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Legislative Summary

BILL S-2: AN ACT TO AMEND THE INDIAN ACT (NEW REGISTRATION ENTITLEMENTS)

45-1-S2-E

3 March 2026

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Legislative Summary of Bill S-2
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL S-2: AN ACT TO AMEND THE INDIAN ACT (NEW REGISTRATION ENTITLEMENTS)

1 BACKGROUND

Bill S-2, An Act to amend the Indian Act (new registration entitlements),[1] was introduced in the Senate of Canada by the Honourable Marc Gold, the then-government representative on 26 May 2025. It was adopted at second reading on 25 June 2025 and was referred to the Standing Senate Committee on Indigenous Peoples.

The Standing Senate Committee on Indigenous Peoples (the committee) reported the bill to the Senate with amendments on 2 December 2025, along with observations that were appended to the report. The Senate adopted the committee's report on 2 December 2025 and passed the amended bill on 4 December 2025.

Bill S-2 received first reading in the House of Commons on 10 December 2025, on the motion of the Honourable Mandy Gull-Masty, Minister of Indigenous Services.

When it was first introduced in the Senate, Bill S-2 was identical to the former Bill C-38, An Act to amend the Indian Act (new registration entitlements), which was introduced during the 44th Parliament in the House of Commons by the Minister of Indigenous Services and Minister responsible for the Federal Economic Development Agency for Northern Ontario on 14 December 2022.[2] The bill was debated at second reading stage, but was not called for a vote before it died on the *Order Paper* following the prorogation of the first session of the 44th Parliament on 6 January 2025.

The definition of "Indian" in the *Indian Act* is "a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian" (section 2(1)).[3] The criteria for how Canada determines who is entitled to be included in the Indian Register (the Register) are set out in section 6 of the *Indian Act*.

Individuals who are registered are often referred to as having "status." Being registered or having status can be important both for the individual and for the individual's community in terms of one's identity and belonging. In addition, status First Nations individuals are entitled to certain legislated rights, have access to tangible federal benefits, such as non-insured health benefits and post-secondary education funding, and may be entitled to treaty annuity payments.[4] In addition, federal funding for some First Nations programs and services is based on the number of status First Nations individuals in the community.

In 2023, the Department of Indigenous Services Canada (ISC) reported there were 1,088,573 status First Nations individuals in Canada, with the majority living in Ontario (22%) followed by Manitoba and Saskatchewan (approximately 16%) and British Columbia (14.5%). Overall, there are slightly more First Nations women (50.8%) than men (49.2%)[5] and more women with status live off reserve (52.1%) than men with status (47.9%). Slightly more status First Nations men (50.6%) reside on reserve or on Crown lands than status First Nations women (49.4%).[6]

The amendments to the *Indian Act* in Bill S-2 relate to enfranchisement, or the loss or termination of status. Prior to 1985, a status First Nations individual could be enfranchised for a variety of reasons. Enfranchisement meant losing entitlement to be registered and no longer being considered an "Indian" under the *Indian Act* for the purpose of becoming a full Canadian citizen. Some of the reasons a person may have "chosen" (characterized as a "coerced enfranchisement")[7] to terminate their status was to vote, own property off-reserve or to keep their children from attending residential schools.[8] One of the ways a First Nations woman would be automatically enfranchised in the past – and thus lose status and its attendant rights – was by marrying a non-status First Nations man (commonly referred to as "marrying out").

Part of Bill S-2 responds to a constitutional challenge brought forward in *Nicholas v. Canada (Attorney General)*[9] (*Nicholas*), which relates to continuing inequity in the *Indian Act* registration provisions for some individuals who had been enfranchised in the past and to their ability to transmit status under the Act to their direct descendants. In 2022, the representatives for the plaintiffs in *Nicholas* and the Minister of Indigenous Services agreed to put the litigation on hold while legislative amendments were pursued.[10] In 2024, the plaintiffs recommenced the litigation because former Bill C-38 did not progress past second reading in the House of Commons.[11] In *Nicholas*, the Supreme Court of British Columbia indicated that

> [t]he defendant, the Attorney General of Canada … concedes that the challenged portions of the *Indian Act* … unjustifiably infringe the plaintiffs' [section] 15 Charter rights by reason of discrimination on the basis of race or ethnic origin.[12]

Bill S-2 contains legislative amendments pertaining to the registration provisions of the *Indian Act*.[13] The amendments in the bill mean that individuals whose status under the Act was reinstated after enfranchisement can transmit status to their direct descendants to the same extent as individuals who were never enfranchised. Currently, only women who were reinstated after being enfranchised for marrying non-status men can transmit status to their direct descendants to the same extent as individuals who were never enfranchised (clause 4). ISC estimates that approximately 6,200 people could be eligible for registration over 13 years under the bill.[14]

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Additionally, ISC reported that as of May 2025, approximately 1,492 applications for registration from individuals who could be eligible should Bill S-2 be enacted have been placed on "hold" rather than having their claims rejected according to the current registration criteria.[15]

The bill also

- repeals the term "mentally incompetent Indian" from the interpretation section of the *Indian Act*, replacing it with "dependent person" (clauses 1, 2 and 6);
- permits persons to apply to have their names removed from the Register (clause 3); and
- entitles persons to have their names entered on the band list maintained by the ISC for the band they were born into if they had ceased to be a band member as a result of marrying someone who was not a member of that band (clause 5(3)).

With respect to the use of the terms "Indian" and "First Nations," the former is widely seen as outdated and rooted in colonialism and the latter is now preferred. However, "Indian" is still the term used in the *Indian Act* and has legal meaning. It is used in this legislative summary only when necessary, particularly when quoting the *Indian Act* or historical documents.

Between 24 September 2025 and 5 November 2025, the Standing Senate Committee on Indigenous Peoples held 10 meetings on Bill S-2 and proposed several amendments to the bill, all of which were adopted by the Senate. The Senate amendments created a one-parent rule for the transmission of status. Living minor and adult children will also be eligible for status if their deceased parent would have been entitled to be registered under the new rules.

Other Senate amendments eliminated the 1985 cut-off rule (under which birth or marriage before or after 17 April 1985 can affect a person's eligibility for and ability to transmit status, discussed below in part 1.1) and the second-generation cut-off (which prevents the transmission of status to the second generation when only one parent has status for two consecutive generations, also discussed below in part 1.1). The Senate's amendments bring these provisions into force 12 months after the day on which the Act receives Royal Assent. The bill was also amended to remove two no liability clauses protecting the Crown or band councils from litigation over the past administration of certain registration provisions.

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1.1 ENTITLEMENT TO BE REGISTERED UNDER THE *INDIAN ACT*

Section 6 of the *Indian Act* sets out a person's entitlement to be included in the Register. Section 6(1) lists the criteria for being registered. These criteria have been revised through various *Indian Act* amendments as discussed in part 1.1.1 of this legislative summary.

Section 6(1)(a.1) of the *Indian Act* relates to registration provisions for the following:

- individuals who had previously not been included in, or were deleted from, the Register (the "double mother" rule [section 12(1)(a)(iv) of the pre-1985 *Indian Act*]);
- First Nations women with status who were no longer entitled to be registered because they had married non-status men unless they subsequently become the wife or widow of a person entitled to be registered (section 12(1)(b) of the pre-1985 Act);
- children born out of wedlock whose inclusion on a band list was protested and the protest determined that the father was non-status (section 12(2) of the pre-1985 Act); and
- women and their children who were not entitled to be registered pursuant to an order made under section 109(2), which allowed the Governor in Council to declare that a status woman and her children were enfranchised as of the date of the woman's marriage to a non-status man (section 12(1)(a)(iii) of the pre-1985 Act).

