January 2025

Indian Act Second-Generation Cut-off and Section 10 Voting Thresholds

B.C. First Nations Perspectives and Positions

B.C. Assembly of First Nations

BCAFN is a Provincial Territorial Organization (PTO) representing 204 First Nations in B.C. Nationally, BCAFN is one of twelve regional organizations affiliated with the national Assembly of First Nations whose members include 633 First Nations across Canada.

Union of B.C. Indian Chiefs

The UBCIC is a First Nations political advocacy organization founded in 1969 with a mandate of advancing and protecting First Nations title and rights.

This report speaks about the history and harms associated with status provisions of the *Indian Act*. Should they be needed, individual supports include:

- Hope for Wellness Help Line Call 1-855-242-3310 (toll-free) or connect to the online Hope for Wellness chat. Available 24 hours a day, 7 days a week to First Nations, Inuit, and Métis Peoples seeking emotional support, crisis intervention, or referrals to community-based services.
- The National Residential School Crisis Line Crisis support is available to Residential School survivors and their families 24 hours a day, 7 days a week at 1-866-925-4419 (toll-free)

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Purpose of this Paper & Materials

Enfranchisement and Indian status policies under the *Indian Act* have been used by colonial governments for 144 years to assimilate First Nations peoples into settler society, including forcing many to lose their legal status, community connection, ability to reside on reserve, and access to rights and entitlements.

Tireless advocacy by First Nations – particularly women and their descendants – has forced change to the status provisions of the *Indian Act* through the years, but these have not comprehensively removed inequitable and discriminatory provisions. The Chiefs in Assembly of the UBCIC and BCAFN have passed resolutions calling on the Government of Canada to abolish all remaining sex, race, and family-based discrimination in the *Indian Act* as identified by First Nations and advocates. This includes legacies of sex discrimination resulting from sections 6(1)(f) and 6(2) and the requirement to have two status parents to transmit status to the next generation.

Following two recent rounds of engagement and four attempts at legislative change, the federal government through Indigenous Services Canada (ISC) has launched another formal consultation process (**the Collaborative Process**) in 2025 **to co-develop with First Nations a legislative remedy** for these issues. The Union of BC Indian Chiefs (UBCIC) and the BC Assembly of First Nations (BCAFN) have, and continue to, participate in an Indigenous Advisory Process and provide extensive feedback on the process. Continued concerns about the process include:

- Despite decades of extensive research, reports, studies, and recommendations on these issues, Canada is again carrying out engagement. Furthermore, while the federal government has both the capacity and obligation to undertake legal analysis and propose options on the basis of extensive feedback to date, this process is asking First Nations to devote substantial capacity in developing legislative remedy(ies). This process runs the risk of First Nations undertaking significant legal work to propose solutions that are ultimately rejected by the Ministry of Justice.
- The federal government continues to slow-walk the process of addressing discriminatory provisions within the *Indian Act*. This delayed implementation of solutions equates to tolerance of discrimination towards First Nations women in particular. For example, in this current process, the federal government has described the need for First Nations to reach consensus on *Indian Act* changes but has not

defined the threshold for consensus nor how it aims to achieve consensus from First Nations.

- It remains unclear how the First Nations-led consultation events will roll out and how ISC will ensure maximum participation, including both title and rights holders and affected individuals and families.
- ISC continues to take a pan-Indigenous approach in its language and materials.

The inequities in registration and membership are also entangled with colonial laws related to the government's imposed definitions of citizenship and its administration over Indian status. Consultation by the federal government is also underway on this related matter (section 10 voting thresholds) and on a different timeline. It is therefore imperative that First Nations bring forward consistent and strong messaging to drive comprehensive, conclusive, and timely solutions on both fronts.

To support this messaging, the BCAFN and UBCIC have prepared materials to support First Nations and affected individuals in B.C. to engage in the upcoming federal **Collaborative Process which will consult on the topics of second generation cut-off and a related issue of voting thresholds in Section 10 of the *Indian Act*.**

The materials aim to:

- arm B.C. First Nations communities and individuals about the consultation process on an ongoing basis to ensure effective participation,
- identify the key issues being discussed,
- recommend remedies and Calls to Action for First Nations to use to reinforce and guide their perspective.

The **Collaborative Process** presents an opportunity to address long-standing discriminatory practices, support First Nations' self-determination, and rectify historical injustices.

We wish to reiterate that this is an issue of deep, deep importance that, if not remedied fully, will contribute to mathematical genocide.

