



Government
of Canada

Gouvernement
du Canada

COLLABORATIVE PROCESS

on Indian Registration, Band Membership
and First Nation Citizenship

Consultation Plan

June 2018



Canada

CONTEXT

In August 2015, a decision was rendered in the *Descheneaux* case by the Superior Court of Quebec which declared key provisions of the *Indian Act* inoperative, because they unjustifiably violated equality rights under the *Canadian Charter of Rights and Freedoms* by perpetuating sex-based inequities in eligibility for Indian registration between descendants of the male and female lines. The *Descheneaux* decision highlighted residual sex-based inequities in Indian registration carried forward following the 1985 and 2011 amendments to the *Indian Act*. It also brought to light the long-standing and unaddressed broader issues relating to Indian registration, band membership and First Nation citizenship.

In July 2016, the Government launched its approach to respond to the *Descheneaux* decision.¹ It includes two parts:

1. Legislative changes to immediately amend the *Indian Act* - *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);
2. *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship*.

Legislative changes were introduced in October 2016 under Bill S-3. The Act received Royal Assent on December 12, 2017.² Bill S-3 not only remedied the issues identified in the *Descheneaux* decision that came into force on December 22, 2017, it also includes provisions to remove what is commonly known as the 1951 cut-off, (which is the practice of linking registration reform to the date of the creation of the modern Indian registry in 1951), but with a delayed coming into force to allow for consultation on an implementation plan. The Act also requires that Canada consult broadly on issues around Indian registration, band membership and First Nation citizenship.

In addition, Bill S-3 requires that the Government report back to each House of Parliament on three separate occasions:

- 1) on the design of the consultation process within 5 months of Royal Assent (by May 12, 2018);
- 2) on the results of the consultation one year after the consultations begin (by June 12, 2019); and
- 3) on the review of Bill S-3 amendments to determine whether all sex-based inequities have been eliminated with respect to those provisions and on the operation of those provisions within 3 years of Royal Assent (by December 12, 2020).

¹ <https://www.canada.ca/en/indigenous-northern-affairs/news/2016/07/the-government-of-canada-takes-action-to-eliminate-known-sex-based-discrimination-in-the-indian-act.html>

² <https://www.aadnc-aandc.gc.ca/eng/1467214955663/1467214979755>

Finally, the legislation mandates that the consultation process must be conducted through the lens of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the *Canadian Charter of Rights and Freedoms* and, if applicable, the *Canadian Human Rights Act*.

The Collaborative Process will build on what First Nations and Indigenous groups raised in the 2011-2012 *Exploratory Process on Indian Registration, Band Membership and Citizenship*.³

Co-design of the Collaborative Process

October 2017 - March 2018

As part of the Government's commitment to develop a collaborative process on issues relating to Indian registration, band membership, and First Nation citizenship, in response to the *Descheneaux* decision, and in line with the requirements laid out in Bill S-3, the Department sought input from First Nations and Indigenous groups to co-design the consultations under the Collaborative Process from October 31, 2017 to March 31, 2018.

The co-design phase provided First Nations and Indigenous groups an opportunity to determine how the consultation process would take place, the issues to be examined under this process and the types of activities to be undertaken by participants. In total, 20 formal submissions were received representing 182 communities. All input received during the co-design informed the consultation approach.

Key themes to ensure a successful consultation process that emerged during the co-design process included the need for:

- 1) the Government to share comprehensive information with its partners in advance of consultation sessions;
- 2) the most inclusive and representative process possible;
- 3) flexibility in the process; and
- 4) adequate support to facilitate participation.

We heard that, in addition to working closely with national Indigenous representative organizations, the process must also engage directly with First Nations, regional Indigenous groups, communities and impacted individuals.

On May 10, 2018, the Government tabled *A Report to Parliament on the Design of a Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship*.⁴ The report provides information on the input received from First Nations and Indigenous groups on the design of the consultations and fulfills the first requirement under Bill S-3 for the Government to a report back to Parliament on the design of the consultation process.