Section 6(1)(a.2) entitles an individual who was born female and out of wedlock between 4 September 1951 and 16 April 1985 to be registered if the father was entitled to be registered at the time of the individual's birth or, if he was no longer alive at that time, was entitled to be registered at the time of his death. For an individual to be registered under section 6(1)(a.2), the individual's mother must also not have been entitled to be registered at the time of the individual's birth.

Section 6(1)(a.3) provides that direct descendants of those who are, or would have been, entitled to be registered under section 6(1)(a.1) or 6(1)(a.2) are entitled to be registered. In order for an individual born after 16 April 1985 to be registered, the individual's parents must have been married to each other before 17 April 1985. In the case of an individual born before 17 April 1985, it does not matter whether the parents were married to each other at the time of the individual's birth. This provision is known as the "1985 cut-off."

Section 6(1)(b) provides that a person is entitled to be registered if that individual is a member of a body of persons declared to be a band by the Governor in Council on or after 17 April 1985.

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Section 6(1)(d) provides that a male whose name was omitted or deleted from the Indian Register prior to 4 September 1951 because the individual had applied for enfranchisement (and, if he was married, whose wife and minor children were enfranchised as a result) is entitled to be registered.

Section 6(1)(e) provides that a person is entitled to be registered if their name was omitted or deleted from the Register prior to 4 September 1951 because

- they had lost membership as a result of living continuously outside of Canada for five years (individuals who had prior consent of the band to live outside of Canada and had that consent approved by the Superintendent General[16] did not lose status) (section 6(1)(e)(i)); or
- they had become a doctor, lawyer, priest or minister or had obtained a university degree (section 6(1)(e)(ii)).

Finally, section 6(1)(f) provides that a person is entitled to be registered if both parents are entitled to be registered or, if deceased, were entitled to be registered at the time of death.

If only one parent of an individual is registered under section 6(1), then that individual may be registered under section 6(2). Being registered under section 6(2) means that an individual can transmit status to their child only if the child's other parent also has status. This is commonly referred to as the "second-generation cut-off rule."[17]

While having status does not necessarily mean that an individual is also entitled to band membership, section 11 of the *Indian Act*, which sets out the rules relating to band membership lists that are controlled by ISC, links status with membership.

In addition to specific legal entitlements and access to certain federal programs, some status First Nations individuals may be entitled to treaty annuity payments where applicable.[18] Also, federal funding for some First Nations programs and services is based on the number of status First Nations individuals in a community.

For over 150 years, the Government of Canada has controlled who may register for status under the *Indian Act*. Registration is not automatic; a person must apply to ISC and include with their application, for example, proof of birth documentation and genealogical information to demonstrate that they meet the requirements for registration under the *Indian Act*.[19] The Registrar at ISC is responsible for maintaining the Register and band lists. ISC has a six-month service standard to issue decisions about registration.[20]

Nevertheless, the registration process can be lengthy. A 2025 Office of the Auditor General of Canada (OAG) performance audit of ISC's management of the registration process under the *Indian Act* found that there were almost 12,000 individuals awaiting decisions. About 1,500 of these individuals experienced wait times of more than two years. Additionally, around 200 individuals, whose applications were deemed priority for such reasons as advanced age or health, waited more than two years for a decision about their applications. Altogether, over 80% of applications took longer than six months to issue a decision.[21]

The OAG found that the department takes on average about 16 months for individuals to receive decisions about their applications. The department takes three years to make decisions about individuals who disputed the Indian Registrar's decisions regarding status (referred to as "protests" under the *Indian Act*). This timeframe does not include the wait times to receive ISC's initial decision regarding status. The OAG further found that funding provided to First Nations to employ a registration administrator to assist individuals applying for status had remained the same for 30 years, leading to problems with retention and recruitment.[22]

In response to the OAG findings, the government committed to identifying its service standard on its website and beginning in 2026, reporting annually to explain the extent to which these standards had been met. It also committed to ensuring that its employees were trained and that the compensation for First Nation registration administrators would be reviewed.[23] The government's response to the seventh report of the then Standing Senate Committee on Aboriginal Peoples (now the Standing Senate Committee on Indigenous Peoples) entitled *Make it stop! Ending the remaining discrimination in Indian registration* committed the Government of Canada to publish annual reports on registration, which began in 2024.[24]

Several factors have affected processing timeframes, which are set out in ISC's first *Annual Report on Registration under the Indian Act, First Nations Membership and Status Cards – 2023*. For example, the annual number of applicants increased between 2016 and 2023 from 26,507 to 40,950. The increased volume of applications is attributed to a greater awareness of eligibility for status due to the coming into force of *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* (Bill S-3)[25] and various settlement processes related to litigation against Canada by First Nations, which require status and band membership.[26] In 2023, ISC reports 46,420 decisions regarding applications were rendered.[27] Between 2018 and 2023, ISC received about 73,000 applications under the amendments brought to the *Indian Act* under Bill S-3, with about 50,000 individuals eventually being registered.

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1.1.1 Historical and Contemporary Context of the *Indian Act* Registration Provisions

Attempts by the Crown to control First Nations identity date to the mid-1800s, when colonial laws first began to define which people were considered to be "Indians." An 1850 law had a broad definition of who was an Indian that was applied "for the purpose of determining any right of property, possession or occupation in or to any lands belonging or appropriated to any Tribe or Body of Indians in Lower Canada."[28] That definition was as follows:

> *First*. – All persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants.
>
> *Secondly*. – All persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons.
>
> *Thirdly*. – All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such: And
>
> *Fourthly*. – All persons adopted in infancy by any such Indians, and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendants.[29]

The legal definition of "Indian" was considerably narrowed over time through federal legislation. As explained in the Library of Parliament's 2010 legislative summary of Bill C-3, *Gender Equity in Indian Registration Act*:

> The 1951 *Indian Act* repealed its predecessor and made significant changes to the previous regime, including the establishment of a centralized "Indian Register." Under the 1951 Act, entitlement to registration remained linked to band membership, continued to emphasize transmission of status through the male line, and extended as before to the wives and widows of status Indians, whether Indian or not (section 11). The 1951 Act maintained the loss of status for Indian women who married non-Indians ([section] 12(1)(b)) and for enfranchised persons, a category that might also encompass women who married out ([section] 12(1)(a)(iii)). In addition, the 1951 Act introduced the "double mother rule" under which a person registered at birth would lose status and band membership at age 21, if his/her parents had married after the coming into effect of the legislation in September 1951 and his/her mother and paternal grandmother had acquired status only through marriage ([section] 12(1)(a)(iv)).[30]

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Prior to the coming into force of the *Canadian Charter of Rights and Freedoms* (the Charter), Jeannette Corbiere Lavell and Yvonne Bédard separately challenged the *Indian Act* provisions where a First Nations woman lost status when she married a non-status man arguing that the provisions violated the *Canadian Bill of Rights*. The cases were joined, and the Supreme Court ultimately determined that the provisions did not result in inequality under that law.[31]

Also prior to the Charter, First Nations women turned to international legal instruments to address the discriminatory "marrying out" provisions. In 1977, Sandra Lovelace [Nicholas], who went on to become a Canadian senator, brought a complaint to the United Nations Human Rights Committee under the *Optional Protocol to the International Covenant on Civil and Political Rights* (the Covenant). She had lost status and band membership upon marriage to a non-status man, and when that relationship ended, she was unable to return to her community. In 1981, the Human Rights Committee concluded that Canada had breached its obligation under the Covenant.[32]

In 1985, Bill C-31, An Act to amend the Indian Act, introduced significant amendments to registration provisions.[33] The amendments were aimed at making the *Indian Act* compliant with the equality provisions of the Charter, which came into effect in April 1985.[34]

While Bill C-31 removed certain gender-based inequalities around registration, it also created two tiers of status: Individuals who meet certain criteria may be registered under section 6(1) of the *Indian Act* and pass status on to their children; on the other hand, other categories of individuals are registered under section 6(2) of the *Indian Act* may not pass their status on to the next generation unless their child's other parent also has status.

