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Legislative Summary

BILL C-38:
AN ACT TO AMEND THE INDIAN ACT (NEW REGISTRATION ENTITLEMENTS)

44-1-C38-E

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Legislative Summary of Bill C-38
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-38: AN ACT TO AMEND THE INDIAN ACT (NEW REGISTRATION ENTITLEMENTS)

1 BACKGROUND

Bill C-38, An Act to amend the Indian Act (new registration entitlements)[1] was introduced in the House of Commons by the Minister of Indigenous Services and Minister responsible for the Federal Economic Development Agency for Northern Ontario on 14 December 2022. It received first reading that same day.

The definition of "Indian" in the *Indian Act* is "a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian" (section 2(1)).[2] The criteria for determining who is an "Indian" and entitled to be included in the Indian Register are set out in section 6 of the *Indian Act*.

Individuals who are registered are often referred to as having "status," which can be important both for the individual but also for the individual's community. For example, status First Nations individuals are entitled to certain legislated rights, have access to certain federal programs, such as non-insured health benefits and post-secondary education funding, and are entitled to treaty annuity payments.[3] In addition, federal funding for some First Nations programs and services is based on the number of status First Nations individuals.

Prior to 1985, a status First Nations individual could be enfranchised for a variety of reasons. Enfranchisement meant losing entitlement to be registered and no longer being considered an "Indian" under the *Indian Act*. One of the reasons a First Nations woman could be enfranchised in the past was if she married a non-status First Nations man (commonly referred to as "marrying out").

Part of Bill C-38 responds to a constitutional challenge brought forward in *Nicholas v. Canada (Attorney General)*[4] (*Nicholas*), which relates to continuing inequity in the *Indian Act* registration provisions for some individuals who had been enfranchised in the past, as well as their ability to transmit status under the Act to their direct descendants. The representatives for the plaintiffs in *Nicholas* and the Minister of Indigenous Services agreed to put the litigation on hold while legislative amendments were pursued.[5] Bill C-38 contains these amendments. The amendments in the bill mean that individuals whose status under the Act was reinstated after enfranchisement can transmit status to their direct descendants to the same extent as individuals who were never enfranchised. Currently, only women who were reinstated after being enfranchised for marrying non-status man can transmit status to her direct descendants to the same extent as individuals who were never enfranchised (clause 4).

The bill will also:

- repeal the term "mentally incompetent Indian" from the interpretation section of the *Indian Act*, replacing it with "dependent person" (clauses 1, 2 and 6);
- permit a person to apply to have their name removed from the Indian register (clause 3); and
- entitle a person to have their name entered on the department Band List of the band they were born into if they had ceased to be a band member as a result of marrying someone who was not a member of that band (clause 5(3)).

With respect to the use of "Indian" and "First Nations," the term "Indian" is widely seen as outdated and rooted in colonialism, and First Nations is the preferred term. However, it is still the term used in the *Indian Act* and has legal meaning. It is used in this legislative summary when necessary, particularly when quoting the *Indian Act* or historical documents.

1.1 ENTITLEMENT TO BE REGISTERED UNDER THE *INDIAN ACT*

Section 6 of the *Indian Act* sets out a person's entitlement to be included in the Indian Register.[6] Individuals who are registered are often referred to as having "status." Section 6(1) sets out the criteria to be registered. These criteria have been revised through various *Indian Act* amendments; this is discussed below in section 1.1.1, "Historical and Contemporary Context of the *Indian Act* Registration Provisions."

Section 6(1)(a.1) of the *Indian Act* relates to registration provisions for:

- individuals who had previously not been included in, or were deleted from, the registry (the "double mother" rule [section 12(1)(a)(iv) of the pre-1985 *Indian Act*];
- First Nations women with status who were no longer entitled to be registered because they had married non-status men, unless they subsequently become the wife or widow of a person entitled to be registered (section 12(1)(b) of the pre-1985 Act);
- illegitimate children whose inclusion on the Band List was protested, and the protest determined that the father was non-status (section 12(2) of the pre-1985 Act); and
- women and their children who were not entitled to be registered under section 12(1)(a)(iii) pursuant to an order made under section 109(2), which allowed the Governor in Council to declare that a status woman and her children were enfranchised as of the date of the woman's marriage to a non-status man.