An Overview of Enfranchisement and the Second-Generation Cut Off

The *Gradual Enfranchisement Act* of 1869 and the *Indian Act* of 1876 are the laws aimed to assimilate First Nations peoples into settler society and have unilaterally and long defined who is considered an "Indian" under the law and who had membership in a "community of Indians".

Enfranchisement was a policy that compelled First Nations individuals to **renounce their Indian status, rights, and community ties** in exchange for Canadian citizenship. This could occur for various reasons, such as attaining professional or educational achievements, prevent children from being removed from the family into residential schools, or serving in the armed forces. While presented as a "voluntary process", enfranchisement was, in reality, a tool of forced assimilation designed to erode Indigenous identity and culture. In some cases, if their husbands were enfranchised, these women and their children were also forcibly enfranchised.

From 1876-1985 there was a **"one-parent rule"** in place, which allowed only men to transmit Indian status. First Nations men who "married out" retained their status and passed it to their wives and children, whereas First Nations women who married non-First Nations men automatically lost their status.

Throughout the 1970s there were court challenges, particularly by First Nation women who lost status, leading to widespread criticism of the *Indian Act* and eventually the passage of Bill C-31 *Indian Act* amendments in 1985. The amendments reinstated status to women who had lost it through marriage, removed the automatic linkage between marriage and status, and created a process for enfranchised individuals to regain their status. However, Bill C-31 continued to maintain and perpetuate inequities rooted in historic enfranchisement, related to the three core issues described in this paper:

- introducing the **second-generation cut-off** rule under sections 6(1) and 6(2), which limits the ability of individuals to pass on their status to their grandchildren if they had only one status parent.
- penalizing women whose child's father was unknown or unnamed and creating discrimination based on birth and marriage dates before and after 1985.

- **establishing Section 10**, “granting” individual bands more control over membership and membership lists without addressing the resources needed for bands to support enfranchised members returning to their communities.

Since the introduction of these categories in 1985, judicial challenges have continued to be instrumental in highlighting ongoing discrimination in the *Indian Act*. Landmark cases, such as *McIvor v. Canada* (2009) and *Gehl v. Canada* (2017), exposed persisting sex-based inequities. Federal Bills C-3 (2010), S-3 (2017), and C-38 (introduced in 2022), are subsequent attempts at amendments stemming from these cases, including issues such as unknown paternity and extending status to descendants of First Nations women – however, given that these Bills were never passed, these inequities remain in place.

Impacts on First Nation Women & Descendants

> “As you know, with Band Registration goes so many other things — connection to the community, band membership, treaty rights, recognition that they are holders of Aboriginal rights, recognition that they have a voice with respect to what should happen with their community or with self-government. If they are not back and reconnected, they don’t get a say about self-government and what that should look like for their communities.”
>
> (Shelagh Day, Chair, Human Rights Committee and Co-founder, Canadian Feminist Alliance for International Action)[1]

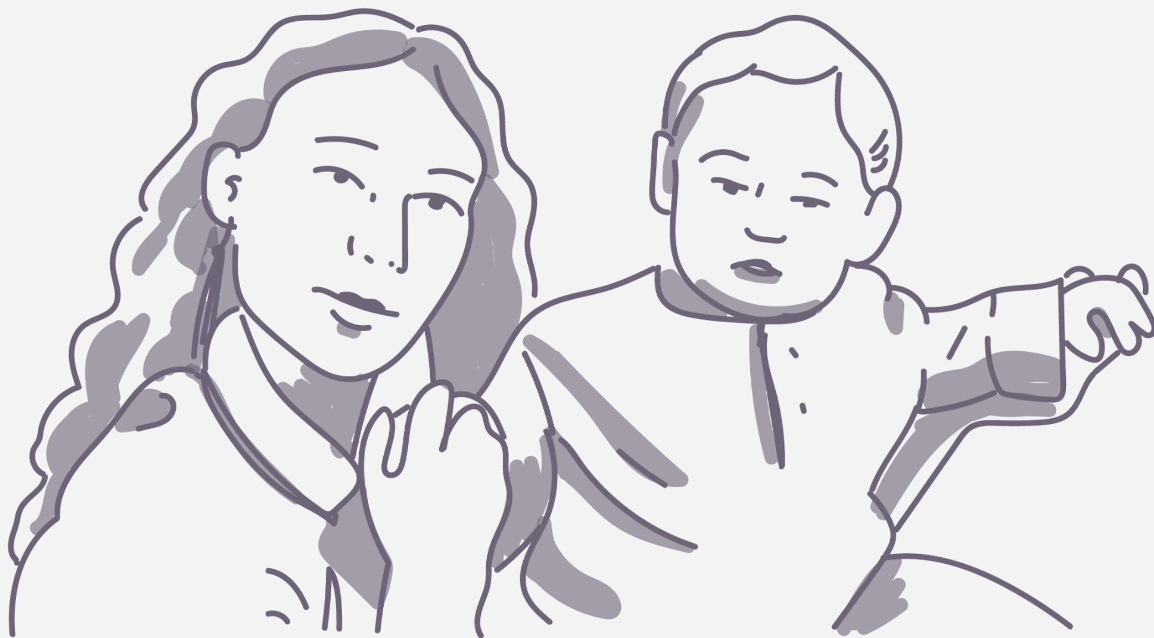
Decades of piecemeal changes to the *Indian Act* have created complex and confusing categories of status, perpetuating systemic discrimination against First Nations women and their descendants. These policies, including enfranchisement and targeted status restrictions, have had profound and lasting impacts on individuals and communities. They have diminished the number of status and treaty rights holders, fractured families, disrupted community ties, and severed connections to ancestral lands. Additionally, these measures undermined matriarchal societies by severing clan systems and women's traditional roles in