Bill C-31 removed the discriminatory provisions that caused a First Nations woman to be enfranchised and lose status when she married a man who did not have status. However, individuals who were reinstated were unable to transmit status to their descendants to the same extent as individuals who had never been enfranchised, as they were registered under the *Indian Act* under section 6(2). This inequity resulted in court challenges and subsequent legislation.

Bill C-31 also created a 1985 cut-off date that affects entitlement to be registered based on the individual's date of birth or marital status. As Crown-Indigenous Relations and Northern Affairs Canada's report entitled *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019* explains,

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> Whether an individual is born or married before or after the effective date of Bill C-31 (April 17, 1985) may impact registration of individuals and result in the denial of status and related benefits. For example, 2 siblings born or married on opposite sides of the 1985 cut-off might not have the same ability to pass on status to their children.[35]

Post–Bill C-31 amendments to the registration provisions have been driven largely by litigation. In 2010, the *Gender Equity in Indian Registration Act*[36] (former Bill C-3 or the *McIvor* amendments) responded to the British Columbia Court of Appeal's decision in *McIvor v. Canada* (*McIvor*).[37] Sharon McIvor and her son had challenged the post–Bill C-31 registration provisions as discriminatory on the basis of sex and marital status. The challenge in *McIvor* related to the "double mother rule," which, as the Court explained, "provided that if a child's mother and paternal grandmother did not have a right to Indian status other than by virtue of having married Indian men, the child had Indian status only up to the age of 21." In *McIvor*, the Court concluded that when Bill C-31 removed the "double mother rule," the male line of descendants received more favourable treatment than the female line to transmit status to descendants born prior to 1985.[38]

Bill C-3 amendments also removed what is known as the "1951 cut off"; a cut-off date of 4 September 1951 was used to determine eligibility for registration under section 6(1)(c.1)(iv) as it read in the bill. As the Library of Parliament's legislative summary of Bill C-3 explains,

> Entitlement to registration under [that] provision requires, finally, that the person have had at least one child after September 1951 with a non–First Nations person. If that requirement is met, all her/his other children will also be entitled to registration, whatever their date of birth. In most cases, the children's entitlement will be to [section] 6(2) status. In contrast, any of the person's siblings who satisfy all other conditions of new [section] (c.1) but whose children were all born before September 1951 will not be entitled to registration under the provision.[39]

A Crown-Indigenous Relations and Northern Affairs Canada fact sheet entitled *Removal of the 1951 cut-off* further explains,

> [T]he birth or adoption date of a grandchild (or of a sibling of the grandchild) of a woman who lost entitlement to registration due to a marriage to a non-Indian man must occur after September 4, 1951 for the grandchild to be entitled to registration. This could mean that two siblings born to the same parents (where the mother lost status due to marriage to a non-Indian man prior to their birth) could have

> different abilities to pass their entitlement to their descendants. This cut-off has implications for cousins that share a grandmother who lost entitlement due to a marriage to a non-Indian man, to pass on entitlement to their descendants. Some of the cousins can pass on entitlement, while others cannot.[40]

In 2017, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*[41] (former Bill S-3 or the Descheneaux amendments) responded to the decision named in the bill's title. In that decision, the Court found continuing sex-based discrimination in the registration provisions of the *Indian Act*. The Court concluded that two categories of individuals continued to be treated differently after Bill C-3: individuals whose grandmother had lost status due to marriage to a non-status man when that marriage occurred prior to 17 April 1985 (the "cousins issue"); and women who were born out of wedlock to a status First Nations father prior to 17 April 1985 (the "siblings issue").[42] Part of Bill S-3 also removed the 1951 cut-off, but there was a delayed coming into force for those provisions.

Following the passage of Bill S-3, the United Nations Human Rights Committee released a decision in relation to a November 2010 complaint submitted by Sharon McIvor and Jacob Grismer. As was the case with Sandra Lovelace's complaint, the Human Rights Committee determined that Canada violated the Covenant:

> Pursuant to article 2(3)(a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia: (a) to ensure that section 6(1)(a) of the 1985 revision of the Indian Act, or of that Act as amended, is interpreted to allow registration by all persons, including the authors, who previously were not entitled to be registered under section 6(1)(a) solely as a result of preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985 and to patrilineal descendants over matrilineal descendants born prior to that date; and (b) to take steps to address residual discrimination within First Nations communities arising from the legal discrimination based on sex in the Indian Act. Additionally, the State party is under the obligation to take steps to avoid similar violations in the future.[43]

The United Nations Committee on the Elimination of Discrimination against Women also released a decision concerning Bill S-3 in relation to a complaint brought by Jeremy Matson under the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. The complaint had initially been submitted in 2013, after Bill C-3 received Royal Assent but prior to Bill S-3's introduction. Following the Bill S-3 amendments, Jeremy Matson's children were

only entitled to be registered under section 6(2), compared to cousins whose parents had married prior to 1985 and were entitled to be registered under section 6(1). The committee concluded in part that

> the 1985 cut-off rule under the amendments of 2019, even if not currently based on the gender of the descendants themselves, perpetuates in practice the differential treatment of descendants of previously disenfranchised [I]ndigenous women. As a result of the disenfranchisement of his maternal ancestor, the author cannot freely transmit his [I]ndigenous status, and his [I]ndigenous identity, to his children and, as a consequence, his children in turn will not be able to transmit freely their status to their own children. The Committee notes that the State party has acknowledged that, according to the Department of Indigenous Services, the new cut-off date will likely require legislative changes … precisely because of the current inequities based on the previous, explicit gender-based discrimination. The Committee is therefore of the view that the consequences of the denial of Indian status to the author's maternal ancestor has not yet been fully remedied, being precisely the source of the current discrimination faced by the author and his children. As a consequence, the Committee concludes that the State party has breached its obligations under articles 2 and 3 of the Convention.[44]

During consideration of Bill S-3, witnesses who appeared before the then Standing Senate Committee on Aboriginal Peoples raised concerns about continuing inequality for some individuals who had been enfranchised and their ability to transmit status to their direct descendants. This issue is the subject of the constitutional challenge in *Nicholas* (not to be confused with the United Nations complaint brought by Sandra Lovelace [Nicholas]).[45] The plaintiffs in this case argue that women who were enfranchised as a result of their husband's application for enfranchisement are not able to transmit status to their descendants in a manner equal to women who were reinstated after having lost status by marrying a non-status man. As mentioned previously, the plaintiffs in *Nicholas* and the Minister of Indigenous Services agreed to put the litigation on hold while legislative amendments contained in Bill C-38 were pursued.[46] However, when Bill C-38 died on the *Order Paper*, the litigation was recommenced in May 2024. In August 2025, the British Columbia Supreme Court released its decision in *Nicholas v. Attorney General (Canada)*, 2025 BCSC 1596. In the decision, the Court found that sections 6(1)(a.1) and 6(1)(d) of the *Indian Act* violated the equality provisions of the *Charter of Rights and Freedoms*. Specifically, that the Court held that section 6

> creates a distinction based on race or ethnic origin by providing s. 6(2) entitlement to descendants of enfranchises and s. 6(1) entitlement to individuals with the same degree of "Indian" ancestry but who are not descended from enfranchises.[47]

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Registration entitlement under section 6(2) limits an individual's ability to pass status to their children. The Court also found that part of section 6 of the *Indian Act* denies registration that "reinforces disadvantage" in that the law

> treats descendants of enfranchises as "less Indian" and, … may deny their grandchildren eligibility under s. 6 while affording entitlement to persons with similar "Indian" ancestry but without enfranchisement in their family history.[48]

