



# Bill S-3 and the Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship

Fall 2018





## Purpose of Presentation

- To provide information on the Collaborative Process on Indian registration, Band Membership and First Nation Citizenship
- To provide a brief look at Bill S-3 amendments to the *Indian Act* registration provisions
- To gain input on the implementation of upcoming changes to the *Indian Act*





# History of Amendments to the *Indian Act* Regarding Sex-based Inequities

<b>1869 - 1876</b> <i>Gradual Enfranchisement Act and first Indian Act</i>	<b>1951</b> <i>Indian Act</i>	<b>Bill C-31</b> <b>1985</b>	<b>Bill C-3</b> <b>2011</b>	<b>Bill S-3</b> <b>2017</b>
<ul style="list-style-type: none"> <li>• Several forms of enfranchisement introduced</li> <li>• Patrilineal rules of descent introduced</li> <li>• Sex-based discrimination</li> <li>• The term 'Indian' was defined</li> </ul>	<ul style="list-style-type: none"> <li>• Creation of the Indian Registrar and the Indian Register</li> <li>• From band list to central register and management by the federal government</li> </ul>	<ul style="list-style-type: none"> <li>• Reinstatement of women who married out and their children</li> <li>• Acquiring status through marriage stopped</li> <li>• Acquired rights protected</li> <li>• Enfranchisement abolished</li> <li>• Creation of ss.6(1) and 6(2)</li> <li>• Second generation cut-off</li> <li>• Section 10 and section 11</li> <li>• 174,000 registered</li> </ul>	<ul style="list-style-type: none"> <li>• Additional generation descendants of women who were married non-Indian men became entitled</li> <li>• Introduction of the 1951 cut-off</li> <li>• 37,000 registered</li> </ul>	<p><u>Immediate changes:</u></p> <ul style="list-style-type: none"> <li>• In force on December 22, 2017</li> <li>• <i>Descheneaux</i> case: <ul style="list-style-type: none"> <li>• Cousins Issue</li> <li>• Siblings Issue</li> <li>• Omitted Minors Issue</li> <li>• Unknown or Unstated Parentage</li> </ul> </li> </ul> <p><u>Delayed changes:</u></p> <ul style="list-style-type: none"> <li>• Removal of the 1951 cut-off</li> </ul> <p><u>Other Obligations:</u></p> <ul style="list-style-type: none"> <li>• Consultation</li> <li>• Report to Parliament - June 12, 2019</li> </ul>





# The *Descheneaux* Decision and the Federal Response

## *Descheneaux*

- In August 2015 the Superior Court of Quebec declared that key provisions of the *Indian Act* unjustifiably violated equality rights under the *Charter* by perpetuating sex-based inequities in eligibility for Indian registration between descendants of the male and female lines and order Canada to amend the *Indian Act*.
- It also brought to light the long-standing and unaddressed broader issues relating to Indian registration, band membership and First Nation citizenship.

## Canada's Two-stage Response:

**1. Legislative Changes:** amendments to the *Indian Act* to address sex-based inequities in registration in direct response to *Descheneaux* (Bill S-3) to fix the cousins and siblings issues

**2. Collaborative Process on Indian registration, band membership and First Nation citizenship:** comprehensive consultations on broader issues with a view to future reform.

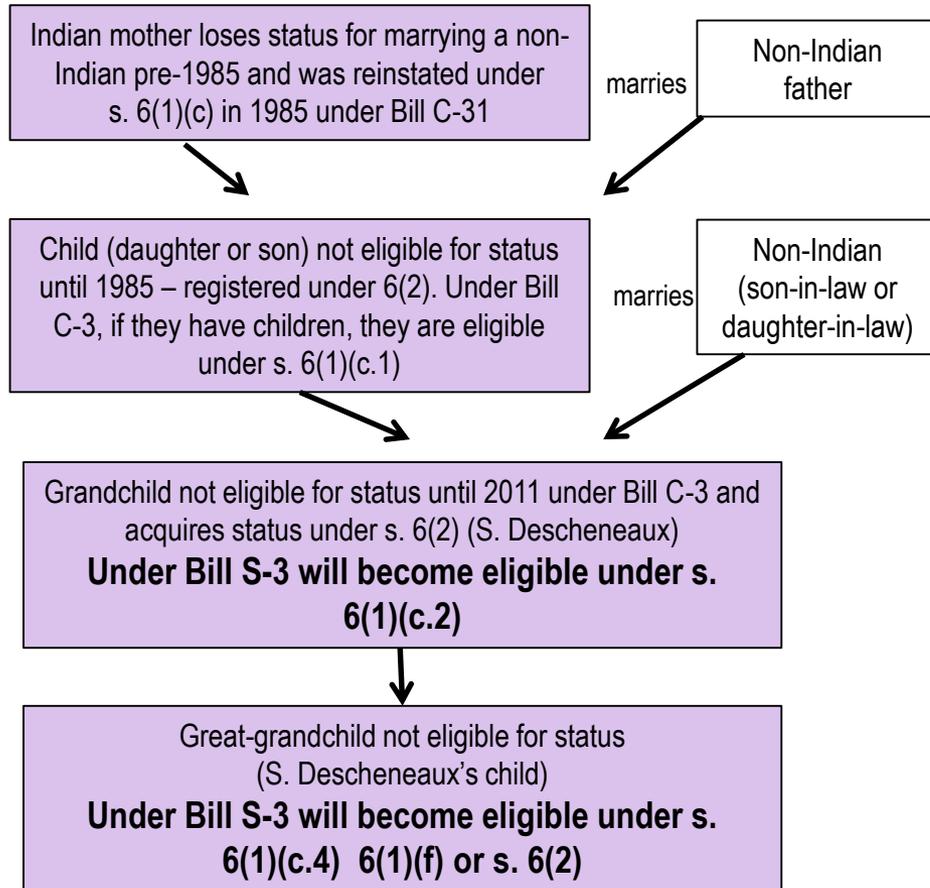
<https://www.canlii.org/en/qc/qccs/doc/2015/2015qccs3555/2015qccs3555.html?resultIndex=9>



