

**BILL C-38:
*An Act to amend
the Indian Act
(new registration
entitlements)***

Information Kit



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BILL C-38: *An Act to amend the Indian Act (new registration entitlements)*

As you may know, in 2019, Bill S-3 came fully into force and eliminated known sex-based inequities in the registration provisions of the *Indian Act*. Today, because of the changes to the law under Bill S-3, matrilineal and patrilineal lines of ancestry are treated equally, all the way back to 1867.

Despite the successful removal of sex-based inequities in registration, Indigenous Services Canada (ISC) and First Nations agree there are issues in registration and membership which still need to be addressed.



These issues include:

- enfranchisement
- deregistration
- acquired rights to natal band membership
- the second generation cut-off*
- cross-border issues*
- voting threshold challenges*

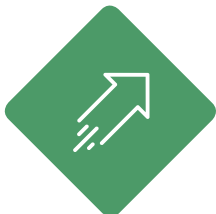
* These issues will be addressed in consultation in 2023



In March 2022, the Minister of Indigenous Services confirmed the federal government's commitment to follow through on the findings of prior national consultation and to address enfranchisement-related inequities in the *Indian Act* as soon as possible.



On December 14, 2022, Bill C-38, *An Act to amend the Indian Act (new registration entitlements)*, was introduced in Parliament. Bill C-38 proposes changes to address the issues of enfranchisement, deregistration, acquired rights to natal band membership and to replace some outdated and offensive language in the *Indian Act*.



This year, ISC is working to co-develop and launch a consultation process on the broader reform issues in registration and membership, including the second generation cut-off, cross-border issues and voting threshold challenges.

Issue 1: Enfranchisement

The Legal Assimilation of First Nations Individuals

What is the issue?

Dating back to the *Gradual Civilization Act* of 1857, enfranchisement was an assimilationist policy that terminated peoples' rights to be considered "Indian" under the *Indian Act*. When enfranchised, individuals lost any benefits associated with their First Nations identity and "Indian" status. In return, they gained basic entitlements of Canadian citizenship. Whenever a man was enfranchised, his wife and minor children would be automatically enfranchised along with him.



Involuntary Enfranchisement (1876-1920)

Occurred when an individual:

- attained a university degree
- became a "professional"
- met the "fit", "sober", "moral", and/or "civilized" requirements of the day
- became a priest or minister
- lived outside of Canada for more than five years without permission



Enfranchisement by Application (1876-1985)

Occurred if an individual or collective:

- showed they were "fit" to enter Canadian society
- wanted to access the rights of Canadian citizenship
- needed a strategic way to protect children from being forced to attend residential schools

In 1985, Bill C-31 eliminated the process of enfranchisement from the *Indian Act*. Individuals who had been enfranchised by application had their entitlement restored under the 6(1)(d) registration provision. Individuals who had been involuntarily enfranchised had their status restored under 6(1)(e) registration provision. This means these individuals and their direct descendants were able to be registered. Individuals who were enfranchised as part of a collective did not have their entitlement restored, and many are still unable to be registered. Today, people with a family history of enfranchisement are not able to access registration to the same extent as people without that family history.

What is the proposed amendment for this issue?

The proposed amendments would ensure that people with a family history of enfranchisement are treated equally to with those without. This includes:

- Repealing the enfranchisement-related provisions of 6(1)(d) and (e) and transferring individuals entitled for registration under these provisions to 6(1)(a.1);
- Entitling direct descendants of individuals who are, were or would have been entitled to be registered under 6(1)(d) and (e) under the provision 6(1)(a.3), if they were:
 - born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or
 - born after April 16, 1985, and their parents were married to each other at any time before April 17, 1985.
- Restoring entitlement to individuals who enfranchised as part of a collective, under section 6(1)(a.1)

Issue 2: Deregistration

Applying to have your name taken off of the Indian Register

What is the issue?

The Indian Registrar adds the name of every person who is registered to the Indian Register. Under the *Indian Act*, the Registrar is not allowed to remove individuals from the Register, even upon their request. Individuals might want to be removed from the Register because they:

- want to enroll with American Indian Tribes that do not allow those registered under the *Indian Act* to enroll;
- want to identify and/or register as a Métis person;
- no longer wish to be recognized on the federal Register; or
- withdraw their consent to be registered as adults, for those whose parents registered them as children.

The **Peavine-Cunningham decision** ruled that members of the Métis settlements cannot be registered under the *Indian Act*, if they wish to maintain their Métis status under the provincial legislation in Alberta. Other Métis groups and American Tribes have shaped their membership rules to exclude those who are registered under the *Indian Act*.

What is the proposed amendment for this issue?

The proposed amendment would enable individuals to send an application requesting deregistration (removal of their name from the Register). This written application would result in the:

- the withdrawal of an individual's consent to be registered under the *Indian Act*;
- the removal of that individual's name from the Register; and
- the removal of an individual's name from any section 11 band membership list.