The ruling states that both Canada and the plaintiffs agreed that the existing registration provisions of the *Indian Act* carry on "disadvantage, stereotyping, prejudice and discrimination" tied to enfranchisement by denying some people the benefits of status.[49] The court did not go so far as to grant the plaintiff's request to declare those sections of the *Indian Act* invalid in British Columbia immediately, because an immediate declaration could create differing rules for registration for individuals in different provinces, resulting in a lack of uniform application. In addition, the Court considered that an immediate declaration was unnecessary because legislation to remedy the issue in dispute had already been introduced in Parliament. The Court suspended the declaration of invalidity until 30 April 2026 to give Parliament time to enact Bill S-2.[50]

Not only have the *Indian Act* registration provisions been subject to court challenges, policies relating to registration have been challenged as well. Prior to the coming into force of Bill S-3, the Registrar had a Proof of Paternity Policy that set out the evidence the Registrar considered acceptable in relation to paternity when considering an application for registration. In 2017, the Ontario Court of Appeal determined that the application of this policy in the circumstances of the plaintiff, Lynn Gehl, "failed to take into account the equality-enhancing values and remedial objectives underlying the 1985 amendments, and was therefore unreasonable."[51] Bill S-3 made amendments such that sections 5(6) and 5(7) of the *Indian Act* now provide that in applications for registration where an ancestor is unknown or unstated on a birth certificate, the Registrar shall consider all relevant evidence to determine whether the ancestor would have been entitled to be registered.

1.1.2 Enfranchisement and the *Indian Act*

Several provisions of Bill S-2 relate to individuals who were subject to enfranchisement under the *Indian Act* and their ability to transmit status to their direct descendants. As the *Report of the Royal Commission on Aboriginal Peoples* (RCAP Final Report) pointed out,

> [t]he concept of enfranchisement was introduced in 1857. … The [A]ct applied to both Upper and Lower Canada, and its operating premise was that by removing the legal distinctions between Indians and

> non-Indians through enfranchisement and by facilitating the acquisition of individual property by Indians, it would be possible in time to absorb Indians fully into colonial society. An enfranchised Indian was, in effect, actually renouncing Indian status and the right to live on protected reserve land in order to join non-Aboriginal colonial society.[52]

In some cases, individuals applied to be enfranchised (voluntary enfranchisement).[53] It is important to note that in July 2020 in *Hele c. Attorney General of Canada* (*Hele*), the Superior Court of Quebec determined that the Governor in Council did not have the authority to enfranchise unmarried women under section 108(1) of the 1952 *Indian Act*. The Court in *Hele* explained that,

> [i]n essence, the appeal concerns yet another lingering effect of the damaging pre-Confederation discriminatory policy known as "enfranchisement" – a euphemism for an oppressive process by which, in return for renouncing personally and on behalf of descendants, living and future, to recognition as an "Indian" and to certain rights and benefits, an Indian gained full Canadian citizenship and the right to hold land in fee simple. The policy used to be the cornerstone of the Canadian federal government's assimilation blueprint relating to Aboriginal peoples.[54]

In other cases, enfranchisement was forced on individuals. For example, the RCAP Final Report refers to the 1920 *Indian Act* amendments that "allowed the governor in council, on the recommendation of the superintendent general, forcibly to enfranchise any Indian, male or female, if found to be 'fit for enfranchisement.'"[55] Other situations in which an individual was forcibly enfranchised under pre-1985 versions of the *Indian Act*[56] included the following:

- living continuously outside of Canada without band permission and approval from the federal government;
- being a lawyer, doctor, priest or minister, or having a university degree;
- being the wife or child of a man who had applied for enfranchisement; and
- being a woman who was subject to an order of enfranchisement for having married a non-status man ("marrying out").

In 1985, part of Bill C-31 removed the *Indian Act* enfranchisement provisions and allowed individuals who had lost status as a result of voluntary or involuntary enfranchisement to have their status reinstated. After those amendments, all categories of enfranchised individuals whose status was restored had the ability to pass on status to their direct descendants in the same way; no category had greater ability to transmit status than any other. However, individuals who had been enfranchised but then regained status after 1985 based on the amendments in

Bill C-31 were not able to transmit status to the same extent as individuals who had never lost status through enfranchisement.

Under the most recent amendments to the *Indian Act* (former Bill S-3), children of women who were reinstated after marrying out became able to transmit status to their direct descendants in the same way as individuals with no family history of enfranchisement. However, as a Crown-Indigenous Relations and Northern Affairs Canada fact sheet entitled *Remaining inequities related to registration and membership* explained,

> Bill C-31 removed both voluntary and involuntary enfranchisement provisions. Individuals who enfranchised, along with their children, could be reinstated or became eligible for registration.
>
> The 2017 amendments (Bill S-3) corrected sex-based inequities for women, and their descendants, when the woman involuntarily lost entitlement to registration due to marriage to a non-Indian man. Bill S-3 brings entitlement to descendants of women who married a non-Indian man in line with descendants of individuals who were never enfranchised. However, the descendants of individuals who were enfranchised for other reasons (both voluntary and involuntary) remain at a disadvantage in comparison. These remaining inequities within the *Indian Act* continue to have an impact.[57]

Under Bill S-2, a person whose status was reinstated after enfranchisement can transmit status to their direct descendants in the same way that a person who was reinstated after "marrying out" can transmit status.

1.2 GOVERNMENT AND PARLIAMENTARY CONSIDERATION OF ISSUES RELATING TO ENTITLEMENT TO BE REGISTERED AND CONTINUING DISCRIMINATION

Prior to the introduction of former Bill C-3 in 2010, what was then the Department of Aboriginal Affairs and Northern Development Canada held engagement sessions with First Nations and Indigenous organizations on the *McIvor* decision. Some of the issues identified were outside the scope of *McIvor*; this led to the Exploratory Process on Indian Registration, Band Membership and Citizenship in 2011. Recommendations to the federal government made by participants in that process included the following:

- The recognition of First Nations rights to determine who is eligible to be registered as an Indian and a member of an Indian Band.
- The elimination of all residual gender-based inequalities and categories of Indians under section 6, including the ability to transmit status from generation to generation.

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- Addressing issues related to unstated paternity, adoption and status Indians without Canadian citizenship or permanent residency.[58]

Most First Nations participants in the 2011 engagement process stressed the importance of First Nations jurisdiction over citizenship:

> Based on the collective findings of participating First Nations organizations, it appears that the vast majority of First Nations participants fundamentally oppose Canada's continued authority in defining who is and is not an Indian pursuant to the *Indian Act*, and by extension who is and is not a member of a First Nation, thereby ultimately affecting (positively or negatively) individual and collective identity.
>
> The federal government's continued authority in determining status and for most Bands membership was viewed as the single largest impediment to First Nations governance over citizenship (membership). In turn, the majority of First Nations participants believe that this authority should be vested in First Nations, whether through decision-making of individual communities and their governments, or to a somewhat lesser degree through community consensus to exercise this authority at the broader nation level.[59]

It is important to note that some women's organizations have emphasized the need for First Nations women and descendants to have their status restored before these decisions are made. As explained in a submission to the United Nations Committee on the Elimination of Discrimination against Women,

> [w]e are concerned about the future. Canada now says that it wishes to "get out of the business of Indian registration." In practice, however, for the purposes of resource allocation and self-government agreements, Canada only recognizes, and counts, persons with status as members of a Nation. Consequently, if Canada exits from Indian registration before it restores First Nations women and their descendants to their rightful place, it will be establishing self-government for Nations that have been stripped of thousands of women and their descendants, whose return will then not be affordable, for the Nation. The project of forced assimilation will be further advanced. Canada cannot get out of the business of Indian registration until it restores the women to their status and membership in their Nations, and undoes the enormous damage of its discriminatory regime.[60]

As part of its response to the *Descheneaux* decision, then-Indigenous and Northern Affairs Canada indicated that it would hold a phased, collaborative process on Indian registration, band membership and First Nations citizenship.[61] While there was no reference to engagement or consultation with First Nations in the first reading version of Bill S-3, the Senate amended the bill to require that the Minister of Indigenous

Services Canada initiate consultations on a number of topics related to registration and band membership.[62] The Senate also amended the bill to require that the minister report to Parliament on the design of the consultation process and progress on the consultations. Additional Senate amendments required the minister to undertake a review of the provisions of section 6 of the *Indian Act* enacted by Bill S-3 to determine whether all sex-based inequalities had been eliminated and a review of the operation of the provisions of the bill.