³ <https://www.aadnc-aandc.gc.ca/eng/1308584070908/1308584221643>

⁴ <https://www.aadnc-aandc.gc.ca/eng/1525287514413/1525287538376>

Further, information obtained during the co-design phase indicated that the success of the consultation with First Nations, Indigenous groups and impacted individuals is dependent on the Department's ability to ensure that the many different Indigenous perspectives are considered.

We also heard that there should be involvement by Indigenous peoples throughout the consultation process. To help in this regard, the Department established an Indigenous Advisory Panel in May 2018 to provide advice and guidance to the government throughout the Collaborative Process until the tabling of the June 2019 report to Parliament on the results of the consultation.

This consultation plan will be a living document and regularly updated, based on what we hear could be improved and with other innovative consultation approaches we learn about throughout the process.

Indigenous Advisory Panel

May 2018 - June 2019

The Indigenous Advisory Panel consists of one member from each of the three national Indigenous organizations who represent individuals or partners significantly impacted by *Indian Act* registration, band membership or First Nation citizenship. Each organization selected their own representative. These include:

- Assembly of First Nations (AFN);
- Native Women's Association of Canada (NWAC); and
- Congress of Aboriginal Peoples (CAP).

Members will review documents, provide suggestions, and assist the Department in developing materials for use during the Collaborative Process. In addition to the panel providing input into this Consultation Plan, other items that may be put before the Advisory Panel for advice or guidance may include:

- the Consultation Guide;
- public information materials and fact sheets;
- identifying possible partner Indigenous groups or organizations that could provide additional reference information or material to aid the Collaborative Process; and
- providing advice and guidance on the preparation of the final report.

Suggestions raised by the Advisory Panel have been incorporated into the consultation approach.

CONSULTATION APPROACH

In keeping with Canada's commitment to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples, the Government is committed to working collaboratively with First Nations, Indigenous groups, and impacted individuals on an implementation plan to remove the 1951 cut-off as well as the broader and complex issues related to Indian registration, band membership and First Nation citizenship, with a view to future legislative reform.

During the co-design phase, input was sought for two general design questions.

- a) What subject matters should be included in the *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship*?
- b) What types of consultation activities should occur as part of the Collaborative Process?

In addition to what was legislated under Bill S-3, the analysis of the co-design input saw the emergence of three general content streams that will be considered through consultation.

Consultation Content Streams

- 1) The removal of the 1951 cut-off from the *Indian Act***
Discussions will focus on the implementation of the delayed coming-into-force clauses in Bill S-3 relating to the removal of the 1951 cut-off. First Nations will be consulted on how best to implement the changes, to identify what resources are required and to ensure any unintended consequences are mitigated.
- 2) Remaining inequities related to registration and membership under the *Indian Act***
These issues were articulated in Bill S-3 and enhanced by the input received during the co-design phase. This includes issues such as, but not limited to: adoption; the second-generation cut-off; or enfranchisement; and the related issues of resources and impacts on communities.
- 3) Devolution of the responsibility for determining membership / citizenship to First Nations**
Discussions will seek views on the development of options to devolve to First Nations the exclusive responsibility for the determination of the identity of their members or citizens.

Guiding Principles

The input obtained from First Nations and Indigenous groups on the co-design of the Collaborative Process can be grouped into five key themes that will be used as guiding principles throughout the consultation process.

- 1) Information Sharing** - The Collaborative Process will begin with an information sharing period to facilitate informed discussions and ensure meaningful dialogues can take place during the consultation activities. Information will be disseminated through various means including community sessions. A range of media will be used for information sharing, including online, social media, print, and non-print formats. All materials will be available in plain language. Information sharing sessions will be available throughout the Collaborative Process as needed.
- 2) Inclusiveness** - The issues around Indian registration, band membership and First Nation citizenship are broad; they impact individuals, communities and First Nations. As such, the Collaborative Process will need to be as inclusive as possible to ensure the various perspectives are heard from a broad range of Indigenous peoples and groups from coast to coast to coast. Consultations will not be limited to Indigenous organizations or First Nation leadership.
- 3) Flexibility** - To ensure a comprehensive process, consultations will include a variety of different methods and activities organized by First Nations, Indigenous groups, and Government, including: appointing a Minister's Special Representative, regional events, community / group sessions, town halls, face-to-face discussions, interviews, and an online survey available to everyone.
- 4) Timing and Duration** - The Collaborative Process will allocate as much time as possible for consultation activities, including: information sharing, organization and preparation, consultation, and having community sessions while respecting the legislated requirements to report to Parliament by June 12, 2019. The timing of activities will take into account seasonal factors, linking sessions with existing events, and having weekend and evening sessions.
- 5) Support** - Financial support for First Nations and Indigenous groups will be available through a proposal-based process to participate in the Collaborative Process. In addition to having a Minister's Special Representative, government representatives will be available to provide support and information on the process, issues and respond to questions.