[1] APPA Standing Senate Committee on Indigenous Peoples, Evidence, March 28, 2022.

governance and contributed to the erosion of cultural practices and languages, leaving a legacy of harm that continues to affect First Nations today.

The story below depicts a woman and her children that have lost status, illustrating the impacts on both individuals and communities. It follows the journey of the family regaining status and attempting to move home.

Mae, a proud First Nations woman, grew up on the land of her ancestors, surrounded by her community's rich culture and traditions. As a keeper of her Nation's language and stories, she carried the knowledge of her people, passed down through generations. However, her life took a dramatic turn when she fell in love and married someone outside her Nation. Under the provisions of the *Indian Act*, Mae lost her status and was forced to leave her reserve, severing her ties to the land and her community.



Loss of Rights and Identity

Life off the reserve was challenging. Mae was denied the right to live, hold, and inherit land on her ancestral home. She was stripped of her ability to pass on her status to her children, robbing them of their connection to their heritage. Without the support of her community, Mae struggled to access services and protective factors vital to her and her children's well-being. The loss of these rights deeply affected Mae, isolating her from the cultural and social safety nets her community provided.

A Glimmer of Hope: Regaining Status

Decades later, legislative changes removed the second-generation cut-off rule, allowing Mae and her children to regain their status. While this was a moment of triumph, it was bittersweet. Mae dreamed of returning home to her community, but the path back was fraught with challenges. The community she left behind had changed, and her return stirred feelings of division. Resources were already stretched thin, and the reintegration of re-enrolled members created tension.

Reconnecting with the Community

Mae's return to the reserve was met with mixed emotions. Some welcomed her with open arms, recognizing her rightful place, while others, burdened by years of colonial policies, struggled to accept the influx of re-enrolled members. The community's reduced population had led to funding cuts, weakening its capacity to support members. Mae worked tirelessly to bridge the gap, sharing her knowledge and teaching the younger generation about their language and traditions.

Similar to those women who re-enrolled post-1985, many returning individuals faced rejection and alienation due to their prolonged absence, while the community, underfunded and overstretched, struggled to meet both existing and new needs. These disruptions perpetuated divisions, weakened traditional social structures, and exacerbated the collective trauma of colonial oppression, further marginalizing the role of women and diminishing the community's ability to thrive.

Healing Family and Kin Networks

Years of separation had disrupted Mae's family ties. Her children, who grew up away from the reserve, found it difficult to connect with their relatives and community. The family bore the weight of colonial interference, experiencing collective trauma from the loss of their cultural identity. Mae's efforts to rebuild these bonds were met with challenges, but she remained determined to heal her family and reconnect with her kin.

Overcoming Social and Cultural Alienation

The road to acceptance was long. Mae faced rejection from some who saw her as an outsider. Despite regaining her status, she had been absent from the community for generations. The lack of resources and funding for re-enrolled members added to the strain. Mae and her children often felt alienated, grappling with the same discrimination other First Nations people faced without the full support of their community.

Mae's journey was a testament to resilience. She became an advocate for her community, pushing for funding and resources to support reintegration. Slowly, she helped mend the fractured social fabric, fostering unity and understanding. Mae's story is one of loss, reclamation, and the enduring strength of First Nations women in the face of systemic challenges.

