

WHO IS A STATUS INDIAN?

Indian Act

Previous laws are consolidated in 1876 under the *Indian Act*. A status Indian is (1) any male person of Indian blood reputed to belong to a particular band, (2) any child of such a person, (3) any woman who is lawfully married to such a person. Any woman who married a status Indian gained status. However, any status Indian woman who married a non-status Indian lost their status.

Indian Act amended

The new 'paper blood' system based on an "Indian Register" replaces the 1876 system. Only people in the registry are considered Indian by the government. The following people have status: (1) individuals with status under previous Acts and their male descendants; (2) band members and their male descendants; (3) the legitimate child of a male descendant; or (4) the illegitimate child of a female descendant. Note: status for wives and children is explicitly dependant on the status of the male husband or father.

The following individuals are prohibited from having status: Métis who received lands, money or scrip, and their descendants; and children from mixed marriages. In 1956, this was amended so the Governor in Council can decide which mixed-marriage children were enfranchised (lose status). In practice, children on reserve kept status, but those off-reserve lost status.

Section 15 of the Charter of Rights & Freedoms prohibits discrimination on the basis of sex. & **Section 35 of the Constitution Act, 1982** recognizes and affirms the rights of aboriginal peoples. People had high expectations the *Charter* (part of the Constitution) would end the discrimination in the *Indian Act*. However, many Indigenous women continued to face discrimination in their communities.

Mclvor Case

This case raised the issue of the 'double mother' rule. If a person has Indian status from a grandmother reinstated after 1985 and mother, they will not be able to pass status onto their children. However, if a person was under the 1951 patrilineal model (with a male grandparent) and subject to the double mother rule, they would have status under s 6(1)(c) and could pass status onto their children. The British Columbia Court of Appeal ruled this unequal treatment is discriminatory. It was up to Parliament to fix the inequality.

Bill S-3 (Response to the Descheneaux Case)

The Government of Canada responded to *Descheneaux* by creating new rules under s 6(1)(c) and s 6(2). Now 'cousins' and 'siblings' who are born between 1951 and 1985 are equally entitled to status. The same applies for individuals whose parents were married between 1951 and 1985.



Gradual Enfranchisement Act

For the first time, women who married non-Indian men were stripped of their status. And, if women married outside their band (even to a status Indian) they lost membership in their home community. Women lost the right to vote in band elections.

Indian Act amended

Band councils are stripped of their power to financially support women who lost band membership for marrying outside the band. The Governor in Council can also forcibly enfranchise men (along with their wife and children). To be enfranchised is to lose Indian status. The impacts of being enfranchised were severe. Enfranchised individuals lost all rights associated with being a status Indian and band member. This includes the right to live on reserve, vote in band elections, receive financial support from the band etc.

Lovelace Decision

The UN Human Rights Committee found it was not reasonable that the *Indian Act* denied Ms. Lovelace the right to reside on the Tobique Reserve. Without living on reserve, she could not participate in her community. The Government of Canada violated Ms. Lovelace's rights as a member of a minority.

Bill C-31 (Response to the Charter & Lovelace Decision)

Two major changes were made to the *Indian Act*.

First, a new registration system was created. It has two-streams, the old patrilineal (male lineage) registration scheme and a new registration scheme for people previously excluded under discriminatory rules. The following people could now apply for Indian status (1) persons who have a mother and paternal grandmother who is Indian (double mother rule), (2) women who had married non-Indians, (3) individuals who had been forcibly enfranchised for practicing medicine or law, spending 5 years outside of Canada etc.

Second, Indian status was separated from band membership. This continues today. Bands can control their membership and create their own membership codes. However, the Government of Canada will provide funding to bands for status Indians, not all band members.

Bill C-3 Gender Equity in Indian Registration Act (Response to the Mclvor Case)

This Bill attempted to fix the problem raised in *Mclvor*. It created new rules so the descendants of women (who lost status for marrying non-Indian's) could pass on Indian status to their children.

Descheneaux Case

The case concerns Mr. Descheneaux, Ms. Tammy Yantha and their descendants. Both Mr. Descheneaux and Ms. Yantha were born between 1951 and 1985 and were unable to pass status onto their children as they had status under s 6(2).

Mr. Descheneaux's grandmother married a non-Indian man between 1951 and 1985. If Mr. Descheneaux's status Indian grandparent was male, he would be able to pass status onto his children. Ms. Yantha was the illegitimate daughter of a status Indian man and non-Indian woman born. If Ms. Yantha was born male, she would be able to pass status onto her children.

The judge ruled Bill C-3 did not fully remedy the *Indian Act*. The membership provisions continued to discriminate on the basis of sex. The court gave Parliament 22 months to fix the membership provisions.

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