Minister's Special Representative

An Indigenous Minister's Special Representative (MSR) was appointed by the Minister of Crown-Indigenous Relations and Northern Affairs Canada to lead consultation activities, regional events, and participate in community-organized activities, if requested and subject to availability. Claudette Dumont-Smith will bring valuable expertise to the Collaborative Process and will ensure comprehensive consultations that are inclusive and flexible. As MSR, Claudette Dumont-Smith will also prepare a final report including recommendations to be used for the preparation of the June 2019 report to Parliament.

Crown-Indigenous Relations and Northern Affairs (CIRNA)

Crown-Indigenous Relations and Northern Affairs (CIRNA) is the lead department for the *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship* and will be responsible for the consultations under this process including:

- providing support and coordination for the MSR and the Indigenous Advisory Panel;
- coordinating the development of all content used for the consultation process;
- coordinating government-organized consultation activities, including information sharing, regional events, and some community sessions;
- the online survey process with the assistance of a specialized firm;
- attending consultation activities;
- responding to inquiries and providing information to parties interested in participating in the Collaborative Process;
- reviewing and approving proposal-based funding;
- working with partners to create and amend funding arrangements for participation in the process;
- contracting with, and directing the work of contracted firms (research/survey);
- working cooperatively with regional offices for regional activities; and
- developing communications products to inform and update partners and interested parties on the Collaborative Process.

Funding for Consultation Activities

Proposal-based funding for First Nations communities and Indigenous groups will be available for those who wish to organize their own consultation activities beginning in September 2018. Please refer to the Department's website for details and deadlines. Specific templates and funding guidelines to participate in the consultations have been developed to ensure participation across the country with a balanced representation for each province. Funded groups will be required to submit a final report summarizing the activities, results and recommendations from their sessions in accordance with the guidelines provided.

Participants

The issues around Indian registration, band membership and First Nation citizenship are broad and impact individuals, communities and First Nations. As such, the Collaborative Process will need to be as inclusive as possible to ensure the various perspectives are heard from the following (overlap is expected between groups):

- First Nations;
- Tribal councils;
- Treaty organizations;
- National Indigenous organizations;
- Regional Indigenous organizations;
- Friendship Centers;
- Elders;
- Indigenous women;
- Impacted individuals;
- Band registration / membership experts;
- Off-reserve individuals (urban and rural);
- Youth;
- Non-status individuals;
- Métis;
- Non-recognized individuals who self-identify as Indigenous;
- Descendants of impacted individuals;
- Legal experts;
- Scholars; and
- Special interest organizations.

Other government departments and provinces will also be consulted later in the process to discuss issues and concerns from these partners, as well as to determine what impacts there may be on their programs moving forward.

Accessibility of Consultation Materials

In response to input received during the co-design phase, all materials developed to support discussions during the consultation activities will be available online, in print, and through e-mail, mail and fax. These materials will be made available throughout the consultation process. When possible, materials will also be available in the Indigenous Services Canada regional registration offices. Communities and groups may also request copies of materials. All materials will be available in plain language. The Consultation Guide will be available in selected Indigenous languages.

Social Media

The Collaborative Process will also be promoted through official departmental social media channels, including Twitter and Facebook. Social media messages will encourage participation and direct users to the departmental website for information and updates on the Collaborative Process. Consultation will not be conducted through social media.

Remote Participation

To ensure maximum flexibility and to improve accessibility for participation, the Department will offer online and audio / video conferencing options throughout the process. This is also in accordance with the Greening Government Strategy⁵ to reduce greenhouse gas emissions through reduced travel and consumption of resources.