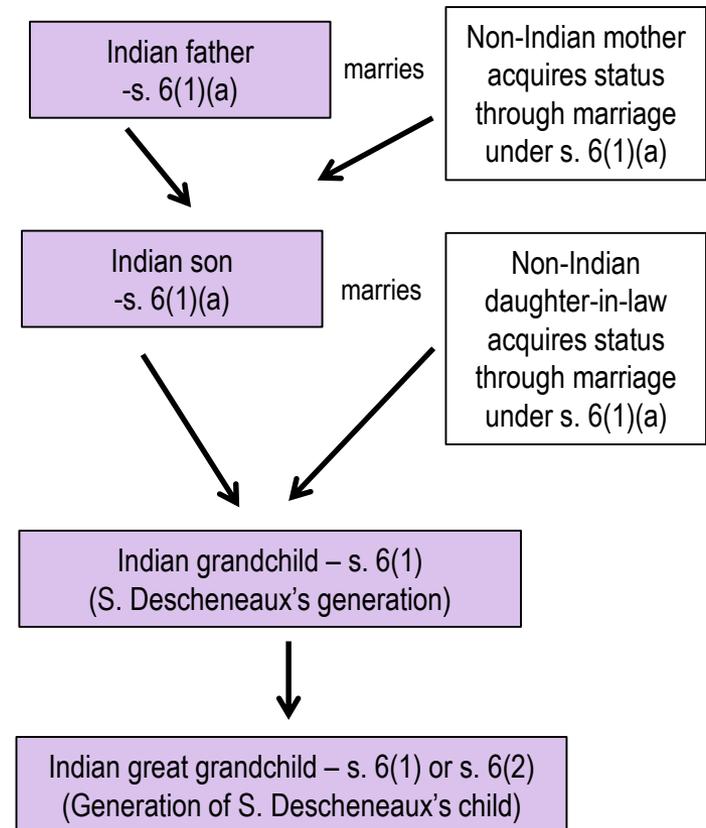


# Bill S-3 - Addressing the Cousins Issue

## Maternal Line (Situation of Stéphane Descheneaux)



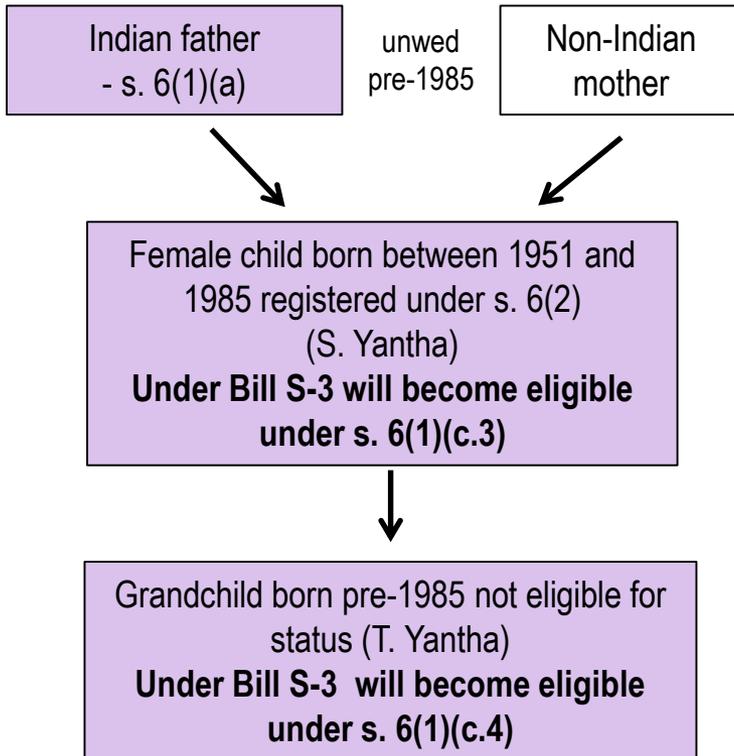
## Paternal Line (Comparator Group)