Section 6(1)(a.2) entitles an individual who was born female and out of wedlock between 4 September 1951 and 16 April 1985 to be registered if the father was at

the time of the individual's birth entitled to be registered, or, if he was no longer alive at that time, was at the time of his death entitled to be registered. The other condition that must be met for an individual to be registered under section 6(1)(a.2) is that the person's mother was not entitled to be registered at the time of the individual's birth.

Section 6(1)(a.3) provides that direct descendants of those who are, or would have been, entitled to register under section 6(1)(a.1) or 6(1)(a.2), are entitled to register. In order for an individual born after 16 April 1985 to be registered, the individual's parents had to have been married to each other before 17 April 1985. In the case of an individual born before 17 April 1985, it does not matter whether the parents were married to each other at the time of the individual's birth.

Section 6(1)(b) provides that a person is entitled to be registered if they belong to part of a body of persons declared to be a band by the Governor in Council on or after 17 April 1985.

Section 6(1)(d) provides that a male whose name was omitted or deleted from the Indian register prior to 4 September 1951 as a result of the individual having applied to be enfranchised (and, if he was married, whose wife and minor children were enfranchised as a result) is entitled to be registered.

Section 6(1)(e) provides that a person is entitled to be registered if their name was omitted or deleted from the Indian register prior to 4 September 1951 if:

- they had lost membership as a result of living continuously outside of Canada for five years (individuals who had prior consent of the band to live outside of Canada and had that consent approved by the Superintendent General[7] did not lose status) (section 6(1)(e)(i)); or
- they had become doctors, lawyers, priests or ministers, or who obtained a university degree.

Finally, section 6(1)(f) provides that a person is entitled to be registered if both parents are entitled to be registered or, if deceased, were entitled to be registered at the time of death.

If only one parent of an individual is registered under section 6(1), then that individual is registered under section 6(2). Being registered under section 6(2) means that an individual can only transmit status to their child if the child's other parent also has status. This is commonly referred to as the "second generation cut-off rule."[8]

Registration is not automatic; a person has to apply to Indigenous Services Canada (ISC) and include with their application, for example, proof of birth documentation and genealogy information to demonstrate that they meet the requirements for registration under the *Indian Act*.[9] The Registrar at ISC is responsible for maintaining the Register

as well as Band Lists.[10] While ISC indicates that it can take up to two years to process an application,[11] the 23 February 2023 Government Response to the Seventh Report of the Standing Committee on Indigenous Peoples, entitled, "*Make it Stop! Ending the remaining discrimination in Indian Registration*," states that as a result of improvements to the registration process, such as proactively modernizing outdated systems, "it is expected that processing times will continually improve."[12] The Government Response also indicates that starting in 2024, the Government of Canada will publish annual reports on registration.

While having status does not necessarily mean that an individual is also entitled to band membership, section 11 of the *Indian Act*, which sets out the rules relating to Band Lists that are controlled by the department, links status with membership.

As mentioned in the introduction, in addition to being entitled to certain legislated rights and having access to certain federal programs, such as non-insured health benefits and post-secondary education funding, only status First Nations individuals are entitled to treaty annuity payments.[13] Also, federal funding for some First Nations programs and services is based on the number of status First Nations individuals.

1.1.1 Historical and Contemporary Context of the *Indian Act* Registration Provisions

Attempts by the Crown to control First Nations identity dates to the mid-1800s, when colonial laws first began to define which people who were considered to be "Indians." An 1850 law had a broad definition of who was an Indian that was applied "for the purpose of determining any right of property, possession or occupation in or to any lands belonging or appropriated to any Tribe or Body of Indians in Lower Canada."[14] That definition included:

- "All persons of Indian blood, reputed to belong to the particular Body of Tribe of Indians interested in such lands, and their descendants";
- "All persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons";
- "All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such"; and
- "All persons adopted in infancy by any such Indians, and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendants."[15]

