

Welcome to the Engagement Kit!

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

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

These remaining issues include:

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

**these issues will be addressed in future consultation, set to commence 2023*

This year, the Minister of Indigenous Services confirmed the federal government's commitment to addressing enfranchisement-related inequities in the *Indian Act* as soon as possible.

Following through on that commitment, Indigenous Services Canada is working to introduce a Bill in Parliament in the Fall of 2022 that will propose changes to address the issues of **individual deregistration, natal band membership and some of outdated and offensive language in the *Indian Act*.**

This Engagement Kit is an opportunity for you to:

- **Read about each issue**
- **Understand the proposed solution(s) for each issue**
- **Brainstorm your thoughts, feedback, ideas and/or concerns**
- **Reflect your ideas in writing and share them with the Engagement Team (if you'd like)**
- **Get in touch with the Engagement Team (if you'd like to)**
- **Request to be added to an engagement and consultation mailing list, to stay in-the-know.**

Thank you for taking the time to review this material, engage with us, and for any feedback and comments you wish to provide.

Issue 1: Enfranchisement

The legal assimilation of First Nations

What is the issue?

Dating back to the *Gradual Civilization Act* of 1857, enfranchisement was an assimilationist policy that terminated an individual's right to be considered First Nations under the *Indian Act*. When enfranchised, individuals lost any benefits associated with their previous First Nations identity and Indian status, exchanging them for the rights of Canadian citizenship. Whenever a man was enfranchised, his wife and children would be automatically enfranchised along with him.

| Involuntary Enfranchisement (1876 – 1920) | Enfranchisement by Application (1876 – 1985) |
|--|---|
| Occurred when an individual: <ul style="list-style-type: none">• attained a university degree• became a "professional"• met the "fit", "sober", "moral", and/or "civilized" requirements of the day• became a priest or minister• lived outside of Canada for more than five years without permission. | Occurred if an individual or collective: <ul style="list-style-type: none">• showed they were "fit" to enter Canadian society• wanted to access the rights of Canadian citizenship• needed a strategic way to protect children from being forced to attend residential schools. |

In 1985, Bill C-31 eliminated the process of enfranchisement from the *Indian Act*. Individuals who had been enfranchised by application had their entitlement restored under the 6(1)(d) registration provision. Individuals who had been involuntarily enfranchised had their status restored under 6(1)(e) registration provision. This means individuals and their descendants were able to be registered and the provisions are part of the *Indian Act* today.

However, today, people with a family history of enfranchisement are not able to access registration to the same extent as people without that family history.

What is the proposed amendment for this issue?

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

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

Issue 2:

Deregistration

Voluntarily applying to have your name taken off of the *Indian Register*

What is the issue?

Since 1985, the *Indian Act* does not allow the Registrar to remove individuals from the Register, even upon their request. Individuals can request to be removed from the Indian Register for a variety of reasons, including:

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

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

What is the proposed amendment for this issue?

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

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

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

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

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

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

Any individual who opts to deregister will retain their entitlement to registration under the *Indian Act*, including the ability to regain their status in the future.

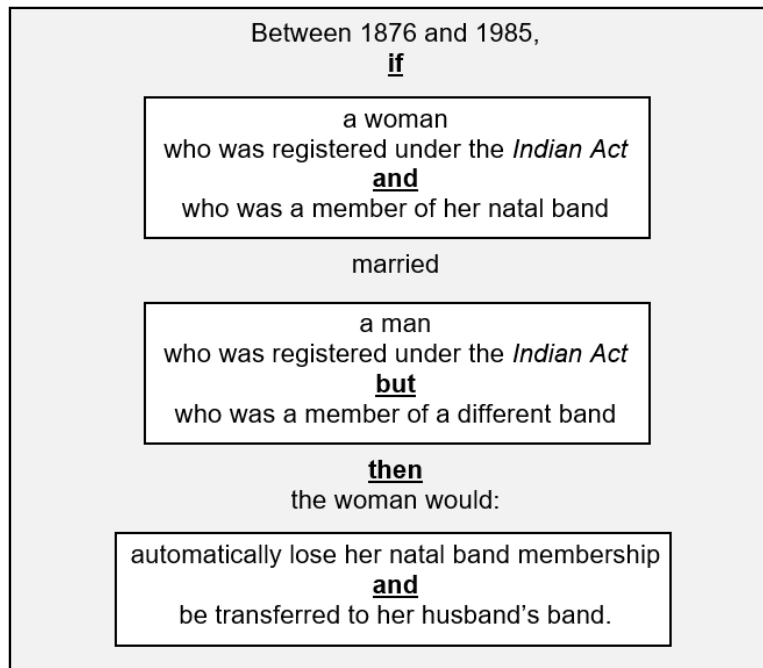
Issue 3:

Loss of Natal Band Membership

The automatic transfer of women to their husbands' band list.