The design and progress reports were tabled in May 2018 and June 2019, respectively.[63] Claudette Dumont-Smith was appointed as the Minister's Special Representative (MSR) to lead the consultations, and her report was appended to the June 2019 report.[64] The MSR's report noted the most significant inequity raised by First Nations during the consultations were restrictions on the ability to pass on status between generations under section 6(2) of the *Indian Act*, which would "see the gradual elimination of persons eligible to be registered as an Indian."[65] The MSR report recommended that Canada engage in in-depth consultations to find solutions to address remaining inequities around the transmission of status. The final report on the review of Bill S-3's provisions and sex-based inequalities was tabled in December 2020.[66]

The then Standing Senate Committee on Aboriginal Peoples reviewed the implementation of Bill S-3's amendments, releasing an interim report in June 2022.[67] That report recommended the full repeal of section 6(2) of the *Indian Act* by June 2023. It also recommended that ISC

> work with First Nations people and communities to develop an action plan with clear timeframes for the repeal of all discriminatory provisions of the *Indian Act*; the resolution of all outstanding inequities including enfranchisement, the 1985 cut-off and age and marital distinctions.[68]

2 DESCRIPTION AND ANALYSIS

Bill S-2 contains 11 clauses. Key clauses are discussed below.

2.1 "DEPENDENT PERSON": DEFINITION AND RELATED AMENDMENTS (CLAUSES 1, 2 AND 6)

Clause 1 repeals the term "mentally incompetent Indian" from the interpretation section of the *Indian Act* (section 2) and adds the definition "dependent person." "Dependent person" means a First Nations individual who is "unable to manage their estate by reason of an illness or impairment affecting their cognitive capacity" in accordance with the applicable legislation in their province of residence.

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This is substantively the same as the definition for "mentally incompetent Indian" but reflects a shift in terminology. Many provincial statutes relating to property and persons who are found to lack capacity to manage property refer instead to an individual being "incapable" or to an individual's "incapacity."[69]

In addition, clauses 2 and 6 make technical amendments to sections 4.1 and 51 to replace the term "mentally incompetent Indians" with "dependent persons."

2.2 APPLICATION TO REMOVE NAME FROM INDIAN REGISTER AND BAND LIST (CLAUSES 3 AND 9)

Section 5 of the *Indian Act* relates to the Register. There is currently no process for individuals to have their names voluntarily removed from the Register and band list. This concern was included in the Minister's Special Representative's final report. That report notes that reasons for which individuals may want to deregister include "wanting to identify and register as a Métis, belong[ing] to an American Indian Tribe [that does not permit the enrollment of people registered under the *Indian Act*] or for personal reasons."[70] An individual who identifies as Métis, which is defined by the Métis National Council General Assembly as "a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of historic Métis Nation Ancestry and who is accepted by the Métis Nation,"[71] is not able to have Métis membership if that person is registered under the *Indian Act*.[72] The Special Representative recommended that the *Indian Act* include a provision to permit deregistration and that the names of descendants of deregistered individuals not be removed from the Register.

Clause 3 of Bill S-2 adds section 5(8) so that a person can apply in writing to have their name removed from the Register, and ISC is then required to do so. If a person is a member of a First Nation for which ISC maintains the band list (meaning that a First Nation has not assumed control of its membership under section 10 of the *Indian Act*), the person's name will also be removed from that band list. A person whose name is removed, or whose parent's, grandparent's or other ancestor's name is removed, is still entitled to be registered (clause 9).

2.3 PERSONS ENTITLED TO BE REGISTERED (CLAUSE 4(1))

Clause 4 of the bill amends the registration provisions relating to those who had lost status due to either involuntary or voluntary enfranchisement under section 6. The enfranchisement provisions were removed from the *Indian Act* by the amendments made by Bill C-31 in 1985. However, individuals who had been enfranchised and were then reinstated were not able to transmit status to their direct descendants in the same way as individuals who had never been enfranchised.

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Bill S-3 created an exception for women who had lost status when they married non-status men; these women can now pass on their status as if they had never been enfranchised. Section 6(1) of the *Indian Act* relates to various registration provisions as described in section 1.1 of this legislative summary.

Under the 1985 cut-off in section 6(1)(a.3), the Native Women's Association of Canada has pointed out that

> [w]here two siblings were born to unmarried, status-non-status parents across the 16 April 1985 divide, and where their grandmother regained status entitlement under Bill C-31, the 1985 cut-off date does not operate to limit the application of entitlement only to individuals that would have been adversely affected by the marry out rule, because they would not have been affected by this rule. Rather, it creates an arbitrary distinction on the basis of age and marital status wherein the sibling born before 1985 is entitled to 6(1) status and the sibling born after the cut-off date is entitled to the more limited 6(2) status.[73]

In clause 4 of Bill S-2, section 6(1)(a.1) of the *Indian Act* is renumbered section 6(1)(a.1)(i) and amended to remove the reference to the Governor in Council order declaring that a First Nations woman is enfranchised as of the date of her marriage. As a result, the reference to enfranchisement in that section is no longer restricted to women who were enfranchised by an order but instead applies to all individuals who would not have been entitled to be registered because of enfranchisement. Currently, a male whose name was omitted or deleted from the Indian Register because he was enfranchised (and, if he was married, whose wife and minor children were enfranchised as a result) is entitled to be registered under section 6(1)(d), which means that his direct descendants are not entitled to be registered. It is section 6(1)(d) that is at issue in *Nicholas*. Clause 4(2) of Bill S-2 repeals section 6(1)(d).

In addition, section 6(1)(a.1) is amended to include the following categories of individuals who had been involuntarily enfranchised and whose names had been omitted or deleted from the Register:

- individuals who had lost membership as a result of living continuously outside of Canada for five years (individuals who had prior consent of the band to live outside of Canada and had that consent approved by the Superintendent General did not lose status) (new section 6(1)(a.1)(ii), moved from section 6(1)(e)(i));
- individuals who became doctors, lawyers, priests or ministers or obtained a university degree[74] (new section 6(1)(a.1)(iii)) (moved from section 6(1)(e)(ii)); and

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- individuals who were members of a band that had been enfranchised (new section 6(1)(a.1)(iv)) (there is currently no provision relating to entitlement to be registered for members of bands that had been enfranchised).[75]

Moving existing sections 6(1)(e)(i) and 6(1)(e)(ii) to section 6(1)(a.1) means that the direct descendants of the individuals to whom those sections apply are entitled to be registered, subject to the same provision that for an individual born after 16 April 1985 to be registered, the individual's parents must have been married to each other before 17 April 1985. In the case of an individual born before 17 April 1985, it does not matter whether the parents were married to each other at the time of the individual's birth.

Clauses 4(2), 4(3), 5(1), 5(2) and 7 contain consequential amendments reflecting the deletion of sections 6(1)(d) and 6(1)(e).

Clause 4 was amended by the Senate to provide that individuals with at least one parent with status under the *Indian Act*, can pass that status to their children, eliminating the requirement for two status parents to pass down registration entitlement and moving to a "one parent rule" for transmission of status. Additionally, the Senate's amendments remove the second-generation cut-off and ensure that the current generation can register even if the eligible parent has passed away.