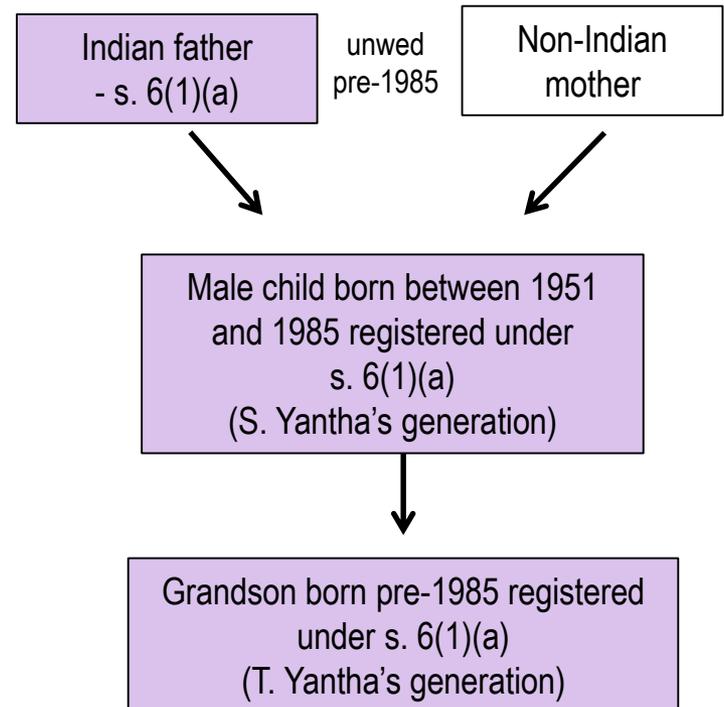


# Bill S-3 - Addressing the Siblings Issue

### Female child born out of wedlock to Indian male between 1951 and 1985 (Situation of Susan and Tammy Yantha)



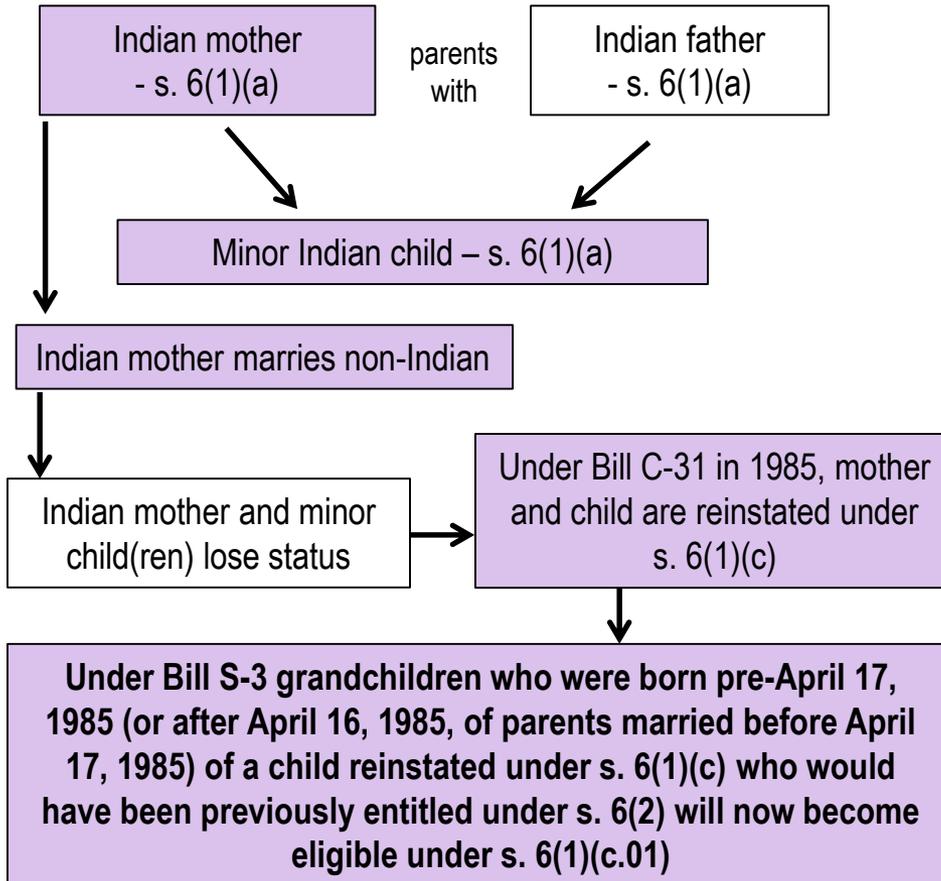
### Male child born out of wedlock to Indian male between 1951 and 1985 (Comparator Group)



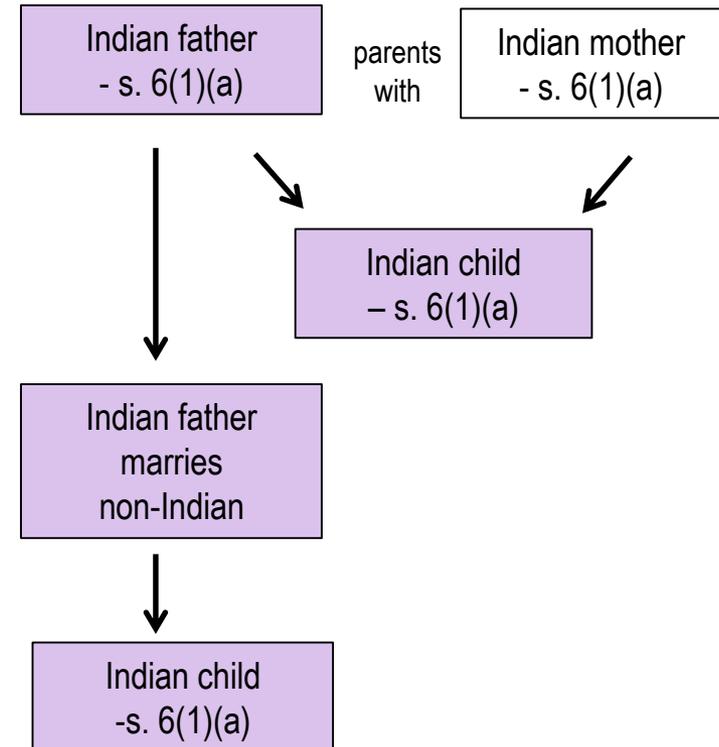


# Addressing the Issue of Omitted or Removed Minors

**Minor child born of Indian parents; mother marries a non-Indian man, between 1951 and 1985, after the birth of the minor child; minor child loses status**



**Child born of Indian parents; father marries a non-Indian woman, between 1951 and 1985, after the birth of the child; child retains status**





## Immediate Impacts of Bill S-3

- It was initially estimated that 28,000 and 35,000 individuals would become newly entitled to registration under the *Indian Act* through the Bill S-3 amendments (cousins, siblings, omitted minors).
- Additional funding was set aside in the 2016 and 2017 federal budgets for the two federal programs that are directly linked to Indian registration (status):
  - Non-Insured Health Benefits Program
  - Post-Secondary Education Program
- Newly registered individuals would become automatically added to membership list for bands under section 11 (controlled by the Indian Registrar).
- For First Nations under section 10 (control their own membership list), newly registered individuals will need to apply for membership directly with the First Nation.
- Forms to apply for or change entitlement under the *Indian Act*: [www.canada.ca/indian-status](http://www.canada.ca/indian-status)





## Delayed Amendments in Bill S-3

### What are the changes?

- The delayed amendments **will remove the 1951 cut-off from the *Indian Act* for determining eligibility for entitlement.**
- Whether an individual was born or adopted before OR after September 4, 1951 impacts whether they are entitled to be registered in situations where they have a grandmother who lost her status due to marriage to a non-Indian man and one of their parents was entitled to be registered under s. 6(2) of the *Indian Act* and the other is not entitled.
- Removing the 1951 cut-off will extend entitlement to Indian status, under section 6(1) of the *Indian Act*, to women, and all her descendants if they were removed from band lists or not considered an Indian due to marrying a non-Indian man, going back to 1869 and were born prior to April 17, 1985 (or of a marriage prior to that date).
- Key discussion item under the Collaborative Process. Once completed, an implementation plan will be prepared and the process will begin to bring the remaining clauses of Bill S-3 into force.