Impacts on B.C. First Nation Population

Ultimately, the aim of "enfranchisement" has been to decrease the Indian status population and thereby eliminate "the Indian problem". This continues to have its intended effect today. Dating back to 2001, Stewart Clatworthy has performed multiple population projections and projected impacts for the federal government outlining the potential significant decreases in the First Nation status population stemming from *Indian Act* status provisions. In 2007 he projected that:

- Loss of entitlement to Indian registration and citizenship/membership will affect large and growing numbers of descendants both on and off reserve.
- Within one generation (25 years), about 1 in every 4 children born on reserve is expected to lack registration entitlement and eligibility for membership.
- Within three generations (75 years):
    - children who qualify for registration and citizenship/membership are expected to form a minority, and
    - about 1 in every 8 children off reserve will qualify for registration and be eligible for citizenship/membership.
- The process of loss of registration entitlement and membership eligibility is expected to occur much more rapidly off reserve where rates of Indian/non-Indian parenting are considerably higher.[2]

New projections indicate that of the 158,040 total registered B.C. First Nations individuals, 43,000 – as much as 27% – have been impacted by the cut off created by Section 6(2) of the *Indian Act*. There are also indications that smaller communities will be impacted the most – and B.C. is home to most of the small First Nations in the country. This is an imminent threat to the continued existence of First Nations and their ways of knowing and languages.

[2] Stewart Clatworthy, Impacts of the 1985 Indian Act Amendments: A Case Study of Brokenhead Ojibway Nation (2007).

Province or Territory	Total Registered First Nation Population	Total Number of Individuals Registered at 6(2)	Percentage of Individuals Registered at 6(2)
Alberta	146,016	38,987	27%
British Columbia	158,040	43,026	27%
Manitoba	175,771	49,915	28%
Newfoundland and Labrador	31,703	7,475	24%
New Brunswick	17,968	6,627	37%
Northwest Territories	20,405	6,259	31%
Nova Scotia	19,127	5,703	30%
Ontario	266,338	82,596	31%
Prince Edward Island	1,502	598	40%
Saskatchewan	175,533	52,511	30%
Quebec	103,036	25,107	24%
Yukon	10,952	3,372	31%
Total	**1,126,385**	**332,173**	**29%**

Figure 2: Information provided by the Government of Canada; Indigenous Services Canada; Registration Reform.

By way of example, according to Indian Register data (as of January 11, 2024), one B.C. First Nation has 1,491 individuals who are registered under the *Indian Act.* Of the 1,491 people registered, 397 have a single entitled parent and are registered under 6(2). Over the course of a few generations, 27% of this Nation's population may no longer have descendants registered under the *Indian Act* – unless they parent with another entitled person. If they do not do so, their future descendants will no longer be entitled to registration under the *Indian Act,* and they will no longer have access to the rights, benefits and services that the government provides for individuals who are registered under the *Indian Act.* This also means that even as this Nation's population grows over time, their total registered populations are likely to decrease in size. This is a result of the second-generation cut-off.

Data sheets have been prepared for each B.C. First Nation community, outlining projected impacts of the Second-Generation cut-off. These can be found here.

Calls to Action

This section highlights Calls to Action, empowering B.C. First Nations to unify around shared positions that amplify our voice and perspectives, driving timely and well-supported legislative change.

1. Achieving consistency with the UN Declaration

In June 2021, Canada adopted the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) which commits the Government of Canada to, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration). The United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan 2023-2028 commits the following:

> The Government of Canada will take the following actions in consultation and cooperation with First Nations:
>
> *7.* Support the adoption of Bill C-38, which seeks to address discrimination in the registration and membership provisions of the *Indian Act. (Indigenous Services Canada)*
>
> *8.* Co-develop a collaborative consultation process on a suite of broader reforms relating to registration and band membership issues, prior to any transition away from the *Indian Act.*
>
> This includes to consult, cooperate and effectively engage with First Nations women to eliminate remaining gender-based issues. Canada recognizes that the *Indian Act* is a colonial-era law designed to exert control over the affairs of First Nations, and as such, the Act will never be fully aligned with the UN Declaration. For Canada's laws to fulfill the UN Declaration, the *Indian Act* must be repealed. The government is seeking to make the Act's registration and band membership provisions more consistent with the UN Declaration, until a clear consensus on a way forward on comprehensive change or the Act's repeal is possible.