These legislative consequences were accomplished through several specific changes to the bill made by the Senate. Section 6(1)(a.3) of the *Indian Act* was amended to entitle a person to be registered if that person "is a direct descendant of a person who is, was or would have been entitled to be registered under" section 6(1)(a). Clause 6(1)(a) refers to a "person who was registered or entitled to be registered immediately before April 17, 1985." This amendment removes the 1985 cut-off. Additionally, section 6(1)(f) of the *Indian Act* was amended to change the wording from "both parents of that person" to "at least one parent of that person," thus moving to a one-parent rule for transmission of status. This change ensures that a person "is entitled to be registered if at least one of their parents is entitled to be registered under this section or, if the parent is no longer living, was or would have been so entitled at the time of their death." A one parent rule for transmission of status eliminates issues relating to "unknown paternity," which denies children of status mothers their right to register if the father is not identified on the birth certificate.[76] Furthermore, sections 6(2) and 6(2.1) of the *Indian Act* are removed by the Senate amendments, as are any prior references to these sections in the Act, removing the second-generation cut-off. Senate amendments under clause 4 ensure that the current generation would still be entitled to be registered even if their eligible parent is deceased, if that parent would have been entitled to be registered under the new rules.

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2.4 MEMBERSHIP RULES: MARRIED WOMEN (CLAUSE 5(3))

Section 11 of the *Indian Act* relates to the band membership rules for band lists maintained by ISC (as noted above, meaning that a First Nation has not assumed control of its membership under section 10 of the *Indian Act*). Prior to 1985, a woman who was a member of a band lost her membership in that band when she married a person who was not a member of that band. If she married a person who was a member of another band, she automatically became a member of her husband's band. Clause 5(3) of Bill S-2 adds section 11(3.2) to the Act, which entitles persons to have their names entered on the band list maintained by ISC if they had ceased to be a member of that band because they married someone who was not a member of that band. Direct descendants of these persons, if entitled to be registered, are also entitled to have their names entered on the band list.

The Senate amended clause 5 which affects membership rules for band lists maintained by ISC under section 11 of the *Indian Act*. Section 11(1) sets out four different categories of individuals entitled to have their name entered on band lists. The Senate amended the fourth category for membership eligibility, in section 11(1)(d), to remove the requirements that a person be born on or after 17 April 1985 and that both of their parents be entitled to have their names entered on the band list. Instead, the section 11(d) will now make individuals eligible for membership in a band if two criteria are met: they are eligible for registration under the new one-parent rule for transmission of status (clause 4(4)) **and** at least one of their parents was entitled to membership in the band in question.

Section 11(2) of the *Indian Act* contains additional membership rules to ensure individuals entitled to registration under the *Indian Act* can be added to a band list if they meet specific criteria. The Senate removed section 11(2)(a) of the Act**,** whereby a person is entitled to have their name entered onto a band list maintained by ISC "if that person is entitled to be registered under sections 6(1)(d) or 6(1)(e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph." Sections 6(1)(d) and 6(1)(e) pertain to people entitled to be registered if "the name of that person was omitted or deleted from the … Register, or from a band list prior to September 4, 1951." Individuals whose names were omitted or deleted from the Register or a band list prior to 4 September 1951 were often removed due to discriminatory *Indian Act* provisions such as First Nations women marrying non-status men. Recent legislative changes, including Bill S-3, allow for the reinstatement of some of these individuals and their descendants. The Senate also altered section 11(2)(b) to reflect the removal of section 6(2).

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After clause 9, the Senate added two new clauses to the third reading version of the bill, which appear as clauses 10, a deeming provision, and 11, on "Registration entitlements recognized." These provisions serve to ensure that upon the repeal of the second-generation cut-off rule, no one who was previously registered as having status under section 6(2) of the *Indian Act* would lose their previous registration entitlement. Instead, they would be registered under section 6(1)(f) of the *Indian Act.*

2.5 NO LIABILITY (CLAUSES 10 AND 11)

When introduced in the Senate, clause 10 of Bill S-2 provided that no claim may be made against the Crown, an employee or agent of the Crown, or a band council "for anything done or omitted to be done in good faith in the exercise of their powers or the performance of their duties" in relation to a person whose name or whose parent's, grandparent's or other ancestor's name was removed by application of the person or the person's parent, grandparent or other ancestor.

Similarly, when first introduced in the Senate, clause 11(a) provided that no claim could be made against the Crown, an employee or agent of the Crown, or a band council under specific circumstances. When Bill S-2 was introduced, the original clause prevented claims from being made by individuals or their relatives if the individuals were not registered, or did not have their names entered on a band list, but, upon the coming into force of this clause, that person or one of the person's parents, grandparents or other ancestors is entitled to be registered under:

- section 6(1)(a.1) of the *Indian Act*, (as amended by the first reading version of Bill S-2), as described in section 2.3 of this legislative summary, or
- section 6(1)(a.3) of the *Indian Act*, (as amended by the first reading version of Bill S-2), as described in section 1.1 of this legislative summary, pertaining to the 1985 cut-off.

The original version of clause 11(b) provided that no claim could be made against the Crown, an employee or agent of the Crown, or a band council in relation to a person whose name or whose parent's, grandparent's or other ancestor's name was removed from the band list maintained by ISC due to marrying a person from another band, as discussed in section 2.4 of this legislative summary.

"No liability" clauses were included in both former Bill C-3 (following the *McIvor* decision) and former Bill S-3 (following the *Descheneaux* decision). During the then House of Commons Standing Committee on Aboriginal Affairs and Northern Development's consideration of former Bill C-3, that committee recommended deleting the non-liability clause from the bill.[77] The clause, however,

was restored at the report stage in the House of Commons.[78] A no liability clause was also retained in Bill S-3.[79] The then Standing Senate Committee on Aboriginal Peoples recommended repealing the non-liability clauses in former Bill C-31, former Bill C-3 and former Bill S-3 in its 2022 special study report on remaining inequities in *Indian Act* registration.[80]

The non-liability clause contained in former Bill C-3 is the subject of a class action suit in *Sarrazin v. The Attorney General of Canada*.[81] The plaintiffs seek, among other things, declarations "that the 1985 amendments to section 6 of the *Indian Act* are discriminatory and therefore unconstitutional"; and "that the doctrine of state immunity or section 9 [the non-liability clause] of the 2010 amendments do not protect the state from being ordered to compensate the damage sustained as a result of this discriminatory provision."[82]The first phase of the trial, dealing with the question of state immunity, began in January 2026.[83]

With respect to the non-liability clause in the initial version of the bill, the Department of Justice's Charter Statement on Bill S-2 asserts that

> [t]he bill's disallowance of claims for compensation by individuals who were previously not entitled to registration or to have their name entered on a Band List may be considered a race-based distinction because it is imposed in a context exclusive to Indigenous persons. The following considerations support the consistency of this provision with section 15. The provision does not impose a new limit or one specific to Indigenous persons. Rather, the provision confirms for greater certainty an immunity that already exists under the law, and that applies generally to any claim for damages by any person based on good faith conduct in relation to a law subsequently found to be unconstitutional.[84]

In addition, the government's response to the seventh report of the then Standing Senate Committee on Aboriginal Peoples states that

> [t]he Government of Canada does not accept the recommendation to repeal non-liability clauses in those Acts, as the validity of these clauses is being assessed and determined by the courts.
>
> There may be distinct legal implications between section 22 of *An Act to Amend the Indian Act* (1985), section 9 of the *Gender Equity in Indian Registration Act* (2010), and sections 10 and 10.1 of *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* (2017).
>
> The non-liability clauses in the 2010 and 2017 amendments to the *Indian Act* codify a jurisprudential principle of the Supreme Court of Canada, which excludes the possibility of obtaining damages with

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> regard to actions taken in good faith under a law that is later declared constitutionally invalid. This is also known as the principle of limited executive immunity.[85]

This principle was affirmed by the Supreme Court of Canada in *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, and *Canada (Attorney General) v. Power*,[86] in which it held that in the absence of clearly wrongful conduct, bad faith or abuse of power, courts will not award damages for harm suffered as a result of a law subsequently declared unconstitutional. The non-liability clauses in the 2010 and 2017 amendments to the *Indian Act* apply to the executive responsible for implementing and administering the *Indian Act* passed by Parliament, in this case, the Registrar.[87]

The Senate amended Bill S-2 to remove its two non-liability clauses, deleting the original clauses 10 and 11.