# Explaining How the 1951 Cut-off Works

Hypothetical Situation to demonstrate the differences between the various amendments to the <i>Indian Act</i> when an Indian woman lost entitlement due to marriage to a non-Indian man.							
<i>Annie and Sarah are siblings born to the same biological parents. Their mother Mary lost status prior to their births when she married a non-Indian. Following the Bill C-31 amendments, their mother regained her status under paragraphs 6(1)(c).</i>							
			Birthdate	C-31 (1985)	C-3 (2011)	S-3 (2017)	S-3 (delayed) (removal of the 1951 cut-off)
Mary			Feb.15,1908	6(1)(c)	6(1)(c)	6(1)(c)	6(1)(a.1)
Child	<b>Annie</b>			6(2)	6(2)	6(2)	6(1)(a.3)
	Children	Sam	May 2, 1947	Denied	Denied	Denied	6(1)(a.3)
		Sally	Mar.17,1949	Denied	Denied	Denied	6(1)(a.3)
		Steve	Dec.1,1950	Denied	Denied	Denied	6(1)(a.3)
Child	<b>Sarah</b>			6(2)	6(1)(c.1)	6(1)(c.1)	6(1)(a.3)
	Children	Jane	Jan.11,1949	Denied	6(2)	6(1)(c.2)	6(1)(a.3)
		John	Nov.5,1950	Denied	6(2)	6(1)(c.2)	6(1)(a.3)
		James	<b>Feb.3,1953</b>	Denied	6(2)	6(1)(c.2)	6(1)(a.3)
					<b>See Note 1</b>	<b>See Note 2</b>	<b>See Note 3</b>

**Note 1:** Because James was born after September 4, 1951, he and all his siblings became entitled to registration as their mother now met the criteria to be amended from section 6(2) to 6(1)(c.1). James' other parent is not entitled to registration.

**Note 2:** As James was born after September 4, 1951, he and his siblings meet all the criteria required to be amended from 6(2) to 6(1)(c.2) as a result of Bill S-3. Annie's children however are not entitled as none of them were born on or after September 4, 1951.

**Note 3:** Once the changes to remove the 1951 cut-off come into effect, section 6(1)(a.1), and(a.3) will extend entitlement to descendants of children born prior to 1951.





## Delayed Impacts of Bill S-3

- Context around identifying the potential impact of the delayed amendments:
  - Lack of Data: No data set available to directly identify the number of impacted individuals
  - 2016 Census estimates: 750,000 to 1.3 million individuals self-reported Indigenous ancestry
  - Reality: Likely overestimation given the need to apply and prove entitlement

### Who are they:

- Most have been disconnected from their First Nations and identity for many generations
  - Almost all live off-reserve and are more likely to be affected by the second-generation cut-off
  - Includes those that have self-reported as having Métis origin and identity
  - Some could be descendant of men who were enfranchised and would not be entitled under Bill S-3
- 
- The Parliamentary Budget Officer (PBO) report, *Bill S-3: Addressing Sex Based Inequities in Indian Registration* estimated that about 270,000 (40%) are expected to become registered ([http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3\\_EN.pdf](http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3_EN.pdf))