What is the issue?

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



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

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

The Government successfully eliminated sex-based inequities in the registration provisions of the *Indian Act* over a series of changes since 1985. Because lawmakers were focused on addressing the registration provisions specifically for those who lost

status, changes to the band membership provisions were not made for people who never lost their status. This includes women impacted by the involuntary loss of natal band membership. As a result, many women continue to experience differential treatment in terms of their access to membership in their natal bands as compared to their male counterparts who never lose access to their natal bands.

What is the proposed amendment for this issue?

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

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

Individuals who are impacted by this proposed amendment will have to go through a **band transfer process**. In order for registered individuals to transfer bands, a statement of consent is required from the admitting band along with a corresponding written request from the individual requesting the band transfer.

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

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

In instances where an individual is entitled to registration under the *Indian Act* and wishes to be added to the membership list of their section 10 natal band, the individual must apply for re-affiliation directly with that band. These First Nations maintain their own membership lists and maintain the right to limit their membership.

Issue 4:

Outdated and Offensive Language

The removal of objectionable or insensitive terms

What is the issue?

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

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

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

What is the proposed amendment for this issue?

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

Optional: Written Feedback & Engagement

The Engagement Team extends our thanks to you for taking the time to read the Issue Sheets on the proposed changes to the *Indian Act*.

While these four issues do not represent the full range of remaining inequities in the *Indian Act*, they are a group of issues that have been broadly consulted.

With adequate prior consultation, the solutions established reflect the recommendations and perspectives of First Nations and other Indigenous stakeholders.

While building understanding and knowledge around upcoming legislation is both positive and essential, the Engagement Team hopes to hear back from any person and/or community and/or organization that anticipates being impacted by the proposed changes.

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

- Schedule an engagement session to review this information and attend a virtual engagement session, or
- Provide written feedback via email, or
- Fill out and return the worksheet on the next page.

Your perspectives are important, needed and relevant and will be a key driver for the changes being prepared to address these specific issues.

By sharing your feedback, you will enable us to produce a bill that reflects your concerns and considers your experiences.

We ask that any feedback be sent to us no later than November 1, 2022.

Thank you,

Engagement Team

Feedback Worksheet

PART 1 - ASSESSING SUPPORT OR LACK OF SUPPORT

This part of the worksheet seeks information about whether you support or do not support the proposed amendments to address the issues. This will allow the Engagement Team to track and understand whether or not the proposed solutions are considered adequate by the population that they are designed to serve.

Place any mark in the column best describes your level of support or perspective. **Provide comments**, if you wish.

| | | ABSOLUTE SUPPORT: I support the proposed changes | SOMEWHAT SUPPORT: I support changes, but not as proposed | NO SUPPORT: I do not support changes for this issue | COMMENTS |
|-------|---------------------------|---|---|--|----------|
| ISSUE | ENFRANCHISEMENT | | | | |
| | INDIVIDUAL DEREGISTRATION | | | | |
| | NATAL BAND REAFFILIATION | | | | |
| | OUTDATED LANGUAGE | | | | |

PART 2 - ASSESSING DIRECT IMPACT OF PROPOSED CHANGES

Sharing your answers to the following **Yes or No** questions will allow the Engagement Team to better understand whether this Engagement Kit was able to reach directly impacted persons and if information is likely to be passed along to a directly impacted person.

Question 1a - Have you or someone you know been impacted by Enfranchisement? **YES** **NO**

Question 1b - Will you be likely to share the information learned today with the directly impacted person? **YES** **NO**

Question 2a - Have you or someone you know been impacted by the inability to Deregister? **YES** **NO**

Question 2b - Will you be likely to share the information learned today with the directly impacted person? **YES** **NO**

Question 3a - Have you or someone you know been impacted by Natal Band Re-Affiliation? **YES** **NO**

Question 3b - Will you be likely to share the information learned today with the directly impacted person? **YES** **NO**

Question 4a - Have you or someone you know been impacted by outdated and offensive language in the Indian Act?

YES **NO**

Question 4b - Will you be likely to share the information learned today with the directly impacted person?

YES **NO**

PART 3 – NEXT STEPS

Sharing your answers to the following questions will help the Engagement Team to plan the Department's **Next Steps**.

Question 5a - Do you think there are issues that should not be included in these initial changes? **YES** **NO**

Question 5b – Please explain:

Question 6a - Do you think there are issues that are not currently included, but could have been included in this initial round of amendments? **YES** **NO**

Question 6b – Please explain:

PART 4 – GENERAL COMMENTS ON ISSUES AND PROPOSED AMENDMENTS

Please feel free to write whatever ideas, critiques, thoughts and/or feedback that you would like to see reviewed and incorporated into the process of changing the *Indian Act* as laid out in the first 4 issue sheets. You may be as detailed or as brief as you wish.

GENERAL COMMENTS:

