



Native Women's  
Association of Canada



L'Association des  
femmes autochtones  
du Canada

## Backgrounder:

Report to Parliament on the Collaborative Process  
on Indian Registration, Band Membership and First  
Nations Citizenship

## 1. Develop an Implementation Plan for the Removal of the 1951 Cut-off

The Report to Parliament on the Collaborative Process on Indian Registration, Band Membership and First Nations Citizenship does not indicate that the Government of Canada will move immediately ahead with issuing an order in council to bring into force the remaining provisions of Bill S-3 –specifically, removing the 1951 cut-off date.

Instead the Government of Canada recommends that, “First Nations need more information, time, and support to consult with members and understand the impacts of the implementation of the delayed coming-into force changes in Bill S-3 on their membership, community and band administration.” And that Crown Indigenous Relations and Northern Affairs Canada, “develop an implementation plan for the removal of the 1951 cut-off.”

The Minister of Crown Indigenous Relations and Northern Affairs was mandated by Parliament under Bill S-3 to consult with First Nations on the 1951 cut-off. It is deeply unfair to First Nations persons who continue to be denied status as a result of the discriminatory effects of these provisions. Removing the 1951 cut-off by an order of the Governor in Council would deliver immediate justice to First Nations women and children.

While it is true that many First Nations communities and individuals are concerned that the removal of the 1951 cut-off will diminish their access to public services, these concerns can be resolved. Further delaying the calling into force of the remaining provisions of Bill S-3 is not warranted.

NWAC recommended in its Final Report on Bill S-3 Consultations that the Governor in Council set a firm date for the coming into force of the remaining provisions of Bill S-3 no later than June 13, 2020. Such a date provides sufficient time for CIRNA to implement a plan for the removal of the 1951 cut-off –in consultation and cooperation with First Nations peoples– while providing legal assurances to the persons and families who continue to be discriminated against under these provisions.

The failure on the part of the Government of Canada to fully eliminate gender-based discrimination under the *Indian Act* constitutes ongoing injustices to Indigenous women and their families.

It is important to recall that the United Nations Human Rights Committee noted in their decisions regarding Sharon McIvor’s case addressing ongoing sex-based discrimination under the *Indian Act* that, “the lack of a fixed date for section 2.1 to come into force means that the amendment is entirely without legal force... Furthermore, Bill S-3 is devoid of any mechanism to ensure that the amendment will ever come into force, which means that, as a legal legislative provision, it is meaningless.” (CCPR/C/124/D/2020/2010 at <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CCPR\\_C\\_124\\_D\\_2020\\_2010\\_28073\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CCPR_C_124_D_2020_2010_28073_E.pdf) > 5.24)

## **2. Continue to Inform First Nations on the Issues Identified in the Collaborative Process and Changes to the Registration Provisions under Bill S-3**

NWAC urges CIRNA to provide First Nations people with clear, accessible and accurate information on issues related to the second-generation cut-off, unknown/ unstated paternity, the 1951 cut-off, enfranchisement, adoption and the ongoing role of the federal government in determining the status of First Nations individuals.

Also, efforts should be undertaken to provide plain language versions of the *Indian Act* and related policies. NWAC encourages CIRNA to act immediately to begin to simplify the relevant legislation and policies, to facilitate information sessions on these matters and to make information resources readily available.

## **3. Work to Assess, Address and Simplify Aspects of the Application Process and Registration Requirements and Provide Better Support and Information for Applicants.**

The convoluted and inaccessible language of the *Indian Act*, particularly its registration provisions, deprives First Nations individuals of the right and ability to know the legislated framework, imposed by the federal government, regulating their entitlement to status and, in effect, access to their Indigenous communities.


Many applicants are given confusing and often inaccurate reasons for decisions regarding their application for status under the *Act*. Legislative appeal and judicial review processes can be confusing and a lack of access to legal representation can result in incorrect decisions preventing First Nations individuals from gaining status and access to entitlements under the *Act*.

NWAC strongly encourages CIRNA to work collaboratively with First Nations and National Indigenous Organizations to address and simplify these convoluted and complex processes to ensure that the Indigenous rights of First Nations applicants are properly respected.

## **4. Work collaboratively with First Nations to Develop Measures for Addressing Other Inequities Related to Registration and Membership Under the Indian Act.**

While NWAC strongly encourages CIRNA to engage in collaborative actions with First Nations for addressing ongoing inequities under the registration provisions of the *Indian Act*, the Report fails to set out any concrete steps to address the issues that were consulted on under the Bill S-3 Collaborative Process.

First Nations women and children continue to face significant risks and denials of their rights as Indigenous peoples. While the second-generation cut-off requires legislative amendments



to be removed, the effects of this provision on First Nations women and children can be minimized by simple changes to the *Unknown or Unstated Parentage Policy*.

## **5. Continue discussions with First Nations on How to Move Towards First Nations Controlling Membership and Citizenship**

NWAC strongly encourages the Government of Canada to engage with First Nations and National Indigenous Organizations to move toward First Nations membership frameworks that respect the United Nations Declaration on the Rights of Indigenous Peoples, including the right under Article 33 of that Declaration of Indigenous peoples to determine their own identity or membership in accordance with their customs and traditions.

These discussions should must be undertaken in good faith and with the meaningful intention to achieve conformity with UNDRIP at the earliest possible date.