Bill S-2: An Act to amend the Indian Act (new registration entitlements)

Information Kit

Indigenous Services Canada
Services aux Autochtones Canada

Canada

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Catalogue: R122-104/2025E-PDF
ISBN: ISBN 978-0-660-79302-3

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This publication is also available in French under the title: Trousse d'information sur le projet de loi S-2 : Loi modifiant la Loi sur les Indiens (nouveaux droits à l'inscription).

Bill S-2: An Act to amend the Indian Act (new registration entitlements)

Introduction

In 2019, Bill S-3 came fully into force and eliminated known sex-based inequities in the registration provisions of the *Indian Act*. Despite this, Indigenous Services Canada (ISC) and First Nations agree there are issues in registration and membership which still need to be addressed.

The former Bill C-38, newly introduced as Bill S-2, reiterates the Government of Canada's commitment to reconciliation and to eliminating inequities that continue to impact First Nations individuals and families. As consultations on other remaining inequities are underway, Bill S-2 seeks to address these important issues:

- Enfranchisement
- Deregistration
- Loss of natal First Nation membership
- Removal of offensive language related to dependent persons

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.

The former Bill C-38, An Act to amend the Indian Act (new registration entitlements) was introduced in Parliament on December 14, 2022. The proposed amendments are in response to concerns raised by First Nations, communities, and Indigenous organizations throughout an engagement period from August to December 2022.

The former Bill C-38 is Action Plan Measure 7 of Chapter 2: First Nations Priorities in the *United Nations Declaration on the Rights of Indigenous Peoples Act*.

The former Bill C-38 died on the Order Paper, along with all other bills, on January 6, 2025, when Parliament was prorogued. The new legislative session began on May 26, 2025, and the former Bill C-38 was reintroduced as Bill S-2 on May 29, 2025, reflecting the same proposed amendments.

If passed, Bill S-2 will:

- ensure entitlement to registration is transmitted the same for persons with a family history of enfranchisement as those without;
- enable persons to apply to have their names removed from the Register if they no longer wish to be registered;
- support women who were automatically transferred to their husbands' First Nation to affiliate with their natal First Nation, and their descendants; and
- replace some outdated and offensive references about First Nations persons with a disability.

Issue 1: Enfranchisement
Removing Inequities for Persons Impacted by a Family History of Enfranchisement

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 rights, benefits, services, and programs associated with registration under the *Indian Act*. 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" and met the "fit", "sober", "moral", and/or "civilized" requirements of the day;
- became a priest or minister; or
- 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; or
- 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 the 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.

Issue 1: Enfranchisement
Removing Inequities for Persons Impacted by a Family History of Enfranchisement

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 those without. This includes:

- repealing the enfranchisement-related provisions of 6(1)(d) and (e) and amending individuals entitled for registration under these provisions to 6(1)(a.1);
- restoring entitlement to individuals who enfranchised as part of a collective, under section 6(1)(a.1); and
- entitling direct descendants of individuals who are 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.

Issue 2: Deregistration
Applying to have your name Removed from the Indian Register

What is the Issue?

The Indian Registrar is the individual who is authorized to add 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 on their request. Individuals might want to be removed from the Register for many reasons, for example:

- want to enroll with Native American Tribes;
- want to identify and/or register as a Métis person;
- no longer wish to be recognized on the federal Register;
- withdraw their consent to be registered as adults, for those whose parents registered them as children; or
- any other personal reason.

The **Peavine-Cunningham decision** affirmed that with the *Métis Settlement Act*, members of Métis settlements cannot be registered under the *Indian Act* if they want to maintain their Métis status in Alberta. Other Métis groups and Native American Tribes have also 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 submit an application requesting deregistration (removal of their name from the Register). This application would result in:

- the removal of that individual's name from the Register; and
- the removal of an individual's name from any section 11 First Nation membership list.

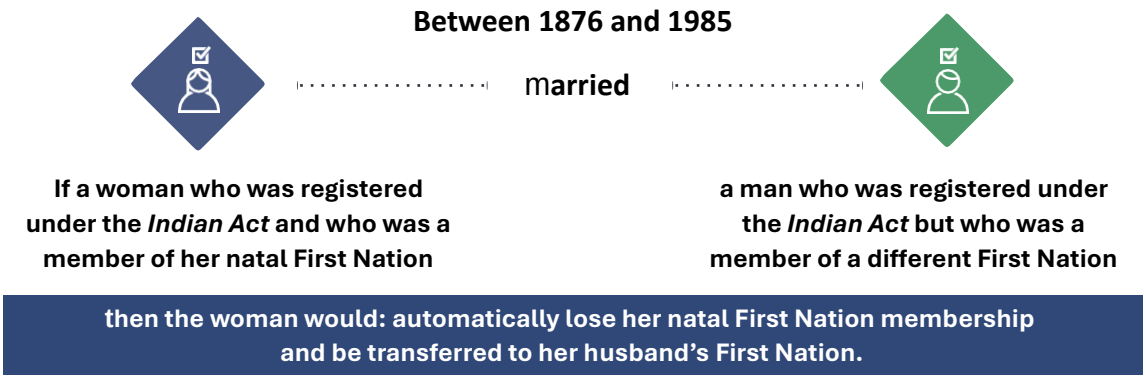
If membership is maintained by an individual's First Nation under section 10 or a self-governing agreement, that First Nation would determine the impact of deregistration on membership. It is recommended that the individual interested in deregistering reach out to their First Nation directly to determine how deregistration may impact their membership.