The legal definition of "Indian" was considerably narrowed over time through federal legislation. As explained in the Library of Parliament's *Legislative Summary of Bill C-3, Gender Equity in Indian Registration Act*:

> The 1951 *Indian Act* repealed its predecessor and made significant changes to the previous regime, including the establishment of a centralized "Indian Register." Under the 1951 Act, entitlement to registration remained linked to band membership, continued to emphasize transmission of status through the male line, and extended as before to the wives and widows of status Indians, whether Indian or not (section 11). The 1951 Act maintained the loss of status for Indian women who married non-Indians (paragraph 12(1)(*b*)) and for enfranchised persons, a category that might also encompass women who married out (subparagraph 12(1)(*a*)(iii)). In addition, the 1951 Act introduced the "double mother rule" under which a person registered at birth would lose status and band membership at age 21, if his/her parents had married after the coming into effect of the legislation in September 1951 and his/her mother and paternal grandmother had acquired status only through marriage (subparagraph 12(1)(*a*)(iv)).[16]

In 1985, Bill C-31, An Act to amend the Indian Act introduced significant amendments to registration provisions.[17] The amendments were aimed at making the *Indian Act* compliant with the equality provisions of the *Canadian Charter of Rights and Freedoms* (the Charter),[18] which came into effect in April 1985. The Bill C-31 amendments included removing the discriminatory provisions that caused a First Nations woman to be enfranchised and lose status when she married a man who did not have status. However, individuals who were reinstated were unable to transmit status to their descendants to the same extent that individuals who had never been enfranchised could transmit status. This inequity resulted in court challenges and subsequent legislation (discussed below). Bill C-31 also created a 1985 cut-off date that affects entitlement to be registered. As Crown-Indigenous Relations and Northern Affairs Canada's *Collaborative Process on Indian Registration*, *Band Membership and First Nation Citizenship*: *Report to Parliament June 2019* explains,

> Whether an individual is born or married before or after the effective date of Bill C-31 (April 17, 1985) may impact registration of individuals and result in the denial of status and related benefits. For example, 2 siblings born or married on opposite sides of the 1985 cut-off might not have the same ability to on pass on status to their children.[19]

Prior to the Charter, Jeanette Corbiere Lavell and Yvonne Bédard separately challenged the *Indian Act* provisions that resulted in a First Nations woman losing status when marrying a non-status man under the *Canadian Bill of Rights*. The cases were joined and ultimately, the Supreme Court determined that the provisions did not result in inequality under the law.[20]

Also prior to the Charter, First Nations women turned to international legal instruments to address the discriminatory "marrying out" provisions. In 1977, Sandra Lovelace (Nicholas), who went on to become a Canadian senator, brought a complaint to the United Nations Human Rights Committee under the *Optional Protocol to the International Covenant on Civil and Political Rights* (the Covenant). She had lost status and band membership upon marriage to a non-status man, and when that relationship ended, she was unable to return to her community. In 1981, the Human Rights Committee concluded that Canada had breached its obligation under the Covenant.[21]

Post–Bill C-31 amendments to the registration provisions have been driven largely by litigation. In 2010, the *Gender Equity in Indian Registration Act*[22] (former Bill C-3 or the *McIvor* amendments) responded to the British Columbia Court of Appeal's decision in *McIvor v. Canada* (the *McIvor* decision).[23] Sharon McIvor and her son had challenged the post-Bill C-31 registration provisions as discriminatory on the basis of sex and marital status. The challenge in the *McIvor* decision related to the "double mother rule." As the court decision in *McIvor* explains, the "double mother rule" "provided that if a child's mother and paternal grandmother did not have a right to Indian status other than by virtue of having married Indian men, the child had Indian status only up to the age of 21." In the *McIvor* decision, the court concluded that when Bill C-31 removed the "double mother rule," the male line of descendants received more favourable treatment than the female line to transmit status to descendants born prior to 1985.[24]

Bill C-3 amendments also included what is known as the "1951 cut off"; 4 September 1951 was a cut-off date used to determine eligibility for registration under section 6(1)(c.1)(iv) as it read in the bill. As the Library of Parliament Legislative Summary for Bill C-3 explains,