Calls to Action

- The Government of Canada must fully implement its commitments under UNDA to align status provisions of the *Indian Act* with the UN Declaration on the Rights of Indigenous Peoples, and do so in an urgent and timely manner, recognizing that further delays threaten the health and survival of First Nations.
- The Government of Canada must recognize that citizenship/membership is the core of Nationhood. Any further delays by the Government of Canada to remove discriminatory barriers to citizenship/membership are a violation of First Nations' human rights and complicit to a regime designed to result in First Nations peoples' extinction in their own homelands.
- First Nations must be enabled to determine and define their own citizenship/membership laws, while upholding the core premise that no citizenship/membership provisions – whether they belong to the Government of Canada or First Nations governments – are allowed to discriminate on the basis of sex. This is a basic human right, and a standard reflected in the UN Declaration, as well as:
    - Section 15 of the *Canadian Charter of Rights and Freedoms* 1982 (*Charter*) guarantees equality between men and women.
    - Section 35(4) of the *Constitution Act, 1982* guarantees that the inherent Aboriginal, treaty and land rights of "Indians" are guaranteed equally between male and female persons.
    - Section 3(1) of the *Canadian Human Rights Act* which prohibits the federal government from discriminating on the basis of race or sex.

2. Addressing Sex-Based Discrimination

The primary legislative tool advancing the extinction of First Nations is the two-parent rule combined with the second-generation cut-off rule. These legislative provisions have historically and to this day disproportionately affected women and threaten the future of many First Nations.

Calls to Action

- Implement the recommendations of the Senate Standing Committee on Aboriginal Peoples report to fully eliminate all sex discrimination from the *Indian Act* and to improve the registration process (see Appendix B for a copy of the recommendations).
- The Government of Canada must remove sections 6(1)(f) and 6(2) and the **Second-Generation Cut-Off rule** and replace it with a **One-Parent Rule** for both male and female parents. This is consistent with Canadian citizenship, which is determined on a one-parent rule basis.
- The Government of Canada must immediately restore the status of descendants and women who lost their right to band citizenship/membership due to marriage to a non-Indian prior to 1951 and going back to 1869.
- The Government of Canada must ensure that any legislative amendments, such as the elimination of sections 6(1)(f) and 6(2), are accompanied by increased entitlements, sustainable funding, resources, programs, services, and lands to address current underfunding and provide funding for newly eligible individuals.

3. Properly funding First Nations Governments

A potential legislative solution to the second-generation cut-off may result in an additional 225,000 (or more) newly entitled individuals. First Nations have been historically under-resourced to carry out the functions of governance and to provide necessary programs and services for their membership. Increases in membership will compound this under-resourcing, as well as introduce the need for additional lands, housing and infrastructure, program and service delivery, and support for cultural and community reintegration of new members. Previous efforts to address discrimination in *Indian Act* status provisions did not include sufficient funding levels and resulted in community tensions and divisions, rather than celebrating the return of enfranchised kin.

Calls to Action

- The Government of Canada must empower Nations to thrive as sustainable, self-governing entities by providing capacity-building support, enhanced infrastructure, and the transfer of lands.
- The Government of Canada must ensure that any legislative amendments, such as the elimination of sections 6(1)(f) and 6(2), will be accompanied by increased entitlements, program and service funding, governance funding, and lands to reflect newly eligible individuals.
- The Government of Canada must rectify historic underfunding of programs and services. This problem is compounded and exacerbated if the current funding formula is simply extended and expanded to newly-enrolled individuals.

4. Providing Compensation and Redress

Article 8(2) of the UN Declaration obligates states to provide effective mechanisms for prevention of, and redress for, any action which has the aim or effect of depriving Indigenous peoples of their integrity as distinct peoples, or of their cultural values or ethnic identities, and for any form of forced assimilation or integration. However, a bar to this type of compensation was introduced in 1985, for those who have been impacted by discriminatory practices of the *Indian Act*. It states that,

> "...no person or body has a right to claim or receive any compensation, damages or indemnity from His Majesty in right of Canada, any employee or agent of His Majesty in right of Canada or a council of a band, for anything done or omitted to be done in good faith in the exercise of their powers or the performance of their duties only because of the removal of a person's name or the name of one of their parents, grandparents or other ancestors under subsection 5(8) of the Indian Act..."

Calls to Action

- The Government of Canada must repeal the non-liability clauses in Bill S-3 and Bill C-3.
- The Government of Canada must compensate women and their descendants for the losses inflicted upon them through the application of discriminatory legislation.
- The Government of Canada must compensate First Nations for community losses inflicted upon them through the application of discriminatory legislation.
- The Government of Canada must make compensation available in a timely way and through a streamlined process.
- Redress measures should include an apology by the Government of Canada, funding for commemoration, ceremony, and welcoming of enfranchised members, and honouring of those who have fought tirelessly for this change.