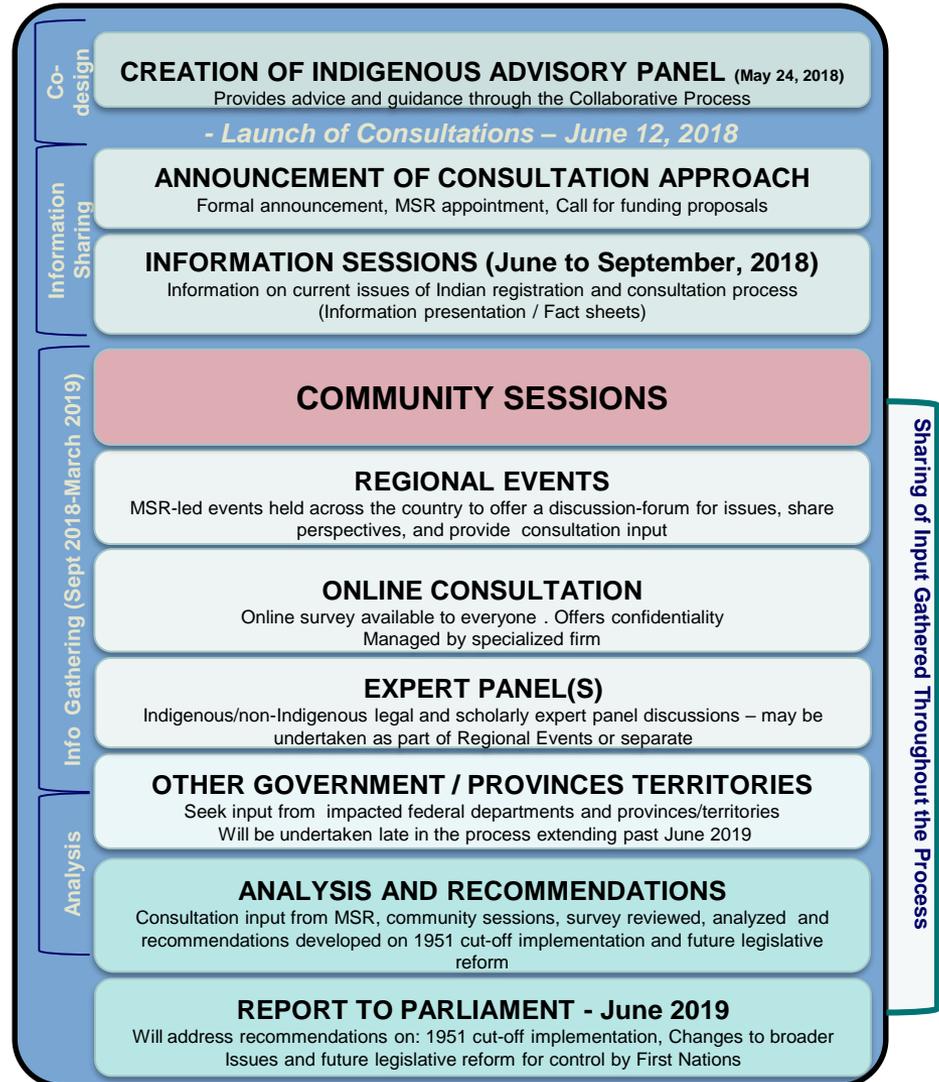


# Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship

The Government launched the Collaborative Process with First Nations and other Indigenous groups to consult on the broader related issues of Indian registration, Band membership and First Nation citizenship to identify areas for future reform. It builds on the 2011-2012 *Exploratory Process on Indian Registration, Band Membership and Citizenship*.

**Co-design Input was collected for the Collaborative Process**  
Oct 31, 2017 – Mar 31, 2018

May 10, 2018 Report to Parliament on the Design of a Collaborative Process





# Consultation Streams What We Should Discuss

The Collaborative Process will address the following streams:

## 1. Implementation of the removal of the 1951 cut-off

- Implementation of the delayed coming-into-force of the removal of the 1951 cut-off, how best to implement the changes to ensure adequate resources are provided and any unintended consequences are mitigated.

## 2. Remaining inequities related to registration and membership under the *Indian Act*

- Adoption, the second generation cut-off, unknown/unstated paternity, enfranchisement, deregistration, children of same sex parents, categories in Indian registration, cross-border issues and non-cisgender identities as it relates to Indian registration and band membership.

## 3. First Nations exclusive responsibility for determining membership /citizenship (moving beyond the Indian Act)

- Federal versus First Nation role and the development of options for First Nations to take exclusive responsibility for the determination of the identity of their members or citizens.





## Stream 1- The removal of the 1951 cut-off from the *Indian Act*

Discussions around the implementation of the delayed coming-into-force clauses in Bill S-3 relating to the removal of the 1951 cut-off. First Nations will be consulted on how best to implement the changes, to identify what resources are required and to ensure any unintended consequences are mitigated.

- 1) **How will the removal of the 1951 cut-off impact you, your community, organization or group?** (e.g.: environmental, economic, land, services, cultural, migration back to reserve, governance, upcoming ratification, demographic impact, membership...)
- 2) **How can the impacts of the removal of the 1951 cut-off be addressed for you, your community, organization or group?** (e.g.: housing, cultural integration, programs...)
- 3) **How can the Government of Canada assist in addressing the impacts of the removal of the 1951 cut-off?** (e.g. capacity, resources, timeline, process...)
- 4) **How soon would you want to see the removal of the 1951 cut-off implemented?** (e.g.: when, process, prerequisite, document requirements, communications, decision making process, validation process...)





## Stream 2 - Remaining inequities related to registration and membership under the *Indian Act*

These issues were articulated in Bill S-3 and enhanced by the input received during the co-design phase. This includes issues such as, but not limited to:

Adoption  
Second-generation cut-off  
Unknown/unstated paternity  
Enfranchisement  
Voluntary de-registration

Categories in Indian registration  
Cross-border issues  
Children of same sex parents  
Non-cisgender identities as it relates to Indian Registration  
and band membership

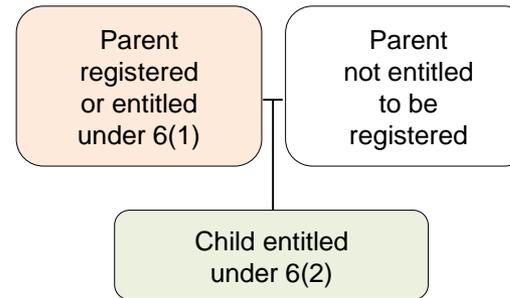
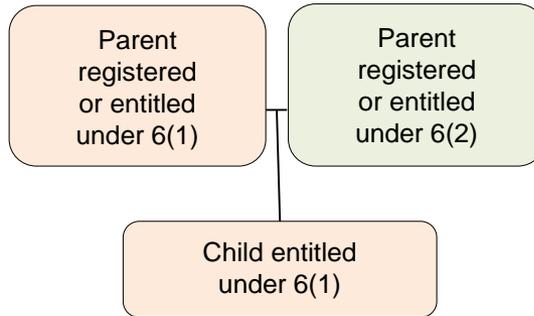
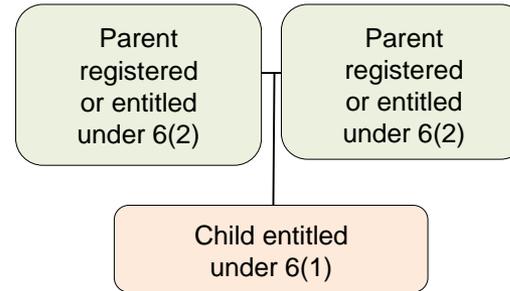
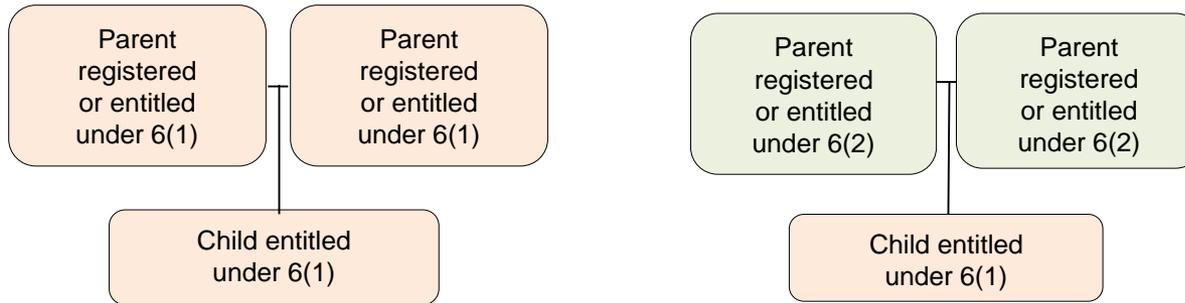
- 1) Which of these issues is of concern for you, your community, organization or group?
- 2) Is there an inequity related to this issue?
- 3) Why do you think that there is an inequity for this issue?
- 4) How can this inequity be addressed or fixed?
- 5) Are there other inequities that need to be discussed? What are they?
- 6) What would you recommend for the next steps going forward?



