the enfranchisement order.

When a woman applies for registration whose husband enfranchised after the marriage occurred, she will be entitled, subject to Section 7, to registration pursuant to the provisions of paragraph 6(1)(d) with band membership determined in accordance with paragraph 11(2)(b), if the band list is departmentally maintained.

Children of an Indian man and his wife, born prior to his enfranchisement are also entitled to registration pursuant to the provisions of paragraph 6(1)(d) with band membership determined in accordance with paragraph 11(2)(b) if the band list is departmentally maintained.

b) Post-1951:

After the amendments to the Indian Act in 1951 an individual's name had to appear on the enfranchisement order for the person to be considered enfranchised.

When you receive an application for registration for the wife of an Indian man enfranchised after 1951 and whose name did not appear on the enfranchisement order, you will determine her entitlement in accordance with the Indian Act as it read prior to the enfranchisement.

The entitlement of a child of an Indian man who enfranchised after 1951 and who was born prior to the enfranchisement but whose name did not appear on the enfranchisement order will be determined in accordance with the Indian Act as it stood at the time of the applicant's birth.

4.10.3 Enfranchisement of Woman Who Gained Status Through Marriage

Section 7(1)(a) of the Indian Act states that a woman who gained status through marriage to an Indian and subsequently lost it is not entitled to registration as an Indian.

Applications for registration from such persons are to be investigated to determine whether they are entitled to registration under another provision of the Indian Act. (See Section 4.5)

4.10.4 Children Born After Parents' Enfranchisement

When you receive an application from an individual whose parents enfranchised prior to his birth, you will first determine the entitlement of both parents to registration. From this you determine the applicant's entitlement.

The following chart may be used as a guide:

<u>Father</u>	<u>Mother</u>	<u>Applicant</u>
6(1)(d)	6(1)(d)	6(1)(f)
6(1)(d)	6(1)(f)	6(1)(f)
6(1)(d)	6(2)	6(1)(f)
6(1)(d)	7(1)(a) not entitled	6(2)
6(1)(d) - deceased	6(1)(d) - deceased	6(1)(f)
6(1)(d)	6(2) - deceased	6(2)
6(1)(d)	6(1)(f) - deceased	6(2)

4.10.5 Children Enfranchised as a Result of Mother's Marriage to a Non-Indian

In 1956 it became possible to enfranchise the children of women who married non-Indians. The Minister was given discretion concerning the recommendation of these children for enfranchisement.

In practice, each case was considered on its own merits. The children were enfranchised if they were living with the mother and her husband in a non-Indian community and it was believed that this situation was likely to continue. It was assumed that custody of the children by the mother in the new family setting was sufficient safeguard for their welfare. Some years later it was felt that this assumption could no longer be applied, particularly as more and more of them were dependent upon

departmental programs for the continuation of their studies. Beginning in 1962, children in the 16 to 21 year age group were not put forward for enfranchisement without the specific consent of the mother. The policy was changed again in 1967 so that consent of the parents was required to enfranchise children under 16 years of age. For minors in the 16-21 year age group their consent as well as that of the parents was required.

Any person enfranchised after 1956 as a result of mother's marriage to a non-Indian is now entitled to registration pursuant to paragraph 6(1)(c) and to band membership under 11(1)(c), if the band list is maintained in the department.

4.10.6 Enfranchisement of a Woman as a Result of Marriage to a Non-Indian

In 1951, for the first time, provision was made for enfranchising Indian women who married non-Indians. Previously, such women, although they ceased to be of Indian status following their marriages, retained the right to receive treaty moneys and any distribution of band fund revenues as Red Ticket holders. However, such income could be commuted to her at any time at ten years' purchase. After 1951, Indian women who married non-Indians became subject to enfranchisement and received the same moneys as those who voluntarily applied for enfranchisement i.e. 1 per capita share of the capital and revenue moneys of the band and 20 years of treaty payments.

Any Indian woman who was enfranchised as a result of her marriage to a non-Indian is now entitled to registration as an Indian pursuant to the provision of paragraph 6(1)(c) subject to Section 7.

The enfranchisement of women who married non-Indians was discontinued in 1976 although such women continued to receive payments under Section 15(1) of the Act.

