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MEMORANDUM

Date:
March 30, 2010

Our File:
#342

To:
Barbara Stevens, Skidegate Band Council

From:
John Gailus and Carly Chunick

Re: Bill C-3, Gender Equity in Indian Registration Act

In April 2009, the B.C. Court of Appeal ruled that certain registration provisions of the *Indian Act* are unconstitutional as they violate the equality provision of the *Charter of Rights and Freedoms* in *McIvor v. Canada*¹. The Court suspended its declaration of invalidity for 12 months - to April 6, 2010 - to give Parliament time to amend the *Indian Act*.

On August 24, 2009, Parliament announced its engagement plan for the development of legislative amendments in response to the Court of Appeal's ruling. On March 11, 2010, those proposed amendments passed First Reading in the House of Commons as Bill C-3, the *Gender Equity in Indian Registration Act*.

New Registration

After several engagement sessions with national and regional Aboriginal organizations and accepting written comments, the proposed amendments contained in Bill C-3 remain unchanged from the original proposal. The main amendment is the addition of subsection 6(1)(c.1) that provides status to any individual:

- whose mother lost Indian status upon marrying a non-Indian man;
- whose father is a non-Indian;
- who was born after the mother lost Indian status but before April 17, 1985, unless the individual's parents married each other prior to that date; and
- who had a child with a non-Indian on or after September 4, 1951.

¹ *McIvor v. Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153.



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Subsection 6(1)(c.1) will apply to individuals currently registered, or entitled to be registered, under sub-section 6(2). However, new registration will be available to the children of individuals covered by paragraph 6(1)(c.1) (whether born before, on, or after September 4, 1951) under subsection 6(2). New registration under s. 6(2) will be available to individuals meeting all of the following criteria:

- whose grandmother lost Indian status as a result of marrying a non-Indian;
- who has one parent currently registered, or entitled to be registered, under sub-section 6(2) of the Indian Act; and
- who was born on or after September 4, 1951.

Existing Registrants

The proposed amendments will also re-enact the provisions struck down by the decision of the Court of Appeal, i.e. paragraphs 6(1)(a) and 6(1)(c). INAC has brought a motion to extend the April 6th deadline for re-enacting those provisions to June 5th, 2010 or whenever the bill comes into force, whichever is sooner.

Regardless, the *Gender Equity in Indian Registration Act* will come into force, or will be deemed to come into force, on a day on or after April 5th, 2010, to be fixed by order of the Governor in Council. This is to protect the entitlement to registration of persons registered or entitled to be registered under those paragraphs so that no one will lose their registration as an Indian as a result of these amendments.

Band Membership

For bands whose membership is determined by INAC in accordance with section 11 of the *Indian Act*, applicants will be added to the band list at the time of registration. For bands that have assumed control of their own membership under section 10 of the *Indian Act*, their membership will be determined by the membership rules adopted by the band.

Continuing Discrimination

Unfortunately, Bill C-3 does not completely eliminate discrimination from the registration provisions of the *Indian Act*. The proposed amendments do not address the "second generation cut-off rule", which was not scrutinized in the *McIvor* case. Furthermore, Bill C-3 does not sufficiently address the source of discrimination identified by the Court of Appeal; that sections 6(1)(a) and 6(1)(c) violate the *Charter* to the extent that they grant individuals to whom the "Double Mother Rule" applied greater rights than they would have had under the former legislation. The following chart shows how Double Mother reinstates still have better status than those in the comparator group even after Parliament's proposed amendments.



Indian status inherited from a Female Grandparent		Indian status inherited from a Male Grandparent (Comparator Group)	
Before 1985			
Grandmother married non-Indian man	lost status	Grandfather married non-Indian woman	status
Father married non-Indian woman	no status	Father married non-Indian woman	status
Child Born before 1985	no status	Child born before 1985 double mother rule	status until 21 years
Grandchild	no status	Grandchild	no status
After 1985 (Bill C-31)			
Grandmother married non-Indian man	6(1)(c)	Grandfather married non-Indian woman	6(1)(a)
Father married non-Indian woman	6(2)	Father married non-Indian woman	6(1)(a)
Child born before 1985 second generation cut-off	no status COURT OF APPEAL FOUND DISCRIMINATION	Child born before 1985 double mother reinstated	6(1)(c)
Grandchild	no status	Grandchild	6(2)
Parliament's proposed amendments (Bill C-3)			
Grandmother married non-Indian man	6(1)(c)	Grandfather married non-Indian woman	6(1)(a)
Father married non-Indian woman	6(1)(c.1)	Father married non-Indian woman	6(1)(a)
Child born before 1985	6(2) CONTINUING DISCRIMINATION	Child born before 1985 double mother reinstated	6(1)(c)
Grandchild second generation cut-off	no status CONTINUING DISCRIMINATION	Grandchild	6(2)

Bill C-3 will eliminate discrimination for some individuals. However, as the above chart demonstrates, some individuals will continue to suffer discrimination by receiving lesser or no status because they had an Indian grandmother, instead of an Indian grandfather. Because each person's family tree is unique and often complex, every individual's situation should be analysed on a case-by-case basis.



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Applying for Registration

Registration does not happen automatically. Individuals must apply for registration once the amendments are in force. According to Indian and Northern Affairs Canada ("INAC"), the procedures for registration are as follows:

For persons born on or after April 17, 1985:

1. Obtain a certified copy of the child's birth registration that shows the names of the child's parents. This document can be obtained from the Division of Vital Statistics for the province or territory where the child was born.
2. Write a letter that states that you wish to register the child as an Indian. Give the name of the parent with which the child should be registered (children are registered with only one parent). *Both* parents must sign this letter.
3. Send the copy of the birth registration and the letter to your First Nation office or to your nearest office of INAC.

For persons born before April 17, 1985:

1. Obtain and fill out *one* of the following forms:
 - o ***For a person who is 18 or older***, the "Application for Registration of an Adult under the *Indian Act*."
 - o ***For a person who is under 18 or for a person who is intellectually impaired***, the "Application for Registration of Children under the *Indian Act*."

Both forms can be obtained from offices of INAC, First Nations or Aboriginal associations, and Aboriginal Friendship Centres.

2. Include as much information as you can about the applicant's Aboriginal background. Include the name or location of the First Nation or First Nations to which the applicant's ancestors belonged. If you know the names of relatives who have been registered, you should include these also.
3. Send the completed form to:
Indian Registrar
Office of the Indian Registrar
Indian and Northern Affairs Canada
Ottawa, Ontario
K1A 0H4

We hope you find this information helpful. Please let us know if you have any questions or concerns about Bill C-3, the registration process or the *McIvor* case.