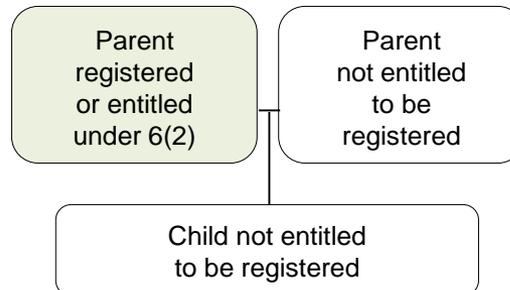


# Current Situation

## Registration Under Section 6 of the *Indian Act*



2<sup>nd</sup> generation cut-off





## **Stream 3 - First Nations exclusive responsibility for determining membership / citizenship (moving beyond the *Indian Act*)**

Discussions to seek views on the development of options for First Nations to take exclusive responsibility for the determination of the identity of their members or citizens.

- 1) Should First Nations take on the exclusive responsibility for determining their membership/ citizenship? Why or why not?**
- 2) What other groups, organizations or bodies could exercise the responsibility for determining membership/citizenship other than First Nations ? Should they? Why or Why not?**
- 3) What are the responsibilities, issues and concerns that are part of defining membership/citizenship for you, your community, organization or group?**
- 4) How do you think that First Nations could take on the responsibility for defining membership and citizenship (if this is not already happening)?**
- 5) When could First Nation begin to take on this responsibility?**
- 6) What would you recommend as the next steps going forward?**





## Current Situation Membership Under the *Indian Act*

**Currently, under Bill C-31 two separate regimes were created for the control of band membership:**

- **Section 10** grants the opportunity for First Nations to take control of their band membership by developing membership rules/codes to be approved by the Minister of Crown-Indigenous Relations Canada.
- **Section 11** band membership lists are maintained by the Indian Registrar.
- First Nations can also take control of their membership through modern treaty or self-government agreement with Canada.

**Prior to 1985, Band membership and registration under the *Indian Act* were more closely tied together and determined by section 11(1) of the 1951 *Indian Act* and individuals were included on the Indian register based on:**

- Persons eligible under previous legislation
- Persons who were members of a Band
- The illegitimate male children of an Indian man
- Legitimate children of parents were married to each other at the time of the child's birth
- The non-Indian wife or widow of an Indian man.





# Next Steps

## Community Consultation

- Beginning October 2018, community consultation sessions are being held across the country. Proposal –based funding was provided for communities to organize these sessions with optional participation by Departmental representatives and/or the MSR, Claudette Dumont-Smith.

## Regional Events

- 15 regional events scheduled across the country. Focus will be on bringing a representative from each regional First Nation together for discussion on the consultation streams. Coordinated by CIRNA with First Nation participation by invite. Discussions hosted by the MSR,. Events will run from November 2018 to March 2019.

## Expert Discussion Panels

- Indigenous experts will be brought together in 3-4 discussion panels across the country. Panel experts will be invited to participate and discussion sessions will be hosted by the MSR, Claudette Dumont-Smith. Discussion panels to be held late 2018/early 2019.

## Online Survey

- An online survey will be available for every individual to provide input on these issues in December 2018. The survey link will be available on the Department's website ([www.canada.ca/first-nation-citizenship](http://www.canada.ca/first-nation-citizenship)). Paper copies will also be made available.

## Report to Parliament

- Summary of what has been heard throughout the consultation process to be submitted by June 12, 2019.





## Contact Information

**dedicated e-mail account:**

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**toll-free number:** 1-855-833-0033

**fax:** 403-292-5393

**mailing address:**

Crown-Indigenous Relations and Northern Affairs Canada

New Service Offerings

25 Eddy Street, 6th Floor, Room 196

Gatineau, QC K1A 0H4

For More Information:

[www.canada.ca/first-nation-citizenship](http://www.canada.ca/first-nation-citizenship)





## Annex A

# Additional Consultation Stream Discussion Questions





## Stream 1 - Removal of the 1951 Cut-off

- 1) What impacts should the Government of Canada consider with respect to the removal of the 1951 cut-off and the related increase in Band membership?
- 2) How should program funding be adjusted to respond to the removal of the 1951 cut-off?
- 3) What could the impacts be of the removal of the 1951 cut-off on Band elections, voting and referendums?
- 4) Should your Band take control over its membership list before the 1951 cut-off is removed from the Indian Act?





## Stream 2 – Additional Questions

### Second Generation Cut-Off

- 1) Does the second-generation cut-off have discriminatory effects?
- 2) Should there be a second-generation cut-off?
- 3) Should there be a cut-off at the third, fourth or fifth generation? What are the positives or negatives to having either: a limited generation cut-off, or multiple generations before cut-off?
- 4) Should there be a strict rule of having two Indian parents to register a child for status, membership or citizenship?
- 5) Should there be a one-parent rule to register a child for status, membership or citizenship?
- 6) Should the second-generation cut-off strictly apply to status registration and not Band membership? Or should it apply to both or neither?
- 7) Should there be a different means to identify First Nation membership, e.g. cultural connection?
- 8) Should there be a cut off? What would removing the second generation cut-off mean for your community and available resources?





## Stream 2 – Additional Questions

### Unknown or unstated parentage

- 1) What type of evidence or proof should be required for cases of unstated parentage? For cases of unknown parentage?
- 2) Are there any other issues or considerations that should be considered relating to unknown or unstated parentage when applications are assessed and reviewed?
- 3) Should a First Nation community be involved in the process? If so, how?