> Entitlement to registration under [that] provision requires, finally, that the person have had at least one child after September 1951 with a non–First Nations person. If that requirement is met, all her/his other children will also be entitled to registration, whatever their date of birth. In most cases, the children's entitlement will be to subsection 6(2) status. In contrast, any of the person's siblings who satisfy all other conditions of new paragraph (c.1) but whose children were all born before September 1951 will not be entitled to registration under the provision.[25]

As a Crown-Indigenous Relations and Northern Affairs Canada Fact Sheet, *Removal of the 1951 cut-off*, further explains,

> the birth or adoption date of a grandchild (or of a sibling of the grandchild) of a woman who lost entitlement to registration due to a marriage to a non-Indian man must occur after September 4, 1951

> for the grandchild to be entitled to registration. This could mean that two siblings born to the same parents (where the mother lost status due to marriage to a non-Indian man prior to their birth) could have different abilities to pass their entitlement to their descendants. This cut-off has implications for cousins that share a grandmother who lost entitlement due to a marriage to a non-Indian man, to pass on entitlement to their descendants. Some of the cousins can pass on entitlement, while others cannot.[26]

In 2017, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*[27] (former Bill S-3 or the *Descheneaux* amendments) responded to the decision named in the bill's title. In that decision, the court found continuing sex-based discrimination in the registration provisions of the *Indian Act*. The court concluded that two categories of individuals continued to be treated differently after Bill C-3: individuals whose grandmother had lost status due to marriage with a non-status man, when that marriage occurred prior to 17 April 1985 (the "cousins issue"); and women who were born out of wedlock to a status First Nations father prior to 17 April 1985 (the "siblings issue").[28] Part of Bill S-3 also removed the 1951 cut-off, but there was a delayed coming into force for those provisions.

Following the passage of Bill S-3, the United Nations Human Rights Committee released a decision in relation to a November 2010 complaint submitted by Sharon McIvor and Jacob Grismer. As was the case with Sandra Lovelace's complaint, the Human Rights Committee determined that Canada violated the Covenant:

> Pursuant to article 2(3)(a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia: (a) to ensure that section 6(1)(a) of the 1985 revision of the Indian Act, or of that Act as amended, is interpreted to allow registration by all persons, including the authors, who previously were not entitled to be registered under section 6(1)(a) solely as a result of preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985 and to patrilineal descendants over matrilineal descendants born prior to that date; and (b) to take steps to address residual discrimination within First Nations communities arising from the legal discrimination based on sex in the Indian Act. Additionally, the State party is under the obligation to take steps to avoid similar violations in the future.[29]

The United Nations Committee on the Elimination of Discrimination against Women also released a decision after Bill S-3 in relation to a complaint brought by Jeremy Matson under the *Optional Protocol to the Convention on the Elimination of*

All Forms of Discrimination against Women. The complaint had initially been submitted in 2013, after Bill C-3 received Royal Assent but prior to Bill S-3's introduction. Following the Bill S-3 amendments, Jeremy Matson's children were only entitled to be registered under section 6(2), compared to cousins whose parents had married prior to 1985 and were entitled to be registered under section 6(1). The Committee concluded in part that

> the 1985 cut-off rule under the amendments of 2019, even if not currently based on the gender of the descendants themselves, perpetuates in practice the differential treatment of descendants of previously disenfranchised [I]ndigenous women. As a result of the disenfranchisement of his maternal ancestor, the author cannot freely transmit his [I]ndigenous status, and his [I]ndigenous identity, to his children and, as a consequence, his children in turn will not be able to transmit freely their status to their own children. The Committee notes that the State party has acknowledged that, according to the Department of Indigenous Services, the new cut-off date will likely require legislative changes … precisely because of the current inequities based on the previous, explicit gender-based discrimination. The Committee is therefore of the view that the consequences of the denial of Indian status to the author's maternal ancestor has not yet been fully remedied, being precisely the source of the current discrimination faced by the author and his children. As a consequence, the Committee concludes that the State party has breached its obligations under articles 2 and 3 of the Convention.[30]