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 may not have the right to access the rights and benefits resulting from registration and First Nation membership. If an individual seeks to be re-registered, they may not have a retroactive claim to any such benefits for the period in which they were deregistered

Issue 3: Loss of Natal First Nation Membership
The Automatic Transfer of Women to their Husbands' First Nation



What is the Issue?

When a person who is registered under the *Indian Act* is a member of the First Nation that they were born into, either of their parent's First Nation, this is referred to as being a member of their natal First Nation.

Prior to 1985, when a woman married a man who was a member of a different First Nation, she remained registered and would automatically become a member of her husband's First Nation. This transfer of First Nation membership was not voluntary and the right to have her natal First Nation membership restored was never granted.

The impacts of a loss of natal First Nation membership on both women who were automatically transferred, and her descendants, could include:

- the forced disconnection between women and their natal communities, even when social and cultural reconnection is desired after a divorce or loss of her husband;
- the loss of rights, benefits, programs or services resulting from membership with their natal First Nation.

The Government successfully eliminated known 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 entitlement to registration, changes to the membership provisions were not made for people who never lost their entitlement. This includes women and their descendants impacted by the involuntary loss of natal First Nation membership.

As a result, many women continue to experience differential treatment in terms of their access to membership in their natal First Nation as compared to their male counterparts who never lost access to their natal First Nation. First Nation choice has implications on a number of aspects of an individual's life and may reflect their family, culture, upbringing, values and community.

Issue 3: Loss of Natal First Nation Membership
The Automatic Transfer of Women to their Husbands' First Nation

What is the Proposed Amendment for this Issue?

At this time, registered individuals who wish to be reaffiliated to their natal First Nation can go through the First Nation transfer process. To transfer First Nations, individuals must submit a signed and dated written request, valid government-issued identification and consent from the admitting First Nation (for example, a band council resolution or equivalent document).

The proposed amendment will support women who were automatically transferred to their husbands' First Nation, and their descendants, to seek reaffiliation with their natal First Nation.

If ISC maintains the membership list under section 11 of the *Indian Act*, affiliated persons automatically become members of that First Nation at the time of registration.

If the First Nation maintains their membership list under section 10 of the *Indian Act* or a self-government agreement, affiliated persons must apply directly to that First Nation for membership. They do not automatically become members of that First Nation as the First Nation determines who is a member based on their own membership rules.

The amendment will only impact membership in a First Nation whose list is maintained by Indigenous Services Canada under section 11 of the *Indian Act*. It will not impact First Nations who maintain their own membership list under section 10 of the *Indian Act* or a self-government agreement.

Issue 4: Removal of 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.

The *Indian Act* currently contains the phrase "mentally incompetent Indian" to refer to dependent adults, which is deeply offensive and outdated language that must be replaced.

Despite strides towards inclusion, accessibility, and diversity to support the needs of dependent adults and their families, the *Indian Act* remains the only legislation that uses the term "mentally incompetent Indian."

What is the Proposed Amendment for this Issue?

Bill S-2 proposes to replace the term “mentally incompetent Indian” with the updated language of “dependent person.” For legal purposes, the *Indian Act* includes a definition to refer to adult persons who receive support in making decisions. The term “dependent person” is more respectful and aligned with provincial and territorial laws.

Next Steps

Although the proposed amendments in Bill S-2 do not address all of the remaining inequities in the *Indian Act,* they do reflect the concerns and perspectives on these specific issues that have been raised by First Nations and Indigenous stakeholders.

Simultaneous to Bill S-2, Indigenous Services Canada continues the work towards the Collaborative Process on the Second-Generation Cut-off and Section 10 Voting Thresholds, fulfilling Action Plan Measure 8 in Chapter 2: First Nations' Priorities in the *United Nations Declaration on the Rights of Indigenous Peoples Act*.

First launched in November 2023, this initiative seeks solutions to the second-generation cut-off and section 10 voting thresholds issue through a co-developed and collaborative consultation process.

The Collaborative Process on the Second-Generation Cut-off and Section 10 Voting Thresholds consists of two key phases:

Phase 1

Co-development and information sharing. This includes:

- Indigenous Advisory Process
- Rights-Holders Information Kit

Phase 2

Consultation events and activities. This includes:

- Developing Indigenous-led options for solutions
- A Legal viability and impact analysis of possible solutions
- Indigenous-led consultation events

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

- schedule an information session on the S-2 information kit;
- receive updates on the progress of Bill S-2 and get added to the mailing list; and
- learn more about the Collaborative Process on the Second-Generation Cut-off and Section 10 Voting Thresholds.