4.10.7 Enfranchisement of Professional

Section 111 of the 1906 Indian Act allowed the following persons to petition the Superintendent General for enfranchisement:

- doctor of medicine
- university graduate
- lawyer
- priest or minister

By virtue of the person's education or profession, the individual was granted enfranchisement without the usual investigation.

Persons enfranchised under this Section are now entitled to registration pursuant to the provisions of subparagraph 6(1)(e)(ii) of the Indian Act with band membership in accordance with paragraph 11(2)(a), if the band list is departmentally maintained.

4.10.8 Enfranchisement of Bands

Section 111 of the 1951 Indian Act allowed for the enfranchisement of an entire band by way of voluntary application by the entire band. Very few bands expressed interest. Only one band has been enfranchised since the 1890's -- the Michel Band in Alberta in 1959.

There is no provision in the Indian Act for the reinstatement of individuals enfranchised as a result of the enfranchisement of the entire band. Therefore, these persons are not entitled to registration as Indians.

However, any person who enfranchised prior to the band's enfranchisement would be entitled to registration pursuant to paragraph 6(1)(d). They have no entitlement to band membership and their names will be added to the Alberta General List.

As the Michel Band no longer exists they cannot be added to a band list. Their group code will be identified in the Indian Register and on the General List for that district.

4.10.9 Enfranchisement to Join the Military

During both world wars, one of the requirements for enlistment in the armed forces was that an individual be a Canadian citizen or a British subject. As Indians were considered to be neither, many Indian men and their families applied to be enfranchised to serve in the forces.

There has never been a provision in former Indian Acts dealing exclusively with this situation. These persons were given the same consideration as any voluntary enfranchisement.

As with any person enfranchised as a result of an application being made, any person who enfranchised to serve in the military is entitled to registration pursuant to the provisions of paragraph 6(1)(d) of the Indian Act with band membership in accordance with paragraph 11(2)(a), if the band list is departmentally maintained.

4.11 FOREIGN RESIDENCY

Section 13 of the Indian Acts of 1906 and 1927 stipulated that any Indian who resided for five years continuously in a foreign country without the written consent of the Superintendent

General or his agent would lose his band membership. There is no reference to loss of Indian status as a result of foreign residency.

Although Section 6(1)(e)(i) of the 1985 Indian Act provides for the registration of these persons, they are entitled to registration as Indians pursuant to paragraph 6(1)(a) and you must determine the basis of their entitlement in a former Act.

However, their band membership would be determined by paragraph 11(2)(a), if the band list in question is departmentally maintained.

It should be noted that, prior to the 1985 amendments, the Registrar was restored Indian status to those persons whose names had been removed under Section 13. Their names were added to the General Lists.

4.12 ILLEGITIMATE CHILDREN BORN PRIOR TO APRIL 17, 1985

4.12.1 To determine the entitlement of illegitimate children born prior to April 17, 1985, you must apply the appropriate legislation affecting their circumstance. There are three possible time frames involved - August 14, 1956 to April 16, 1985, September 4, 1951 to August 13, 1956, and births prior to September 4, 1951. All of the possibilities referred to below are in respect of such children where their mothers are or were registered or entitled to be registered at the time of the child's birth and where subsection 7(1)(b) has no application (See "Section 7: Application and Procedures").

4.12.2 Births - August 14, 1956 to April 16, 1985

Illegitimate persons born during the above period to women registered or entitled to be registered as Indians were entitled to be registered in the Indian Register upon birth. Persons who have such an entitlement but who were never registered can now be registered under paragraphs 6(1)(a) and 11(1)(a) on the basis of their entitlement under paragraph 11(1)(e) of the Act, as it read prior to April 17, 1985. Illegitimate persons born during this period, who are added to the Indian Register and band list, and who are subsequently removed from the Indian Register without protest are entitled to be reinstated under subsection 6(1)(a), as they have been incorrectly removed.

Illegitimate children protested between August 14, 1956 and April 16, 1985

The addition of the name of any illegitimate child was subject to protest where it was determined that the father of the child was a non-Indian the name of the child was removed from the Indian Register and from their band list.

Those persons removed as a result of a protest based on non-Indian paternity are now entitled to registration in accordance with paragraph 6(1)(c).