During consideration of Bill S-3, witnesses who appeared before the then Standing Senate Committee on Aboriginal Peoples raised concerns about continuing inequality for some individuals who had been enfranchised and their ability to transmit status to their direct descendants. This issue is the subject of the constitutional challenge in *Nicholas* (not to be confused with the United Nations complaint brought by Sandra Lovelace (Nicholas)).[31] The plaintiffs in this case argue that women who were enfranchised as a result of their husband's application for enfranchisement are not able to transmit status to their descendants in a manner equal to women who were reinstated after having lost status by marrying a non-status man. As mentioned above, the plaintiffs in *Nicholas* and the Minister of Indigenous Services agreed to put the litigation on hold while legislative amendments contained in Bill C-38 were pursued.[32]

Not only have the *Indian Act* registration provisions been subject to court challenges but policies relating to registration have been challenged as well. Prior to Bill S-3, the Registrar had a Proof of Paternity Policy that set out the evidence the Registrar considered acceptable in relation to paternity when considering an application for registration. In 2017, the Ontario Court of Appeal determined that the application of this policy in the circumstances of the plaintiff, Lynn Gehl, "failed to take into

account the equality-enhancing values and remedial objectives underlying the 1985 amendments, and was therefore unreasonable."[33] In response, Bill S-3 made amendments such that sections 5(6) and 5(7) of the *Indian Act* now provide that in applications for registration where an ancestor is unknown or unstated on a birth certificate, the Registrar shall consider all relevant evidence to determine whether the ancestor would have been entitled to be registered.

1.1.2 Enfranchisement and the *Indian Act*

As mentioned above, part of Bill C-38 relates to individuals who were subject to enfranchisement under the *Indian Act* and their ability to transmit status to their direct descendants. As the Report of the Royal Commission on Aboriginal Peoples (RCAP Final Report) explains,

> The concept of enfranchisement was introduced in 1857 […]. The [A]ct applied to both Upper and Lower Canada, and its operating premise was that by removing the legal distinctions between Indians and non-Indians through enfranchisement and by facilitating the acquisition of individual property by Indians, it would be possible in time to absorb Indians fully into colonial society. An enfranchised Indian was, in effect, actually renouncing Indian status and the right to live on protected reserve land in order to join non-Aboriginal colonial society.[34]

In some cases, individuals applied to be enfranchised (voluntary enfranchisement).[35] It is important to note that in July 2020 in *Hele c. Attorney General of Canada*, the Superior Court of Quebec determined that the Governor in Council did not have the authority to enfranchise unmarried women under subsection 108(1) of the 1952 *Indian Act*. The court in *Hele* explained that

> [i]n essence, the appeal concerns yet another lingering effect of the damaging pre-Confederation discriminatory policy known as "enfranchisement" – a euphemism for an oppressive process by which, in return for renouncing personally and on behalf of descendants, living and future, to recognition as an "Indian" and to certain rights and benefits, an Indian gained full Canadian citizenship and the right to hold land in fee simple. The policy used to be the cornerstone of the Canadian federal government's assimilation blueprint relating to Aboriginal peoples.[36]

In other cases, enfranchisement was forced on individuals. For example, the RCAP Final Report refers to the 1920 *Indian Act* amendments that "allowed the governor in council, on the recommendation of the superintendent general, forcibly to enfranchise any Indian, male or female, if found to be 'fit for enfranchisement.'"[37] Other

examples in which an individual was forcibly enfranchised under pre-1985 versions of the *Indian Act*[38] included:

- living continuously outside of Canada without permission of the band and approval of the federal government;
- being a lawyer, doctor, priest or minister, or having a university degree;
- being the wife or child of a man who had applied for enfranchisement; and
- being a woman who was subject to an order of enfranchisement for having married a non-status man ("marrying out").

In 1985, part of Bill C-31 removed the *Indian Act* enfranchisement provisions and allowed individuals who had lost status as a result of voluntary or involuntary enfranchisement to have their status reinstated. After those amendments, all categories of enfranchised individuals whose status was restored had the ability to pass on status to their direct descendants the same way; no category had any greater ability to transmit status than another category. However, individuals who had been enfranchised but then regained status after 1985, based on the amendments in Bill C-31, were not able to transmit status to the same extent as individuals who never lost status through enfranchisement.