Individuals whose names appear on membership lists of section 10 bands or on membership lists held by self-governing First Nations must rely on their First Nation to determine the impact of their deregistration request on their membership and band affiliation.

When an individual has had their name removed from the Register, they will:

- legally retain their entitlement to be registered under the *Indian Act*;
- legally retain a right to be registered again in the future; and
- legally retain the right to transmit their entitlement to their descendants.

An individual who has been deregistered will not have the right to access any programs, services, settlements and/or benefits associated with *Indian Act* registration. If an individual seeks to be re-registered, they will have no retroactive claim to any such benefits for the period in which they were deregistered.

Issue 3: Loss of Natal Band Membership

The automatic transfer of women to their husbands' band list

What is the issue?

When a woman who is registered under the *Indian Act* is a member of the band that she was born into, either her mother or father's band, this is referred to as being a member of her natal band.

Between 1876 and 1985



if
a woman who was registered under the *Indian Act*
and
who was a member of her natal band

married



a man who was registered under the *Indian Act*
but
who was a member of a different band

then the woman would:



automatically lose her natal band membership
and
be transferred to her husband's band.

Prior to 1985, when a woman married a man who was a member of a different band, she would automatically become a member of her husband's band. This transfer of band membership was not voluntary and the right have her natal band membership restored was never granted. These women retained their entitlement to status.

The impacts of a loss of natal band membership include the forced disconnection between women and their natal communities, even in cases when social and cultural reconnection is desired (e.g. divorce or loss of husband), or when there were rights, benefits, services or settlements that made reconnection preferable.

The Government successfully eliminated sex-based inequities in the registration provisions of the *Indian Act* over a series of changes since 1985. Because lawmakers were focused on addressing the registration provisions specifically for those who lost status, changes to the band membership provisions were not made for people who never lost their status. This includes women impacted by the involuntary loss of natal band membership. As a result, many women continue to experience differential treatment in terms of their access to membership in their natal bands as compared to their male counterparts who never lose access to their natal bands.

Band choice has implications for a number of aspects of an individual's life and may reflect their family, culture, upbringing, values and community. Even once an applicant is affiliated to a First Nation, they may simultaneously retain entitlement to membership with another First Nation. Generally, if someone decides to change their band affiliation, they have the right to pursue that choice, regardless of previous affiliation.

What is the proposed amendment for this issue?

The proposed amendment would create a legal mechanism that would ensure that women who lost the right to their natal band membership prior to 1985, and their children, would have the right to apply to have that membership restored.

Individuals who desire a change to band affiliation can go through a band transfer process. In order for registered individuals to transfer bands, a statement of consent is required from the admitting band along with a corresponding written request from the individual requesting the band transfer.

Section 10 First Nations have control of their own membership list and section 11 First Nations have their membership list maintained by the department.

In instances where an individual is entitled to registration under the *Indian Act* and applies to for membership in their section 11 natal band, the department must affiliate the individual to that section 11 band as result of their acquired rights to band membership.

In instances where an individual is entitled to registration under the *Indian Act* and wishes to be added to the membership list of their section 10 natal band, the individual must apply for membership directly with that band as First Nations under section 10 of the Indian Act maintain control over their membership.

Issue 4: Outdated and Offensive Language

The removal of objectionable or insensitive terms

What is the issue?

The *Indian Act* has administrated the lives of First Nations individuals dating back to 1867. It is simultaneously an active legal instrument and a dated colonial artefact embedded with outdated and offensive language.

As strides towards inclusion, accessibility and diversity are being made, the phrase “mentally incompetent Indian” may be considered by some to be violent language that requires replacement.

Despite an extensive number of laws written to support the needs of dependent adults and their families, the *Indian Act* remains the only law that attaches a precise legal meaning to “mentally incompetent Indian”.

What is the proposed amendment for this issue?

The proposed amendment would replace all references to “mentally incompetent Indians” with the modern language “dependent person”. This amendment would not alter the definition of the term, but would remove offensive language so that it aligns the language with other contemporary laws.

Next Steps

While the four issues do not represent the full range of remaining inequities in the *Indian Act*, they are issues that have been previously consulted on. The proposed solutions reflect the recommendations and perspectives of First Nations and other Indigenous stakeholders.

The Engagement Team welcomes feedback from any person, community or organization that anticipates being impacted by the proposed changes. All feedback provided will assist the department in determining the impacts of Bill C-38.



You can contact the Engagement Team at engagementinscriptionpn-fnregistrationengagement@sac-isc.gc.ca to:

- provide written feedback via email;
- schedule a session to review this Kit's information; or
- request more information on upcoming consultation.

As the Engagement Team prepares for upcoming consultation on a suite of broader reform issues, it welcomes thoughts, comments and concerns on remaining broader reform issues or in relation to the development of the consultation process. Lived experiences and perspectives of First Nations people and allies fuel the conversation on the solutions and changes that remain to be made.

Thank you,

Engagement Team