4.12.3 Births - September 4, 1951 to August 13, 1956

Illegitimate persons born during the above period to women registered or entitled to be registered as Indians were entitled to be registered in the Indian Register except in cases where the Registrar was satisfied that the father was not an Indian. Persons in this category, having non-Indian fathers, would be registered upon application in the Indian Register and band list under paragraphs 6(1)(c) and 11(1)(c), respectively, because their names were systematically omitted from the Indian Register regardless of any effort or lack of effort on their behalf to have them registered on the basis of non-Indian paternity.

4.12.4 Where you are satisfied that the father is registered or entitled to be registered under the former Act, the child is also entitled under paragraph 6(1)(a) of the present Act.

4.12.5 Where you are not able to obtain evidence to satisfy yourself that the father is a non-Indian, the child is entitled to be registered under paragraph 6(1)(a) of the present Act on the basis of subsection 11(e) of the Act as it read immediately prior to August 14, 1956.

4.12.6 Births Prior to September 4, 1951

There is no provision in the 1927 Act specifically denying status to illegitimate children born prior to September 4, 1951. Each case will have to be considered separately, investigated and appropriately documented.

4.12.7 Your decision in each case for an illegitimate child born prior to September 4, 1951 will be one of the following.

4.12.8 If, after investigating paternity, the officer is satisfied the applicant's father was registered or entitled to be registered at the time of the applicant's birth, the applicant will be entitled to registration pursuant to the provisions of paragraph 6(1)(a) based on subsection 11(e) of the Indian Act as it read immediately prior to September 4, 1951.

4.12.9 If the applicant is a woman who married a non-Indian prior to April 17, 1985 she would have lost her entitlement as result of her marriage, and would now be entitled under paragraph 6(1)(c). (See chart Section 4.5.8)

4.13 LEGITIMATION

4.13.1 Most provinces have provincial legislation which provide for the legitimation of a child through the subsequent inter-marriage of his natural parents.

4.13.2 In the past, legitimation resulted in the inclusion or the transfer of the person affected to the husband's band.

4.13.3 Until September 5, 1979, legitimation also resulted in the deletion of a child, if the father was a non-Indian. The S.C.C. decision of Ranville made the deletion of these children no longer possible. As a result, all persons removed from the Indian Register had to be reinstated under the former Indian Act. This process resulted in the reinstatement of the majority of these persons. However, applicants today falling into this category would be entitled to be reinstated or registered under subsections 6(1)(a) and 11(1)(a) of the amended Indian Act.

4.13.4 The concept of legitimate and illegitimate births are removed from the current Indian Act. However, legitimations can still be considered if the event took place before April 17, 1985. You should refer to the section herein dealing with illegitimate children if the birth occurred outside of marriage prior to April 17, 1985.

4.13.5 Presumption of Legitimacy

This is the presumption that a child born to a married woman is the child of her husband and is thus legitimate. It is of course a rebuttable presumption and would be regarded by a Court as rebutted where appropriate evidence was tendered and accepted by the Court. In cases of this kind, a standard of proof accepted by the Registrar and to which you should adhere is that the evidence must be acceptable on a balance of probabilities, which means that given the circumstances, it is more probable that this evidence is true and acceptable than otherwise.

4.13.6 What this evidence will be depends on the facts of the case. It should relate however to the issue of contact between the mother and the putative father and ideally it should come from the husband, the wife and the putative father. In some cases, one or more of the parties may be deceased and it will then be necessary to judge whether the existing evidence is sufficient to rebut the presumption on a balance of probabilities.

4.13.7 Documentation Required

A Statutory Declaration from the mother naming the father of her child and indicating whether she believes Indian or not. If he is an Indian, she can provide his band and band number. If her

husband is not the father, the person she names as the father should be asked to complete a Statutory Declaration either admitting or denying paternity.

4.13.8 If the woman's former or present husband is not the father of her child, he should be asked to complete a declaration indicating when he last cohabited with his wife, whether he was residing in the same community, district or province at the time the child was conceived and if he believes that he is the father of this child.

4.13.9 In addition, if the husband is not named as the father, the mother should also be asked to include in her declaration a statement concerning when she last cohabited with her husband and whether she was residing in the same community, district or province at the time her child was conceived.

4.14 MARRIAGE

4.14.1 A Pre-Confederation Provincial Statute in 1850 provided for the first time that a non-Indian woman who married an Indian should be considered to be an "Indian". Further amendments to the Indian Act in 1951 stated in Section 11(1)(f) that the wife or widow of a registered male is entitled to be registered.