Participants can contact the Department to arrange information sessions or consultation sessions through remote means such as teleconference, videoconference and possibly online meeting options. Information on these will be available on the Department's website.

In response to what was heard during the co-design phase, the consultation approach under the *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship* has been designed to ensure inclusiveness and flexibility through consultation and collaboration while offering sufficient information, support and time to not only fulfill the legislative obligations to meet the June 2019 deadline for the next report to Parliament, but to collect as much information, feedback and views as possible to inform future reform. This will be done through information sharing, information gathering during consultation sessions; time taken to review and analyze the information to prepare recommendations for Parliament based on the consultations, the input of an Indigenous Minister's Special Representative (MSR), and advice from the Indigenous Advisory Panel.

CONSULTATION ACTIVITIES AND MATERIALS

1. LAUNCH OF COMPREHENSIVE CONSULTATIONS

In line with Bill S-3, the Minister must initiate consultations with First Nations and other interested parties on issues related to Indian registration, band membership and First Nation citizenship by June 12, 2018.

⁵ <https://www.canada.ca/en/treasury-board-secretariat/services/innovation/greening-government/strategy.html>

Key Activities

Formal Announcement - June 12, 2018

A statement or press release was issued by the Minister announcing the beginning of consultation process.

Correspondence to Partners - June 12, 2018

Correspondence was sent to all Chiefs and Councils, national Indigenous organizations, regional Indigenous organizations, tribal councils, and the Plaintiffs in the *Descheneaux* litigation to announce the launch of the consultations under the Collaborative Process. General information and contact information on how to participate in the process was included.

Call for Funding Proposals for Consultation Activities - June to August 2018

Information Package for proposal funding for community sessions Information on the application period, guidelines to obtain funding, templates and proposal criteria will be available on the Department's website and through e-mail, mail and fax.

Materials

Information Package for Proposal Funding for Community Sessions - Funding will be available to First Nations and Indigenous groups that meet the Departmental requirements for grants and contributions funding. The guidelines, criteria and templates will be available on the Department's website and copies can be provided by e-mail, mail or fax by contacting the Department.

Collaborative Process website - www.canada.ca/first-nation-citizenship

The Department's website will provide information to the public on the consultations to ensure the process remains inclusive. The website will be updated as events and materials are finalized, and dates are set. Information to be made available including the:

- Consultation Plan;
- Consultation Guide;
- call for funding proposals;
- fact sheets;
- contact information; and
- a link to the consultation page, providing information on timing and events.

2. INFORMATION SHARING

June 2018 - September 2018

Information sharing will allow the Department to work with First Nations and Indigenous groups to set the stage for collecting information through consultation. The Department will share information relating to the existing registration regime under the *Indian Act* and introduce the Consultation Plan and the Consultation Guide. It will ensure participants have the information they need to engage in well informed and meaningful dialogues.

Key Activities

Information Sessions - June to September 2018

Departmental representatives are available to meet with First Nations and Indigenous groups to conduct information sessions on the current issues around Indian registration and the consultation process. Information sessions will be conducted in person across the country or through teleconference or video conference and will be organized in partnership with regional offices, First Nations and Indigenous groups.

Materials

Information Presentation Package - Departmental representatives will have an information presentation package, including an overview of the history of registration, the *Desceheneaux* decision, Bill S-3, details on the consultation approach and information on the current systems and issues.

Fact Sheets - The fact sheets provide information on the current situation and / or meaning of the issues to create a shared understanding of the key factors that are part of, or related to, the Collaborative Process.

3. INFORMATION GATHERING

September 2018 - March 2019

Dialogues with First Nations, Indigenous groups and impacted individuals on the three content streams relating to the implementation of the removal of the 1951 cut-off, other remaining inequities related to registration and membership under the *Indian Act*, and on broader devolution or reform will be conducted throughout this time period.

Key Activities

Community Sessions - September 2018 to March 2019

Community sessions will be organized by First Nations, Indigenous groups or by the government. Community-organized sessions may be funded through proposal-based funding with the Minister's Special Representative or Departmental representatives available to lead, attend or provide support and information. Government-organized sessions will involve the

MSR and/or department representatives leading discussions. Funded organizers of community sessions will be required to submit a final report summarizing the activities, results and recommendations from their sessions in line with the Consultation Guide.