NOTES

1. Bill S-2, An Act to amend the Indian Act (new registration entitlements), 45th Parliament, 1st Session.
2. Bill C-38, An Act to amend the Indian Act (new registration entitlements), 44th Parliament, 1st Session.
3. *Indian Act*, R.S.C. 1985, c. I-5.
4. Indigenous Services Canada (ISC), "Who is eligible," *Treaty annuity payments*.
5. For recent statistics on the Indian Registration System, see ISC, *Population Registered under the Indian Act by Gender and Residence, 2023*.
6. For these statistics, "on reserve and Crown Land" refers to "individuals living on other lands affiliated with First Nations operating under self-government agreements."
7. See, Native Women's Association of Canada, *Final Report: Board Engagement on Bill C-38,* An Act to amend the Indian Act (new registration entitlements), August 2023.
8. Senate, Standing Committee on Indigenous Peoples, *Evidence*, 2 May 2022 (Mr. Ryan Beaton).
9. See Ryan Beaton, Power Law, *Summary of* Charter *challenge to* Indian Act *registration provisions and remedy sought*, Brief submitted to the Standing Senate Committee on Aboriginal Peoples, 2 May 2022.
10. ISC, *First Nations families and Canada agree to put litigation on hold while working to end the legacy of "enfranchisement" under the* Indian Act, News release, 3 March 2022.
11. *Sharon Nicholas et al. v. Attorney General of Canada*, Notice of Civil Claim, Court File No VLC-S-S-215579 (BCSC, 11 October 2024).
12. *Nicholas v. Attorney General (Canada)*, 2025 BCSC 1596, para. 2.
13. *Indian Act*, R.S.C. 1985, c. I-5, s. 6(1).
14. *Nicholas v. Attorney General (Canada)*, 2025 BCSC 1596, para. 39.
15. *Nicholas v. Attorney General (Canada)*, 2025 BCSC 1596, paras. 39–40.
16. The Superintendent General is now the Minister of Indigenous Services. See *Indian Act*, R.S.C. 1985, c. I-5, s. 3.

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17. For details on the "second-generation cut-off rule," see Native Women's Association of Canada, *Ongoing* Indian Act *Inequity Issues: Second Generation Cut-Off Rule*.

18. ISC, "Who is eligible," *Treaty annuity payments*.

19. ISC, *How to apply for Indian status*.

20. Office of the Auditor General of Canada, *Report 1 – Registration Under the Indian Act*, 2025, p. 4.

21. Office of the Auditor General of Canada, *Report 1 – Registration Under the Indian Act*, 2025.

22. Office of the Auditor General of Canada, *Report 1 – Registration Under the Indian Act*, 2025.

23. Office of the Auditor General of Canada, *Report 1 – Registration Under the Indian Act*, 2025, pp. 25–26.

24. The Honourable Patty Hajdu, Minister of Indigenous Services, Government Response to the Seventh Report of the Standing Senate Committee on Indigenous Peoples, entitled *Make it Stop! Ending the remaining discrimination in Indian registration*, 23 February 2023.

25. Bill S-3 had two coming into force dates, in 2017 that addressed inequities between siblings, cousins, removed or omitted children and persons with unknown or unstated parentage. In 2019, the 1951 cut off was removed, extending status entitlement to 1869. ISC, *Annual Report on Registration under the Indian Act, First Nations Membership and Status Cards – 2023*.

26. Settlements include the Restoule settlements, agricultural benefits, Sixties Scoop settlement, lands and drinking water settlements along with child and family service administration. ISC, *Annual Report on Registration under the Indian Act, First Nations Membership and Status Cards – 2023*.

27. ISC, *Annual Report on Registration under the Indian Act, First Nations Membership and Status Cards – 2023*.

28. *An Act for the better protection of the Lands and Property of the Indians in Lower Canada*, 13 & 14 Victoria, c. 42 (U.K.).

29. Ibid.

30. Mary C. Hurley and Tonina Simeone, *Legislative Summary of Bill C-3: Gender Equity in Indian Registration Act*, Publication no. 40-3-C3-E, Library of Parliament, 15 November 2010.

31. *Attorney General of Canada v. Lavell*, [1974] S.C.R. 1349.

32. United Nations, Human Rights Committee, *Decisions: Communication No. R. 6/24*, CCPR/C/DR(XIII)/R.6.24, 30 July 1981.

33. Library of Parliament, "Bill C-31, An Act to amend the Indian Act," Canadian Parliamentary Historical Resources, Database, 28 February 1985, p. 583.

34. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).

35. Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019*.

36. *Gender Equity in Indian Registration Act*, S.C. 2010, c. 18.

37. *McIvor v. Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153.

38. See Mary C. Hurley and Tonina Simeone, *Legislative Summary of Bill C-3: Gender Equity in Indian Registration Act*, Publication no. 40-3-C3-E, Library of Parliament, 15 November 2010.

39. Ibid.

40. CIRNAC, "What is the '1951 cut-off'?," *Removal of the 1951 cut-off*, Fact sheet.

41. *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, S.C. 2017, c. 25.

42. See Norah Kielland and Marlisa Tiedemann, *Legislative Summary of Bill S-3: An Act to amend the Indian Act (elimination of sex based inequities in registration)*, Publication no. 42-1-S3-E, Library of Parliament, 12 March 2018.

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43. United Nations, Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2020/2010*, CCPR/C124/D/2020/2010, 20 November 2019, para. 9.

44. United Nations, Committee on the Elimination of Discrimination against Women, *Views adopted by the Committee under article 7(3) of the Optional Protocol, concerning communication No. 68/2014*, CEDAW/C/81/D/68/2014, 11 March 2022, para. 18.10.

45. See Ryan Beaton, Power Law, *Summary of* Charter *challenge to* Indian Act *registration provisions and remedy sought*, Brief submitted to the Standing Senate Committee on Aboriginal Peoples, 2 May 2022.

46. ISC, *First Nations families and Canada agree to put litigation on hold while working to end the legacy of "enfranchisement" under the* Indian Act, News release, 3 March 2022.

47. *Nicholas v. Attorney General (Canada)*, 2025 BCSC 1596, para. 12.

48. Ibid., para. 19.

49. *Nicholas v. Attorney General (Canada)*, 2025 BCSC 1596, para. 24.

50. *Nicholas v. Attorney General (Canada)*, 2025 BCSC 1596, para. 73.

51. *Gehl v. Canada (Attorney General)*, 2017 ONCA 319, para. 53.

52. Royal Commission on Aboriginal Peoples (RCAP), "Volume 4: Perspectives and Realities," *Report of the Royal Commission on Aboriginal Peoples*, 1996, p. 24. The 1857 law was *An Act to encourage the gradual Civilization of the Indian Tribes in the Province, and to amend the Laws respecting Indians*, 20 Victoria, c. 26 (U.K.).

53. The "voluntary" nature of enfranchisement has been questioned. As the Native Women's Association explains in its report on Indigenous Gender-based Analysis of Bill S-3 and the registration provisions in the *Indian Act*:

> The *Indian Act* offered financial incentives for status persons to enfranchise and many parents felt that enfranchisement was the only way to protect their children from the residential school system. Thus, the coercive nature of "voluntary" enfranchisement strongly indicates that many people enfranchised under conditions of significant pressure.

Native Women's Association of Canada, *Indigenous Gender-Based Analysis of Bill S-3 and the Registration Provisions of the* Indian Act*: Final Report*, May 2022, p. 6.