Under the most recent amendments to the *Indian Act* (former Bill S-3), the children of women who were reinstated after marrying out became able to transmit status to their direct descendants in the same way as individuals with no family history of enfranchisement. However, as the Crown-Indigenous Relations and Northern Affairs Canada Fact Sheet *Remaining inequities related to registration and membership* explains,

> Bill C-31 removed both voluntary and involuntary enfranchisement provisions. Individuals who enfranchised, along with their children, could be reinstated or became eligible for registration.
>
> The 2017 amendments (Bill S-3) corrected sex-based inequities for women, and their descendants, when the woman involuntarily lost entitlement to registration due to marriage to a non-Indian man. Bill S-3 brings entitlement to descendants of women who married a non-Indian man in line with descendants of individuals who were never enfranchised. However, the descendants of individuals who were enfranchised for other reasons (both voluntary and involuntary) remain at a disadvantage in comparison. These remaining inequities within the *Indian Act* continue to have an impact.[39]

As mentioned above, Bill C-38 amendments will mean that a person whose status was reinstated after enfranchisement can transmit status to their direct descendants

in the same way that a person who was reinstated after "marrying out" can transmit status (clause 4).

1.2 GOVERNMENT AND PARLIAMENTARY CONSIDERATION OF ISSUES RELATING TO ENTITLEMENT TO BE REGISTERED AND CONTINUING DISCRIMINATION

Prior to the introduction of former Bill C-3 in 2010, what was then the Department of Aboriginal Affairs and Northern Development Canada held engagement sessions with First Nations and Indigenous organizations on the *McIvor* decision. Some of the issues that were identified were outside the scope of *McIvor*; this led to the Exploratory Process on Indian Registration, Band Membership and Citizenship in 2011. Recommendations to the federal government made by participants of that process included:

- The recognition of First Nations rights to determine who is eligible to be registered as an Indian and a member of an Indian Band.
- The elimination of all residual gender-based inequalities and categories of Indians under section 6, including the second generation cut-off.
- Addressing issues related to unstated paternity, adoption and status Indians without Canadian citizenship or permanent residency.[40]

Most First Nations participants in the 2011 engagement process stressed the importance of First Nations jurisdiction over citizenship:

> Based on the collective findings of participating First Nations organizations, it appears that the vast majority of First Nations participants fundamentally oppose Canada's continued authority in defining who is and is not an Indian pursuant to the *Indian Act*, and by extension who is and is not a member of a First Nation, thereby ultimately affecting (positively or negatively) individual and collective identity.
>
> The federal government's continued authority in determining status and for most Bands membership was viewed as the single largest impediment to First Nations governance over citizenship (membership). In turn, the majority of First Nations participants believe that this authority should be vested in First Nations, whether through decision-making of individual communities and their governments, or to a somewhat lesser degree through community consensus to exercise this authority at the broader nation level.[41]

It is important to note that some women's organizations have emphasized the need for First Nations women and descendants to have their status restored before

these decisions are made. As is explained in a submission to the United Nations Committee on the Elimination of Discrimination against Women,

> We are concerned about the future. Canada now says that it wishes to "get out of the business of Indian registration." In practice, however, for the purposes of resource allocation and self-government agreements, Canada only recognizes, and counts, persons with status as members of a Nation. Consequently, if Canada exits from Indian registration before it restores First Nations women and their descendants to their rightful place, it will be establishing self-government for Nations that have been stripped of thousands of women and their descendants, whose return will then not be affordable, for the Nation. The project of forced assimilation will be further advanced. Canada cannot get out of the business of Indian registration until it restores the women to their status and membership in their Nations, and undoes the enormous damage of its discriminatory regime.[42]

As part of its response to the *Deschenaux* decision, what was then Indigenous and Northern Affairs Canada indicated that it would hold a phased, collaborative process on Indian registration, band membership, and First Nations citizenship.[43] While there was no reference to engagement or consultation with First Nations in the first reading version of Bill S-3, the then Standing Senate Committee on Aboriginal Peoples amended the bill to require that the Minister of Indigenous Services Canada initiate consultations on a number of topics related to registration and band membership.[44] That committee also amended the bill to require that the minister report to Parliament on the design of the consultation process and progress on the consultations. Additional committee amendments required the minister to undertake a review of the provisions of section 6 of the *Indian Act* enacted by Bill S-3 to determine whether all sex-based inequalities had been eliminated, as well as a review of the operation of the provisions of the bill.