### Enfranchisement

- 1) What situations are you aware of where someone is impacted by not being entitled to registration due to an ancestor being enfranchised?
- 2) What would be the impacts on your community if all inequities related to enfranchisement were removed from the registration provisions?

### Deregistration

- 1) What sort of evidence / assurances should the government obtain from individuals who wish to be deregistered? If any?
- 2) What should the requirements be to allow a deregistration from the Indian Register?
- 3) How could the Registrar remove someone by request while ensuring that the negative impacts on descendants are avoided?





## Stream 2 – Additional Questions

### Gender identity and registration for Indian Status

- 1) Are there any issues with removing the sex designation on the Secure Certificate of Indian Status?
- 2) Should an additional gender marker be added to the Indian registration system? What would be appropriate? For example, other federal/provincial departments have given Canadians the option to indicate “X” as a gender marker.
- 3) What term should be used for non-cisgender identities as it relates to registration under the *Indian Act*?

### Indian Registration for children of same-sex parents

- 1) Apart from making registration application forms gender neutral, how could applicants with same-sex parents be better accommodated?

### Registration and the Canada-United States border

- 1) Does the Canada-United States border impact your registration and membership in your community and your relations with family and/or affiliated communities in the United States?
- 2) In relation to movement across the border, what potential changes to registration and membership would you like to see and/or might you be concerned about?





## Stream 2 – Additional Questions

### Adoption in Indian Registration

- 1) Should Canada adopt a national policy on adoption for registration under the Indian Act? What would this policy look like? How would this work with provincial and territorial adoption laws?
- 2) Are there any problems or issues regarding custom adoption? Are there any problems or issues in recognizing custom adoption for the purpose of Indian registration?





## Stream 3 – Additional Questions

### First Nations' responsibility for determining membership / citizenship

- 1) Moving forward, what should the Government of Canada's role be moving forward when it comes to determining Indian status and Band membership?





## Annex B

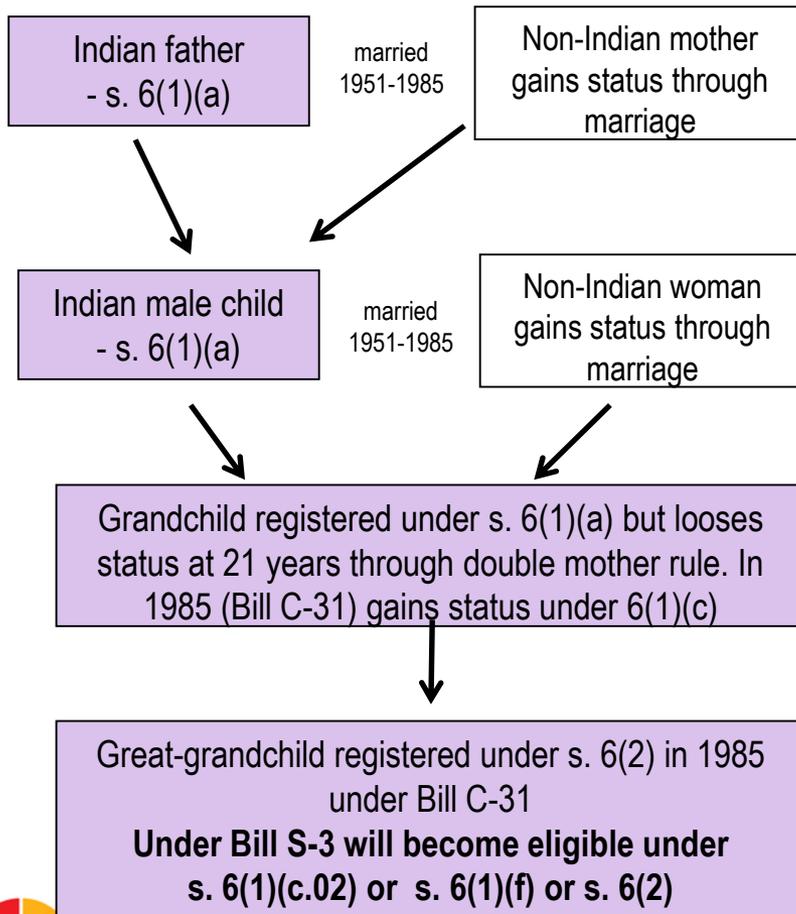
**More details on the other changes under Bill S-3**