4.14.2 Commencing with the 1869 Indian Act, Indian women who married non-Indians ceased to be Indians. Children born after such a marriage were considered to be non-Indians.

4.14.3 Before September 4, 1951 Indian women who married non-Indian men were not enfranchised. Although they lost Indian status, they could retain certain rights to distributions (Red Ticket Holders) or apply for commutation. (See Section 15(5) of the current Indian Act.)

4.14.4 In 1976, as a matter of policy the department ceased enfranchising women who married non-Indians and started paying out funds under Section 15(1).

4.14.5 In 1980, bands were invited to request the issuance of proclamations exempting their members from the application of paragraph 12(1)(b) of the Indian Act which deprived Indian women who married non-Indians and their children of Indian status and band membership.

4.14.6 In dealing with applicants who married non-Indians, the entitlement officer should check the woman's band to determine if the band obtained such a proclamation and if she married after the date of proclamation.

- 4.14.7 If the answer to both questions is in the affirmative, her entitlement to registration as well as the entitlement of any children born of the marriage prior to April 17, 1985, must be considered under paragraphs 6(1)(a) and 11(1)(a) of the Indian Act.
- 4.14.8 Indian women who marry non-Indians after April 17, 1985 no longer lose status and band membership. Their children would be entitled under subsection 6(2) and band membership under paragraph 11(2)(b) provided the band has not taken control of its band list.
- 4.14.9 Non-Indian women who marry Registered Indians after April 17, 1985 do not acquire Indian status. Any children of these unions are entitled to be registered under subsection 6(2) with band membership under paragraph 11(2)(b) of the Indian Act if the band has not taken control of its band membership.
- 4.14.10 Women who married into a different band other than their birth band and then subsequently lost their Indian status by marrying a non-Indian are entitled to be reinstated now under subsection 6(1)(c) and to band membership under subsection 11(1)(c) of the Indian Act into the band from which status was lost and not the birth band.

4.15 PROTEST

- 4.15.1 A protest is the statutory right of a person or a band council to make a formal objection to the addition to or deletion from the Indian Register or band list by the Registrar. That is, if a person or a band council believes the Registrar has erred in his application of the Indian Act they may protest the Registrar's decision. Section 14.2 of the Indian Act clearly sets out the conditions under which a protest can be made. It also sets a three year time limit for lodging a protest. The three year limit begins from the date on which a person's name is included in, added to, omitted or deleted from the Indian Register or a band list, as the case may be. These conditions are listed below.

Condition 1 - the inclusion or addition of the name of a person in the Indian Register,

Condition 2 - the omission or deletion of a person from the Indian Register,

Condition 3 - the inclusion or addition of the name of a person in a band list maintained by this department,

Condition 4 - the omission or deletion of the name of a person from a band list maintained by this department,

- 4.15.2 Condition 1 allows for those persons who have been included or added to the Indian Register to protest the inclusion or addition of their name to the Indian Register. The protest can only be made by the person whose name has been included or added to the Indian Register or by the representative of that person.
- 4.15.3 Condition 2 allows for those persons who have been omitted or deleted from the Indian Register to protest the omission or deletion of their name from the Indian Register. The protest can only be made by the person whose name has been omitted or deleted from the Indian Register or by the representative of that person.
- 4.15.4 Condition 3 allows for those persons who have been included or added to a band list maintained in this department to be protested by a band council, any member of the band or by the person whose name has been included or added to the band list or by the representative of that person, band council or band member.
- 4.15.5 Condition 4 allows for those persons who have been omitted or deleted from a band list maintained in this department to be protested by the band council, any member of the band or by the person whose name has been omitted or deleted from the band list or the representative of that person, band council or band member.
- 4.15.6 Those individuals or band councils who wish to lodge a protest may do so by giving notice in writing to the Registrar, briefly stating the grounds of the protest, within the three years of the addition, deletion or omission.
- 4.15.7 In order that a protest be accepted as a valid protest a protest must be submitted to the Registrar's office within the three year protest period. Further to this point, subsection 14.2(1) of the Indian Act defines the length of a protest period as being three years, therefore, it is then significant to define the date that protest is considered submitted to the Registrar and the date that a protest period begins and the date that a protest period ends.
- 4.15.8 For the purpose of establishing the date of submission, the earliest date obtainable is the date of the BCR or letter which contains the protest. Where there is no date of protest on the BCR or letter, the postmark date will become the date of protest.
- 4.15.9 The protest period begins on the date when a specific event with respect to the name of a person is officially recorded in departmental records. Furthermore, a specific event occurs when the name of a person is added, included, deleted or omitted from

the Indian Register or a band list. The date upon which a specific event is recorded in departmental protest period begins and these dates are recorded in departmental records in the following manner:

Addition (initiated from the field) - the date that the person's name is entered in the Membership Computer System. For events occurring prior to October 19, 1987 the date of entry is the "date recorded". For events occurring on or after October 19, 1987 the date of entry is the date that appears as the date of registration in the "Remarks" field.

Addition (initiated at HDQ) - the officially recorded date is the date that appears on the letter of authority.

Inclusion (1985) - the officially recorded date shall be April 17, 1985. After April 17, 1988, this type of protest will not exist as the protest period will have expired on that date.

Inclusion (reassume control of band list) - the officially recorded date shall be the date that the Minister received the request from the band to the department requesting that the department once again assumes control of the maintenance of the band list.

Deletion - the officially recorded date shall be the date that appears on the letter of authority.

Omission - the officially recorded date shall be the date that appears on the letter of disallowance.

- 4.15.10 When a protest is made, the Registrar will cause an investigation into the matter and render a decision based upon the evidence that has been made available to him. In this respect, the Registrar may request any evidence that he deems necessary for him to render a decision. He may also consider any evidence that he sees fit or deems just, whether or not that evidence is admissible in a court of law.
- 4.15.11 Once a decision is rendered by the Registrar, the person or the band council who had lodged the protest or the person named in the protest or the representative of that person, band council or band member may appeal the Registrar's decision to a court of competent jurisdiction pursuant to Section 14.3 of the Indian Act. It should be noted that Section 14.3 of the Indian Act sets a time limitation of six months after the date the Registrar has rendered a decision on a protest in which to file a notice of appeal. Furthermore, an appeal of the Registrar's decision on a protest is a statutory right of a person or a band council and it is also the final remedy to affirming, varying or reversing the Registrar's decision.

4.16 SCRIP AND WITHDRAWAL FROM TREATY

4.16.1 History

When the treaties were made with the Indians, it was difficult and often impossible to distinguish clearly between an Indian and a person of mixed blood. This was particularly difficult in the northern areas covered by Treaty #8 (1899) and Treaty #11(1921) where both groups led a nomadic hunting way of life. For this reason, the Commissioners had to give the aboriginal inhabitants the option of having their territorial rights extinguished by taking treaty and annuity as Indians (31 Vic., c. 42, sec. 15b 1868) or taking scrip as persons of mixed blood (33 Vic, c. 3, sec. 31 1870 and Vic., c. 20 1874). Generally, throughout the north and west, those mixed blood people who were entirely identified with Indians, following their way of life and speaking their language, chose to be taken into treaty under the band with whom they were affiliated. A list of the available records of scrip and withdrawal from Treaty are included below in Section 4.16.12.

4.16.2 The Manitoba Act 1870 (33 Vic. c. 3, sec. 30) recognized the "Indian title" of persons of mixed blood and 1,400,000 acres was set aside for distribution to children of half-breed heads of families residing in the province on 15 July 1870, in order to extinguish these rights. Under subsequent legislation and Orders-in-Council, 6,034 children secured blocks of land comprising 240 acres each, but there were still many claims outstanding when the land reserve was exhausted. These were satisfied through the issue of Scrip for \$240.00 redeemable in Dominion Lands open for sale. 993 additional children received this benefit.

4.16.3 A further Act in 1874 (an Act respecting the appropriation of certain Dominion Lands in Manitoba 37 Vic., c. 20), provided for the rights of the half-breed heads of families residing in the province on 15 July 1870. Under its provisions, each half-breed head of family was to receive 160 acres of land or scrip of \$160.00, which was redeemable in Dominion Lands. The number of adults who qualified was 3,186.

4.16.4 Pursuant to an amendment to the Dominion Lands Act in 1879, the Metis of the North-West Territories (which included the present Provinces of Alberta and Saskatchewan), became eligible for scrip, provided they had lived there prior to the 15th of July, 1870, in areas which had been ceded by the Indians under Treaty. The formula was similar i.e., heads of families were to receive scrip for \$160.00, while children would scrip for 240 acres, or \$240.00 redeemable in the purchase of Dominion Lands available for sale.