The design and progress reports were tabled in May 2018[45] and June 2019,[46] respectively. Claudette Dumont-Smith was appointed as the Minister's Special Representative to lead the consultations, and her report was appended to the June 2019 report.[47] The final report on the review of Bill S-3's provisions and sex-based inequalities was tabled in December 2020.[48]

The Standing Senate Committee on Indigenous Peoples reviewed the implementation of Bill S-3's amendments, releasing an interim report in June 2022.[49] That report recommends the full repeal of section 6(2) of the *Indian Act* by June 2023. It also recommends that ISC

> 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.[50]

2 DESCRIPTION AND ANALYSIS

Bill C-38 contains 11 clauses. Key clauses are discussed below.

2.1 "DEPENDENT PERSON": DEFINITION AND RELATED AMENDMENTS (CLAUSES 1, 2 AND 6)

Clause 1 repeals the term "mentally incompetent Indian" from the interpretation section of the *Indian Act* (section 2) and adds the definition "dependent person." "Dependent person" means a First Nations individual who is "unable to manage their estate by reason of an illness or impairment affecting their cognitive capacity" in accordance with the applicable legislation in their province of residence. This is substantively the same as the definition for "mentally incompetent Indian," but reflects a shift in terminology. Many provincial statutes relating to property and persons who are found to lack capacity to manage property refer instead to an individual being "incapable" or to an individual's "incapacity."[51]

In addition, clauses 2 and 6 make technical amendments to clauses 4.1 and 51 to replace the term "mentally incompetent Indians" with "dependent persons".

2.2 APPLICATION TO REMOVE NAME FROM INDIAN REGISTER AND BAND LIST (CLAUSES 3 AND 9)

Section 5 of the *Indian Act* relates to the Indian register. There is currently no process for an individual to have their name voluntarily removed from the Indian register and Band List. This concern was included in the Minister's Special Representative's final report. That report notes that reasons an individual may want to remove their name from the register include "wanting to identify and register as a Métis, belong to an American Indian Tribe that does not permit the enrollment of people registered under the Indian Act, or for personal reasons."[52] An individual who identifies as Métis, which is defined by the Métis National Council General Assembly as "a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of historic Métis Nation Ancestry and who is accepted by the Métis Nation,"[53] is not able to have Métis membership if they are registered under the *Indian Act*.[54] The Special Representative recommended that the *Indian Act* include a provision to permit deregistration and that the names of descendants of deregistered individuals not be removed from the Indian register.

Clause 3 of Bill C-38 adds section 5(8) so that a person can apply in writing to have their name removed from the register. The department is then required to remove that person's name. If the person is a member of a First Nation for which the department maintains the Band List (meaning that a First Nation has not assumed control of its membership under section 10 of the *Indian Act*), their name will also be removed

from that Band List. A person whose name is removed, or whose parent, grandparent or other ancestor's name is removed, is still entitled to be registered (clause 9).

2.3 PERSONS ENTITLED TO BE REGISTERED (CLAUSE 4(1))

Clause 4 of the bill amends the registration provisions relating to those who had lost status due to either involuntary or voluntary enfranchisement contained in section 6. As explained above, the enfranchisement provisions were removed from the *Indian Act* by the amendments made by Bill C-31 in 1985. However, individuals who had been enfranchised and were then reinstated were not able to transmit status to their direct descendants in the same way as individuals who had never been enfranchised. Bill S-3 created an exception for women who had lost status when they married a non-status man; these women can now pass on their status as though they had never been enfranchised.