5. Improving the Registration Process

The process for registering as a status Indian under the *Indian Act* is often complex, lengthy, and inaccessible, particularly for those who are most vulnerable. Bill C-31, Bill C-3, and Bill S-3 applicants seeking to obtain status are often faced with two year approval timelines. Given the rapid pace at which these discriminatory provisions are contributing to the decline in registered members, and the length of time that many affected individuals have been waiting for these discriminatory provisions to be repealed, a timely service standard is required.

Calls to Action

- The Government of Canada must create a streamlined registration process with transparent service standards is essential to ensure that all eligible individuals can access their rights under the *Indian Act*.
- The Government of Canada must provide assistance to applicants in navigating the registration process (including through First Nations governments).
- The Government of Canada must provide increased base funding and administrative support for B.C. First Nations to manage the influx of new members, including funding for staff, access to records, databases, research, reconnection with new members, and capacity building for First Nations registration for citizenship /membership administrators.

Notes on Sections 10 & 11 Membership Rules

BCAFN and UBCIC do not have any resolutions providing a clear mandate from B.C. First Nations on Section 10 and Section 11 of the *Indian Act*, or the "Double Majority Threshold" voting issue. Therefore, this section does not include Calls to Action, but does outline high-level background information on this issue for the consideration of B.C. First Nations.

Under Section 10 of the *Indian Act,* First Nations can assume control of their band membership through the creation of membership rules and codes that are approved by the Minister. In these cases, the Nation's membership code may have a different set of criteria than exist for Indian status, and therefore there are two different lists affiliated to the Nation: the Nation's membership list outlining those who have met the conditions for membership according to the Nation's definitions, and the Indian register which outlines those who have met the conditions for Indian status according to the *Indian Act.*

First Nations under Section 11 have not taken control of membership under section 10 and therefore the membership list and the Indian register are one and the same for the Nation. The interaction between Sections 10 and 11 membership rules and the second-generation cut-off rule creates several potential scenarios that risk further harm and discrimination, including:

- Challenges in conducting timely elections and decision-making within First Nations if there is a significant influx of new members who have yet to reconnect with the Nation.
- Difficulties in maintaining up-to-date contact information and ensuring adequate access to information about voting processes.
- Incentives for First Nations to adopt membership codes that perpetuate discriminatory provisions as a means of addressing unaddressed challenges and risks associated with a sudden influx of new members.

Only through implementing the **Calls to Action** described in the above sections can we avert these risk scenarios.

- All legislative changes must uphold the inherent rights of First Nations peoples to self-determine their citizenship and membership processes in accordance with their

Indigenous laws, legal orders, and jurisdiction, with full funding provided by the Government of Canada.

- No citizenship/membership provisions – whether established by the Government of Canada or First Nations governments – should permit discrimination based on sex. This is a fundamental human right and an essential standard.
- The Government of Canada must ensure that any legislative amendments, such as the elimination of sections 6(1)(f) and 6(2), are accompanied by increased entitlements, sustainable funding, and adequate resources. This includes funding for programs, services, and lands to address existing underfunding and to meet the needs of newly eligible individuals.

Participating in the Collaborative (Consultation) Process

> First Nations must lead the process of 'standing up' our own laws and legal systems to define who belongs to our Nations and how that belonging interfaces with colonial governments and their obligations to respect our inherent and Treaty rights, our rights affirmed in Section 35 of the Constitution, as well as our rights affirmed the UN Declaration on the Rights of Indigenous Peoples.
>
> (AFN Bill S3 Sector Update June 2021)

The discriminatory status provisions of the *Indian Act* pose a grave and very real threat to the survival of First Nations, making their potential extinction an unimaginable – yet possible – outcome. Addressing this urgent issue requires the meaningful participation of First Nations and affected individuals in the Government of Canada's consultation process. The upcoming Collaborative Process is the pathway through which First Nations consultation will shape the Government of Canada's commitments under the UNDA Action Plan and ensure alignment between its laws and the UN Declaration.

Resources and Materials

B.C. First Nations will be most effective speaking with a unified voice to drive the necessary legislative and funding changes that will enable First Nations to do the work to restore their kinship connections and fully exercise their jurisdiction over membership and community governance. This is particularly important given that through the Collaborative Process, the Government of Canada is seeking consensus among First Nations on a legislative remedy(ies) to these discriminatory status provisions.