4.16.5 In the case of the N.W.T., it was later enacted that children born there between the 15th of July, 1870 and the 31st of December, 1885 would also qualify, since the latter date was the final hearing of the Half-Breed Commission. There were other modifications in the Regulations to deal with specific Treaties, for example, after 1899, heads of families were to have the same entitlement as their children, and a few of the last claims were settled by cash payments. All told, there were 24,326 claims allowed in the Territories. Many Metis elected to enter Treaty with their Indian friends and were automatically disqualified to receive scrip. Approximately 820 original white settlers in the Province of Manitoba and the North-West Territories received scrip for \$160.00 between 1876 and 1894. Half-Breed Certificates were used to obviate the necessity of printing an extra issue.

4.16.6 Indian Act Provisions Regarding Scrip and Withdrawal from Treaty

The Indian Act of 1876 appears to be the first legislation which denied Indian status to persons known as half-breeds and who had taken scrip. The Indian Acts of 1880 and 1886 were similar except that the 1880 Act introduced the rule that half-breeds in treaty could voluntarily withdraw from treaty and take scrip. Commencing with the 1888 Act such withdrawals were deemed to include the minor unmarried children of the half-breed who was withdrawn from treaty with his or her father. However, prior to 1888 any minor unmarried children would not be deemed to have withdrawn from treaty and would be entitled to treaty status.

4.16.7 It was not until the 1914 Act that the wife of a half-breed who had withdrawn from treaty was included in that withdrawal. Therefore, any wife of such a person who had withdrawn prior to 1914 would still be entitled as a treaty Indian unless she herself had withdrawn from treaty. In the 1927 Act, it was explicit that the wife and minor unmarried children of such a half-breed would be included in the withdrawal.

4.16.8 Subparagraphs 12(1)(i) and (ii) of the Indian Act as it read immediately prior to April 17, 1985, provided that (i) a person who has received or has been allotted half-breed land or money scrip, and (ii) a descendant of such a person are not entitled to be registered in the Indian Register.

Subsection 12(4) of the same Act read as follows:

- (4) Subparagraphs 1(a)(i) and (ii) do not apply to a person who
 - (a) pursuant to this Act is registered as an Indian on the 13th day of August 1958, or

(b) is a descendant or a person described in paragraph (a) of this subsection.

4.16.9 The current Indian Act does not specifically bar scrip-takers or descendants of scrip-takers from any entitlement to registration. However, it also does not specifically provide for their registration.

4.16.10 As the new Act fails to provide a basis for entitlement of scrip-takers of their descendants and as the former Act specifically barred scrip-takers, the Registrar cannot register anyone who has accepted scrip or anyone whose only entitlement is through an ancestor who took scrip unless one of the following situations applies:

1. They are entitled under Section 12(4) of the former Act.
2. It can be established that one or both of the parents of the scrip-taker are deemed entitled to registration under paragraphs 6(1)(a), 6(1)(c), 6(1)(d) or 6(1)(e) of the current Act. If both parents of the scrip-taker are entitled under these paragraphs, the scrip-taker would then be entitled to registration under paragraph 6(1)(f) of the Act. In the event the scrip-taker was still living on April 17, 1985 his children would be entitled to registration under subsection 6(2). It follows that if only one of the parents of the scrip-taker is entitled under one of paragraphs 6(1)(a), 6(1)(c), 6(1)(d) or 6(1)(e), the scrip-taker would be entitled to registration under subsection 6(2) of the Act but he could not pass status on to his descendants.

4.16.11 Where an applicant is a descendant of a scrip-taker or scrip-takers, it will be necessary to consider the possibility that he may be entitled to registration through his ancestors who did not receive scrip. Information supplied by the applicant concerning ancestors who did not receive scrip must be investigated. If no such information is supplied it should be pointed out to the applicant that, if he can provide information concerning ancestors who did not receive scrip and are believed to be persons of Indian descent, further consideration could be given to his application for registration.