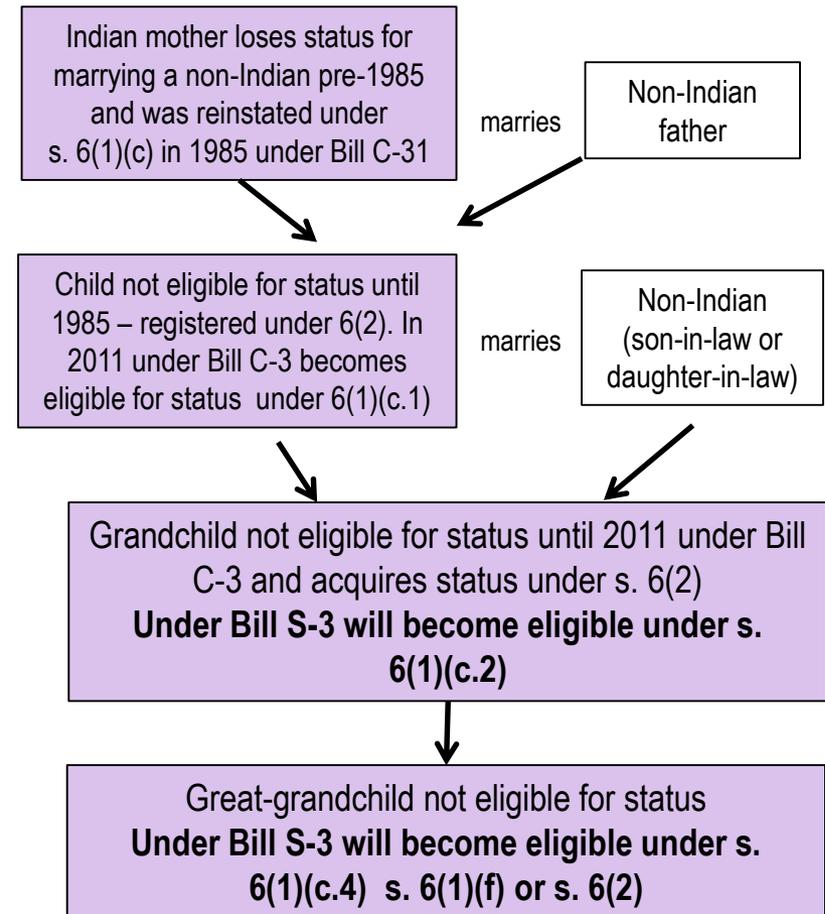


# Addressing the Issue of Great-Grandchildren Born Pre-1985 of a Parent Affected by the Double-Mother Rule

## Remedy for Great-Grandchildren Affected by Double-Mother Rule



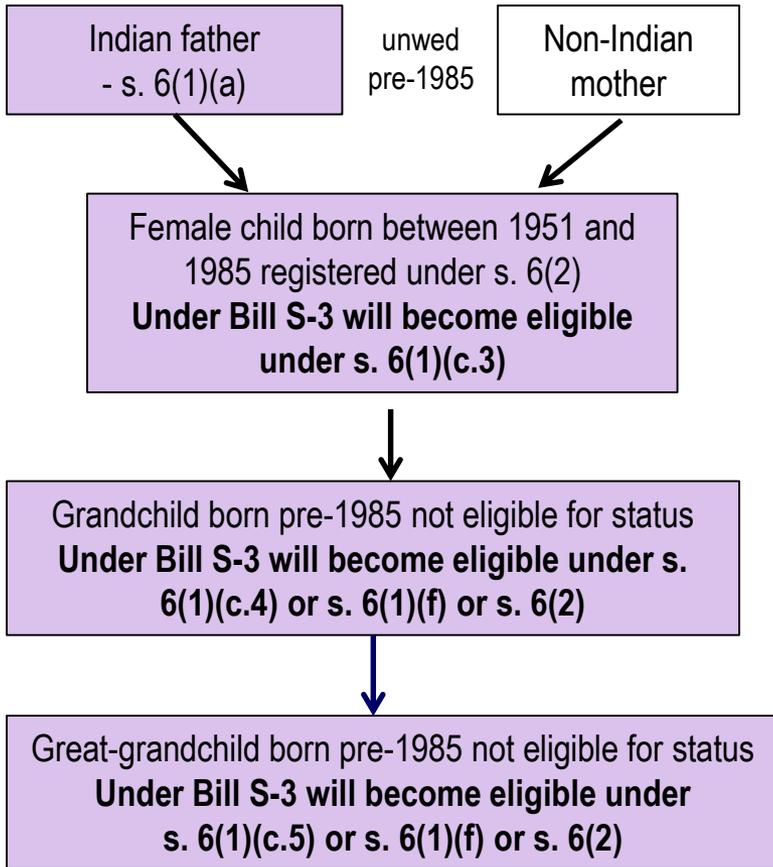
## Remedy for Cousins Issue (New Comparator Group)



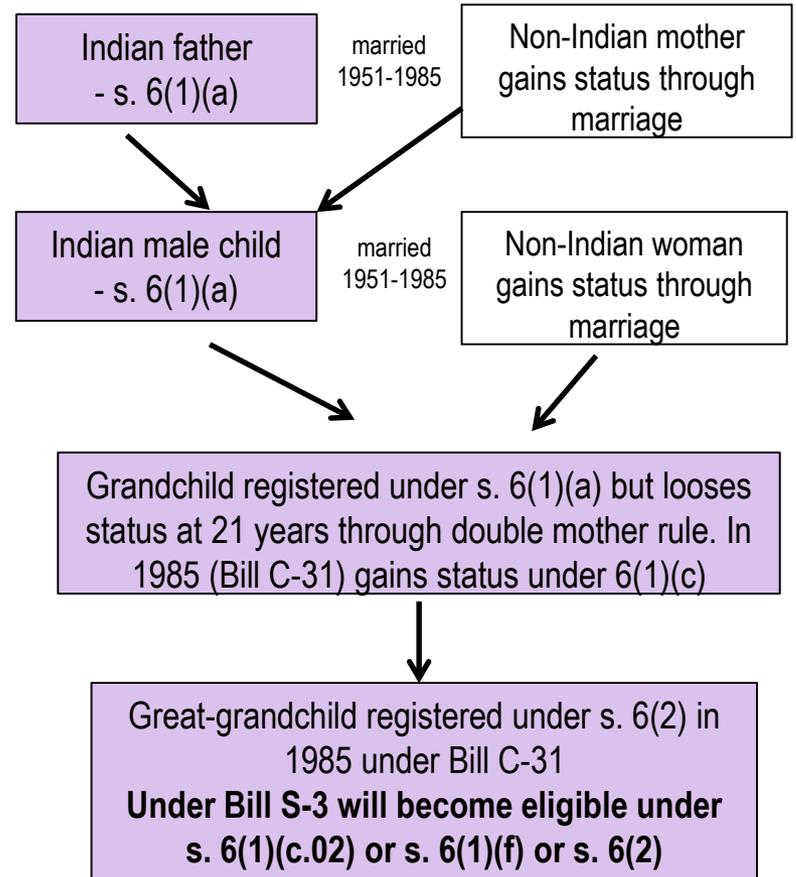


# Addressing the Issue Great-Grandchildren, Born Pre-1985, of A Parent Affected by the Siblings Issue

## Remedy for Great-Grandchildren Affected by Siblings Issue



## Remedy for Great-Grandchildren Affected by Double-Mother Rule (New Comparator Group)





# The 1951 Cut-Off under the *Mclvor* Amendments

For individuals born or adopted on or after September 4, 1951

For individuals born or adopted before September 4, 1951