To support B.C. First Nations in understanding the issues and participating effectively in the Collaborative Process, BCAFN and UBCIC have created comprehensive materials and resources that detail the historical context, proposed changes, and their implications for First Nations communities. On our websites, we have posted the materials developed to support First Nations throughout Phase 2 of Collaborative Process, including:

- Summaries of relevant Indigenous, federal, and international resolutions, recommendations, reports, and laws.
- A form letter to send to the Government of Canada emphasizing key messages and calls to action.
- A reading list of sources for further information or definition.

Federal information on the Collaborative process participation information can be found here:

- Overall website: The Collaborative Process on the Second-Generation Cut-off and Section 10 Voting Thresholds
- ISC Rights-Holders Information Kit and accompanying Community Specific Data Sheets
- Request or apply for funding for community meetings and dialogue sessions by filling out the Consultation Readiness Form

We urge you to:

- **Review** the provided materials to deepen your understanding.
- **Share** the information with your community members.
- **Participate** actively in the consultation process to ensure your voice is heard.

Community Sessions

First Nations may apply for federal funding to hold their own community engagement sessions. This site includes a form to indicate interest in participating in consultations and seeking resources to do so.

Following are a set of questions that could be utilized by First Nations to support community discussions on these issues:

- What are our community's goals regarding jurisdiction and law-making over citizenship/membership?
  - What information do we need to advance our goals?
  - What resources do we need to advance our goals?
  - What first steps can we take?
- How will we be impacted if the legislation doesn't change? If it does change?
  - B.C. Community-specific data sheets can be found here
  - How do these impacts shape our advocacy about potential legislative changes?
- If the legislation changes, how can we best welcome entitled citizens/members back on our citizenship/membership list?
  - What resources would we need?
  - Citizenship/membership comes with responsibility. What are the reciprocal obligations for those who regain membership / citizenship?

For More Information

Visit BCAFN and UBCIC websites for access to the suite of materials developed to support your participation and messaging in this process. Please contact us if you have any questions or need support.

Appendix A:
Definitions & Terminology

Enfranchisement
A legal process that stripped Indigenous individuals of their status and community membership in exchange for Canadian citizenship, voting rights, and other entitlements.

Sections 6(1) & 6(2) of the *Indian Act*

> **Section 6(1)**
> Grants status to individuals who can pass it to their children regardless of the spouse's status.
>
> **Section 6(2)**
> Grants status to individuals with one Indigenous parent under Section 6(1), but they can only pass status if they marry another status Indian.

1951 Cut-Off
A requirement for registration under Section 6(1) (c.1) of the *Indian Act*, which limited eligibility to those born after September 4, 1951, with mothers who lost status due to marriage to non-Indigenous men.

The Cousin Issue
Differential treatment of current generations based on whether their grandmother married a non-Indigenous man, causing unequal status rights.

Double Mother Rule
A historical provision that removed status from grandchildren whose mother and paternal grandmother both acquired status through marriage to an Indigenous person.

Marrying Out Rule
A provision that revoked the status of Indigenous women who married non-Indigenous men, while granting status to non-Indigenous women marrying Indigenous men.

Second-Generation Cut-Off
A rule introduced in 1985 that prevents children from inheriting status if only one parent has it, effectively eliminating status after two generations.

Bill C-3 (2011)
Gender Equity in Indian Registration Act, aimed at addressing inequities following Bill C-31, particularly for grandchildren of women who lost status due to marriage.

Bill S-3 (2017)
Amendment to address sex-based discrimination in the *Indian Act* following the Descheneaux decision. It mandated a review of issues like adoption, paternity, and enfranchisement while considering human rights obligations.

Bill C-38 (2022)
Proposed amendment to address inequities faced by descendants of enfranchised individuals under the *Indian Act*, particularly addressing historical enfranchisement's effects.

Registration
The legal recognition of Indian status by the federal government, granting tax exemptions, education support, and healthcare access. Membership to an "Indian Band" provides the political and social rights within a First Nation, including voting and access to community programs.

Section 10 of the *Indian Act*
Allows First Nations to control membership lists, subject to federal approval and the protection of acquired rights.

Double Majority Rule
Under Section 10 of the *Indian Act*, consent for membership control requires a majority of eligible electors to vote, and a majority of those voting to agree.

Section 11 of the *Indian Act*
Maintains band membership lists under federal government control.

Consent (Membership Control)
A process requiring eligible electors to approve a First Nation's intention to assume membership control through a double majority vote.