4.16.12 Records of Scrip and Withdrawal from Treaty

RG 15 DII 8(a), (b) and (c)

Indexes to Scrip Applications (Copies held in Genealogical Research Office)

RG 10 (BLACK) RE: HALF BREEDS AND SCRIP - (Held at Archives)

17680 - Battleford: Half Breeds on Reserves

132 - Ga - General: Claims of Non-Treaty Halfbreeds to Scrip
1903

24304 - General: Halfbreed claims, N.W.T. 1886 - 1901

30880 - General: Enquiring if Halfbreeds are entitled to Back
pay

56884 - General: Halfbreeds living on Reserves

37267 - General: Halfbreeds who withdrew from Treaty and wish
to Re-enter

92083 - List of Halfbreeds who Withdrew from Treaty in 1892

23593 - Lac La Biche: Withdrawing from Treaty

281180 - General: Claim, Half Breeds for Scrip

119863 - Scrip for Half Breeds who have been living five years
in a Foreign Country

1239-1A - Hobbema: Bobtail's Band: Withdrawals, 1885-6

41250 - Lac La Biche: Halfbreeds who withdrew from Treaty Claim
arrears of Annuity

17092 - Manitoba: Application of Halfbreeds to Withdraw from
Treaty. Land exhausted

100502 - Policy: re Granting discharge from Treaty

4.17 BAND CONTROL

4.17.1 Section 10 sets out a complete code for a band to assume control
of its membership list and the transfer of the department's
responsibility for that list to the band.

4.17.2 Band Lists Maintained in the Department

Before a person can be added to a band list maintained in the
department, he or she must be registered or entitled to be
registered in the Indian Register.

4.17.3 Entitlement to registration in the Indian Register is determined by the provisions of Sections 6(1) and 6(2). If a person is entitled to be registered and his or her band has not assumed control of its list, that person is also entitled to have his or her name entered in a band list maintained by the department to which they are entitled. Where the band has provided notice to the Minister prior to June 28, 1987 that it intends to assume control of its band list, a person who is registered after notice is provided will be added to his or her band subject to subsection 10(8). Subsection 10(8) provides that where a band has submitted its notice to the Minister and the Minister subsequently passes control to the band, the effective date of the band's control is the date of notice and any additions to or deletions from the band list by the Registrar after notice is given are of no effect unless they are in accordance with the membership rules established by the band.

4.17.4 It is important to note that the department's policy regarding acquired rights described in subsection 10(4) and (5) is that where a band has not submitted its subsection 10(6) notice to the Minister prior to June 28, 1987 everyone who is entitled to band membership in such a band has an acquired right thereto and subsection 10(8) should not be cited. This policy will be important when you are writing to the applicant in these circumstances. Entitlement officers should avoid any reference to subsection 10(8) where the applicant has an acquired right.

4.17.5 Where a band has taken control of its list and a person who is affiliated with that band is registered in the Indian Register after the band assumes control, that person must apply to the band for band membership. It is the responsibility of each entitlement officer to advise the client in the letter of confirmation that he or she must apply to the band for band membership giving the address of the band office. In order to minimize the possibility of furnishing incorrect information, the client should be directed to "Chief and Council" with no names cited.

4.18 BAND MEMBERSHIP - CHILDREN

4.18.1 Children born to women who had lost status on marriage to a non-Indian are entitled to band membership under paragraph 11(2)(b). If the band has taken control of their band membership, the children would then have to apply directly to the band for membership.

4.18.2 When a child is born to parents registered in two different bands, the child has the choice of either band. If a minor, his parents must sign a form indicating to which band they wish their child added.

4.18.3 Entitlement to Band Membership of Children of Women Who Lost Status Upon Marriage

Where you are considering in which band an applicant is entitled to membership and where the following facts exist:

1. The mother of the applicant was a member of an Indian band who married a non-Indian and her name was removed from the band list;
2. The applicant was born to her and her non-Indian husband after the marriage;
3. Subsequently, the mother and father are divorced or the father dies;
4. The mother then marries a member of another band, that is to say one different than her birth band, before the Act was amended in 1985 and she is now a member of her husband's band; and
5. As of April 17, 1985, the applicant/child is entitled to registration under subsections 6(2) and 11(2) and the band in which the applicant's child will be entitled to membership on June 28, 1987, must be determined.

You should note that, as the child was born after the mother lost her Indian status, the child's entitlement to membership in the mother's birth band no longer exists due to the fact the mother is now a member of a different band.

It is therefore necessary to identify the child's entitlement under Section 6. The applicable subsection is 6(2) as the child has only one parent who is registered or entitled to be registered under subsection 6(1). As the one parent is the mother who is a member of a certain band, the child will therefore have entitlement to have its name entered in the mother's band list on June 28, 1987, if that band does not have control of its own membership at that time.

4.19 APPLICATION OF THE DEATH RULES IN SUBSECTION 11(2)(b) AND 11(3)

Please refer to comment in Section 4.9.

4.20 MEMBER ONLY

As an entitlement officer, it is unlikely that you will encounter a situation where a person is a member of a band but not entitled to Indian status.

This situation could occur if a band returns control of its membership to the department under Section 13 of the Indian Act. At such a time the band will turn its membership list over to the department and future entitlement to band membership for the children of these persons will be governed by Sections 11 and 12.

If a band list has always been maintained in the department the situation will never arise that a person is a member of the band but not a registered Indian.

Where a band has assumed control of its band list under Section 10 of the Act, it is possible that they may accept as band members persons who are not registered Indians.

As well should a band decide to return control of its band list to the department under Section 13(3) any person who had his/her name on the band list at that time is entitled to retain band membership even though he/she may not be entitled to registration as an Indian.

4.21 NEW BANDS

In this context, "new bands" refers to a band formed by the amalgamation or joining of two or more bands as well as bands formed by the division of a band. Section 11(4) of the Indian Act clarifies the band to which an applicant is entitled to have band membership if his connection is to a band which amalgamated or divided to form new bands.

- 4.21.1 Where an applicant would have been entitled to membership in a particular band and that band amalgamated with another band or bands to form a new band, the applicant is entitled to membership in the new amalgamated band.
- 4.21.2 Where an applicant would have been entitled to membership in a particular band and that band divided to form new bands, he is entitled to membership in the new band to which he has the closest family ties. Further investigation will be required to identify the new band to which his most immediate relatives transferred on band division. In certain cases, it may not be evident from our records as to which of the new bands an applicant's relatives transferred. Additional information should be requested from the applicant in these instances to assist in a determination.
- 4.21.3 If the identified new band is a band which assumed control of its band list, the applicant will be registered in the Indian Register Only under the group code of the new band. He will be advised to apply to that band if he wishes band membership.

4.22 REGISTER ONLY

- 4.22.1 Register Only are those persons who are not members of bands and who are affiliated with bands that have control of membership. Where you have a person who is entitled to be registered as an Indian but who does not have an entitlement to be added to any particular band, his name should be added to the General List in the district in which he is associated or affiliated. He should be assigned an 800 band number accordingly.
- 4.22.2 Where you have a person who is entitled to be registered as an Indian and who would be entitled to band membership if the band had not assumed control of their band list, such a person should be added to the General List in the district in which he is affiliated. Again, he should be assigned an 800 band number by the registration clerk.

4.23 TRANSFERS

4.23.1 To a Departmentally-Controlled Band

To effect a transfer of an individual to a band for which the department maintains the band list two documents are required:

- (i) a written request from each adult requesting the transfer; such requests may include minor unmarried children; and
- (ii) a Band Council Resolution from the receiving band stating that the band council accepts the individual(s) as member(s).

When a person contacts you by telephone requesting a transfer, you should advise him to contact the band, in writing, requesting the transfer. Explain that, if the band accepts his as a member the band will forward the request together with the B.C.R. indicating acceptance to the Registrar who will then record the transfer in the Indian Register and amend the band lists for the affected bands.

If an individual has requested a transfer in writing, you should forward the request to the band, inform the person that you have done so and advise him to contact the band directly as the band council may wish to consult with him prior to making any final decision. (See Letter "A")

When you have received both the written request and the accepting BCR, you will confirm that the individual is registered as an Indian, his band and band number, and birth date, and process that transfer of those persons named on both documents. (See Letter "B")

By copy of the letter of authority, you will notify both bands involved (if they administer their own membership) and the district and regional office involved.

4.23.2 To a Band Controlling its Membership under Section 10

When a band has control of its membership in accordance with Section 10 of the Indian Act you will not be involved in transfers of individuals to their band lists.

If a person contacts you requesting a transfer to such a band you will advise them that the band has control of its membership and that they should contact the band directly. If the request is in writing, you should forward the request to the band, inform the person that you have done so and advise him to contact the band directly as the band council may wish to consult with him prior to making any final decision. (See Letter "C")