54. *Hele c. Attorney General of Canada*, 2020 QCCS 2406 (CanLII).

55. RCAP, "Volume 4: Perspectives and Realities," *Report of the Royal Commission on Aboriginal Peoples*, 1996, pp. 27–28.

56. For historical versions of the *Indian Act*, see Gail Hinge, *Consolidation of Indian Legislation. Volume II: Indian Acts and Amendments, 1868–1975*, 1978.

57. CIRNAC, *Remaining inequities related to registration and membership*, Fact sheet.

58. ISC, *The Exploratory Process on Indian Registration, Band Membership and Citizenship: Highlights of Findings and Recommendations*.

59. Ibid.

60. Canadian Feminist Alliance for International Action and Dr. Pamela Palmater, *Submission to United Nations Committee on the Elimination of Discrimination against Women*, Day of General Discussion on the Rights of Indigenous Women, 18 June 2021.

61. CIRNAC, *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Consultation Plan*.

62. Senate, Standing Committee on Aboriginal Peoples, *Bill S-3, An Act to amend the Indian Act (elimination of sex-based inequities in registration)*, Sixth report, 30 May 2017.

63. CIRNAC, *Report to Parliament on the Design of a Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship*; and CIRNAC, *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019*.

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64. CIRNAC, "Annex A: Minister's Special Representative final report on the collaborative process on Indian registration, band membership and First Nation citizenship," *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019*.

65. CIRNAC, "Annex A: Minister's Special Representative final report on the collaborative process on Indian registration, band membership and First Nation citizenship," *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019*.

66. ISC, *The Final Report to Parliament on the Review of S-3: December 2020*.

67. Senate, Standing Committee on Aboriginal Peoples, Make it stop! *Ending the remaining discrimination in Indian registration*, Seventh report, June 2022.

68. Ibid., p. 32.

69. For definitions of "incapable" and related terms, see, for example, Ontario's *Substitute Decisions Act, 1992*. Under section 1(1) of that Act, "'incapable' means mentally incapable, and 'incapacity' has a corresponding meaning." Ontario, *Substitute Decisions Act, 1992*, S.O. 1992, c. 30, s. 1(1). In addition, section 6 provides that

> [a] person is incapable of managing property if the person is not able to understand information that is relevant to making a decision in the management of his or her property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

Section 3(d) of Nova Scotia's *Adult Capacity and Decision-making Act* provides that

> "capacity" means the ability, with or without support, to (i) understand information relevant to making a decision, (ii) appreciate the reasonably foreseeable consequences of making or not making a decision including, for greater certainty, the reasonably foreseeable consequences of the decision to be made.

Nova Scotia, *Adult Capacity and Decision-making Act*, Chapter 4 of the Acts of 2017, amended 2019, c. 8, s. 179, s. 3(d).

British Columbia's *Adult Guardianship Act*, does not define "incapable"; rather, the test of incapability is set out in the *Statutory Property Guardianship Regulation* made under that Act. See British Columbia, *Adult Guardianship Act*, R.S.B.C. 1996, c. 6; and British Columbia, *Statutory Property Guardianship Regulation*, B.C. Reg. 115/2014.

70. CIRNAC, "Annex A: Minister's Special Representative final report on the collaborative process on Indian registration, band membership and First Nation citizenship," *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019*.

71. Métis National Council, *Citizenship*.

72. In 2011, in *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, the Supreme Court of Canada concluded that the provisions of Alberta's *Metis Settlements Act* that preclude an individual who has voluntarily registered under the *Indian Act* from membership in a Métis settlement do not infringe either section 7 (right to "life, liberty and security of the person") or section 15 (equality rights) of the *Canadian Charter of Rights and Freedoms*. *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, 2011 SCC 37.

73. Native Women's Association of Canada, *Indigenous Gender-Based Analysis of Bill S-3 and the Registration Provisions of the* Indian Act*: Final Report*, May 2022.

74. These enfranchisement provisions were repealed by *An Act to amend the Indian Act*, S.C. 1920, c. 50 (section 3).

75. Bands could apply for enfranchisement. As the *Report of the Royal Commission on Aboriginal Peoples* explains:

> [The] *Indian Act* permitted entire bands to be enfranchised, a provision that the Wyandotte (Wendat) band of Anderdon, Ontario took advantage of in 1881, finally receiving letters patent enfranchising them in 1884. This move greatly encouraged subsequent generations of Indian affairs officials in their civilizing and assimilating endeavour. Bands could still apply for voluntary enfranchisement until 1985. Only one other band [the Michel Band in Alberta] was enfranchised voluntarily during the period when the *Indian Act* contained band enfranchisement provisions.

RCAP, "Volume 1: Looking Forward, Looking Back," *Report of the Royal Commission on Aboriginal Peoples*, 1996, p. 264.

The Friends of Michel Society in Alberta has been seeking reinstatement. See Friends of Michel Society, *Home*; and Chris Stewart, "Feds say reinstating Michel Band not possible under Indian Act," *APTN National News*, 21 August 2019.

76. Multiple witnesses spoke about this issue in the context of the Standing Senate Committee on Aboriginal Peoples' study of Bill S-2. Mary Eberts, in her written brief, explained, "the difference in circumstances between Indigenous men and women, including both physical differences relating to the procreation of children and also the heightened vulnerability of Indigenous women to the kinds of violent circumstances that prevent them from naming the father on the birth certificate, make the two parent rule a violation of the *Charter*" (See: Mary Eberts, Indian Act Sex Discrimination Working Group, *Brief*, Brief submitted to the Standing Senate Committee on Aboriginal Peoples, September 2025).

When asked whether individuals who do not disclose the father or opt to identify just one parent can be recognized within her Nation, Madeleine Redfern, Interim Chief Executive Officer, Native Women's Association of Canada replied, "Absolutely. There are quite a number of people, for different reasons, that enroll their children, more often than not the mother, and do not necessarily need to disclose who the father is." (See: Senate, Standing Committee on Indigenous Peoples, *Evidence*, 7 October 2025 (Ms. Madeleine Redfern)).

77. House of Commons, Standing Committee on Aboriginal Affairs and Northern Development, *Evidence*, 27 April 2010; and House of Commons, Standing Committee on Aboriginal Affairs and Northern Development, *Minutes of Proceedings*, 27 April 2010.

78. House of Commons, *Debates*, 22 November 2010.

79. Bill S-3: An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général), 45th Parliament, 1st Session.

80. Senate, Standing Senate Committee on Aboriginal Peoples, Make it stop! *Ending the remaining discrimination in Indian registration*, Seventh report, June 2022, recommendation 7.

81. "Motion for Authorization to Institute a Class Action and to Obtain the Status of Representative," *Sarrazin v. The Attorney General of Canada*, 1 March 2012.

82. See Merchant Law Group LLP, *To any person in Canada whose grandmother lost her Indian status by marrying a non-Indian*, Notice of authorization.

83. The first phase of the trial in *Sarrazin v. The Attorney General of Canada* began in January 2026. *Sarrazin c. Procureur général du Canada*, 2025 QCCS 4485, para. 14.

84. Government of Canada, *Bill S-2: An Act to amend the Indian Act (new registration entitlements) – Charter Statement*, 17 June 2025.

85. The Honourable Patty Hajdu, Minister of Indigenous Services, Government Response to the Seventh Report of the Standing Senate Committee on Indigenous Peoples, entitled *Make it Stop! Ending the remaining discrimination in Indian registration*, 23 February 2023.

86. *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, 2002 SCC 13 and *Canada (Attorney General) v. Power*, 2024 SCC 26.

87. The Honourable Patty Hajdu, Minister of Indigenous Services, Government Response to the Seventh Report of the Standing Senate Committee on Indigenous Peoples, entitled *Make it Stop! Ending the remaining discrimination in Indian registration*, 23 February 2023.