Appendix B:

Recommendations of the Make it Stop! Ending the remaining discrimination in Indian registration report

RECOMMENDATION 1

We therefore recommend that Indigenous Services Canada:

- provide access to historical and genealogical records held by the department to individuals to facilitate their applications and retain more employees, such as "navigators" and researchers, to assist applicants with legal, historical and genealogical research;
- develop clear, plain language information about new and existing entitlements for status, and make these available in Indigenous languages;
- consolidate online information related to registration and develop a centralized, coherent, well-organized resource that lists where application assistance is available, where registration can take place and that links to the public education materials about registration entitlement developed by Indigenous organizations more broadly;
- ensure the same information above is available in a print format for those that require specialized supports;
- evaluate the effectiveness and reach of its public education campaign against population estimates of new registrants; and,
- establish a plan to raise awareness of the new registration provisions, including broad education and outreach beyond Indigenous organizations, and send a public notice to all individuals in Canada.

RECOMMENDATION 2

We therefore recommend that Indigenous Services Canada:

- establish and publish on the departmental website, a ten-day service standard to complete new and existing registrations following receipt of required documents from applicants;
- address the backlog of applications on a priority basis, ensuring that applications from older applicants are dealt with as quickly as possible;

- conduct a file review of previously denied status applications to determine whether applicants may be eligible under amendments to the *Indian Act* in 1985, 2010 and 2017, including those applications on unknown or unstated paternity, and that Indigenous Services Canada proactively contact individuals to notify them of their potential eligibility for registration;
- simplify and transform the application process, set strict publicly available timelines for department officials to respond to applicants, clearly explain the stages of the application process and communicate these to the general public, to applicants and to this committee;
- conduct an internal evaluation of registration more broadly focused on improving service delivery to First Nations;
- publish an annual service standard report that includes:
    - Indigenous Services Canada's estimates of new registrations, actual registrations disaggregated by gender, region, and linguistic profile;
    - the effectiveness of Indigenous Services Canada's public education campaign, and the number of new applications for registration;
    - average and median wait times for application processing, including times for the processing of complex applications;
    - progress toward implementing a ten-day service standard; and
    - number of protests and number of registration decisions that are appealed to the Superior Courts of each province.
- establish a service standard committee that reviews the above report in order to make recommendations to monitor progress and assess policies and processes, provide guidance to officials and achieve greater accountability within Indigenous Services Canada. This committee should be comprised of First Nations leaders, as well as legal and statistical experts that reflect the diversity of First Nations; and
- establish a robust independent registration review panel with First Nations representation to review denials, protests and complex applications to achieve greater accountability and transparency.

The committee requests a progress report on the implementation of these recommendations on a quarterly basis starting in October 2022.

RECOMMENDATION 3

We therefore recommend that the Office of the Auditor General of Canada conduct a performance audit of the registration of individuals by Indigenous Services Canada with a focus on the implementation of legislative amendments to the registration provisions of the *Indian Act* since 1985.

RECOMMENDATION 4

That the Government of Canada introduce legislation repealing section 6(2) of the *Indian Act* and develop an accompanying transition plan for those registered under section 6(2) as soon as possible, but no later than June 2023.

RECOMMENDATION 5

That Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada provide quarterly reports to the committee on the process and consultations undertaken to co-develop legislation to address enfranchisement with the first report due in October 2022.

RECOMMENDATION 6

That Indigenous Services Canada work with First Nations people and communities to develop an action plan with clear timeframes for the repeal of all discriminatory provisions of the *Indian Act*; the resolution of all outstanding inequities including enfranchisement, the 1985 cut-off and age and marital distinctions; and the implementation of all the recommendations from Claudette Dumont-Smith's 2019 report; and that the department provide its first progress report on this plan by December 2022 and a final report by June 2023.

RECOMMENDATION 7

That the Government of Canada introduce legislation to repeal section 22 of *An Act to Amend the Indian Act* (1985); section 9 of the *Gender Equity in Indian Registration Act* (2010); and sections 10 and 10.1 of An Act to amend the *Indian Act* in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général) (2017) to enable First Nations women and their descendants to access compensation.

RECOMMENDATION 8

That Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada work with Indigenous People and communities to provide reparations including an apology and compensation for the harms experienced by Indigenous women and their

children. This must also include initiatives to commemorate the First Nations women who fought discrimination in the *Indian Act*.

RECOMMENDATION 9

That Indigenous Services Canada provide funding to support First Nations organizations to undertake consultations on how to re-establish connections between those who have lost status and their home communities. Further, that Indigenous Services Canada provide funding for any remedies or solutions proposed as a part of these consultations.