Regional Events - September 2018 to February 2019

Regional events will be led by the MSR and held across the country to consult and provide a forum for discussion on the issues identified in the Consultation Guide. The regional events will allow for First Nation and Indigenous group representatives to come together to share perspectives, provide input to both the MSR and the Department and to engage in discussions.

Up to fifteen (15) regional events will be held across the country with locations and dates posted on the Collaborative Process website. Locations for events will be determined to ensure a cross-country representation and to be as inclusive as possible.

Online Consultation - September 2018 to February 2019

An online survey will be available to ensure that everyone has an opportunity to provide direct and confidential input into the process. Recognizing that not everyone has access to the internet and that some people or groups may prefer printed options, the survey will also be available in print by contacting the Department. The survey will be available to everyone, with a targeted focus on impacted individuals, urban individuals and Indigenous women.

The survey will be administered by a contracted firm that specializes in survey development and analysis with direction from the Department and advice from the Indigenous Advisory Panel.

Expert panel(s) - September 2018 to March 2019

The Department will work in cooperation with the MSR to set up sessions with panel(s) of experts to provide substantive input on options for amendments to the *Indian Act* provisions and broader reform. The expert panel(s) will be comprised of a mix of Indigenous and non-Indigenous experts in areas such as: *Indian Act*, citizenship; Treaty; Indigenous women's rights; Indigenous law; registration; governance; history; or demography. Panel sessions may be held as separate sessions or in conjunction with regional events, or through tele / video conference.

Materials

Consultation Guide - The Consultation Guide is intended to provide direction with regards to subject matters to be discussed as part of the consultation to allow for consistency of information gathering and dissemination. The Guide will include information on the three content streams, discussion questions and general information. The Consultation Guide will be made available in selected Indigenous languages.

Discussion Papers - With advice from the Indigenous Advisory Panel, the Department will contract with third-party experts and academics (both Indigenous and non-Indigenous) to prepare discussion papers. These papers will be used to provide different perspectives on issues

and generate discussion on the issues identified for the Collaborative Process. The papers will reflect the views of the authors. The papers will be available to participants and may be used during regional events or with the expert panel(s).

4. ANALYSIS AND RECOMMENDATIONS

April 2019 - June 2019

The Government has an obligation to report on the results of the consultation one year after the consultations begin (by June 12, 2019) under *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). The analysis period will be used to organize, review and analyze the information collected throughout the consultations. The Department will undertake analysis of all information collected throughout the process by maintaining an ongoing consultation log in accordance with the Consultation Guide to facilitate the final analysis, report and recommendations. The Department's website will be updated to include general information on what is being heard throughout the consultation process.

Information from the Minister's Special Representative report, the online survey, and community and government-organized sessions will be collected and summarized. This information will then be reviewed and analyzed in order to develop an implementation plan for the removal of the 1951 cut-off and recommendations for next steps around the remaining inequities related to registration and membership under the *Indian Act*, and next steps for broader legislative reform including devolution of the responsibility for determining membership / citizenship to First Nations. This work will be done in cooperation with the Minister's Special Representative and with the advice and guidance of the Indigenous Advisory Panel. A summary of the information collected will also be available to the public.

A report to Parliament will be tabled to summarize the process and provide recommendations relating to the three content streams for the implementation of the removal of the 1951 cut-off, other remaining inequities related to registration and membership under the *Indian Act*, and next steps for broader legislative reform including devolution of the responsibility for determining membership / citizenship to First Nations in line with the Recognition and Implementation of Rights Framework and the renewed nation to nation relationship.

FOR FURTHER INFORMATION

Website: www.canada.ca/first-nation-citizenship
E-mail: aadnc.fncitizenship-citoyennetepn.aandc@canada.ca
Toll-free Number: 1-855-833-0033
Fax: 403-292-5393
Mail: Crown-Indigenous Relations and Northern Affairs Canada
New Service Offerings
25 Eddy Street, 6th Floor, Room 196
Gatineau, QC K1A 0H4

Additional information or activities may become available throughout the process. Please check the Department's website for updates to the Consultation Plan or contact the Department.