As mentioned above, section 6(1)(a.1) of the *Indian Act* relates to registration provisions for:

- individuals who had previously not been included in, or were deleted from, the registry (the "double mother" rule [section 12(1)(a)(iv) of the pre-1985 Act];
- First Nations women with status who were no longer entitled to be registered because they had married non-status men, unless they subsequently become the wife or widow of a person entitled to be registered (section 12(1)(b) of the pre-1985 Act);
- illegitimate children whose inclusion on the Band List was protested, and the protest determined that the father was non-status (section 12(2) of the pre-1985 Act); and
- women and their children who were not entitled to be registered under section 12(1)(a)(iii) pursuant to an order made under section 109(2), which allowed the Governor in Council to declare that a status woman and her children were enfranchised as of the date of the woman's marriage to a non-status man.

Section 6(1)(a.2) entitles an individual who was born female and out of wedlock between 4 September 1951 and 16 April 1985 to be registered if the father was at the time of the individual's birth entitled to be registered, or, if he was no longer alive at that time, was at the time of his death entitled to be registered. The other condition that must be met for an individual to be registered under section 6(1)(a.2) is that the person's mother was not entitled to be registered at the time of the individual's birth.

Section 6(1)(a.3) provides that direct descendants of those who are, or would have been, entitled to register under sections 6(1)(a.1) or 6(1)(a.2), are entitled to register. In order for an individual born after 16 April 1985 to be registered, the individual's parents had to have been married to each other before 17 April 1985. In the case of an

individual born before 17 April 1985, it does not matter whether the parents were married to each other at the time of the individual's birth. As mentioned above, the 17 April 1985 date that is used is referred to as the "1985 cut-off." In its *Indigenous Gender-Based Analysis of Bill S-3 and the Registration Provisions of the* Indian Act – *Final Report*, the Native Women's Association of Canada explains that

> Where two siblings were born to unmarried, status-non-status parents across the 16 April 1985 divide, and where their grandmother regained status entitlement under Bill C-31, the 1985 cut-off date does not operate to limit the application of entitlement only to individuals that would have been adversely affected by the marry out rule, because they would not have been affected by this rule. Rather, it creates an arbitrary distinction on the basis of age and marital status wherein the sibling born before 1985 is entitled to 6(1) status and the sibling born after the cut-off date is entitled to the more limited 6(2) status.[55]

As was mentioned above, the United Nations Committee on the Elimination of Discrimination against Women concluded that "the 1985 cut-off rule under the amendments of 2019 … perpetuates in practice the differential treatment of descendants of previously disenfranchised [I]ndigenous women." That decision also notes that ISC has indicated that "the new cut-off date will likely require legislative changes … precisely because of the current inequities based on the previous, explicit gender-based discrimination."[56]

In clause 4 of Bill C-38, section 6(1)(a.1) is renumbered to section 6(1)(a.1)(i). That section is revised by the bill to remove the reference to the Governor in Council order declaring that a First Nations woman is enfranchised as of the date of her marriage. As a result, the reference to enfranchisement in that section is no longer restricted to women who were enfranchised by an order, but instead applies to all individuals who would not have been entitled to register as a result of enfranchisement. Currently, a male whose name was omitted or deleted from the Indian register as a result of the individual having applied to be enfranchised (and, if he was married, whose wife and minor children were enfranchised as a result) is entitled to register under section 6(1)(d), which means that the direct descendants of those individuals are not entitled to register. It is section 6(1)(d) that is at issue in the *Nicholas* case. Clause 4(2) of Bill C-38 repeals section 6(1)(d).

In addition, section 6(1)(a.1) is revised to include the following categories of individuals who had been involuntarily enfranchised and whose names had been omitted or deleted from the register:

- individuals who had lost membership as a result of living continuously outside of Canada for five years (individuals who had prior consent of the band to live outside of Canada and that consent had been approved by the Superintendent General did not lose status) (new section 6(1)(a.1)(ii), moved from section 6(1)(e)(i));

- individuals who became doctors, lawyers, priests or ministers, or who obtained a university degree[57] (new section 6(1)(a.1)(iii)) (moved from section 6(1)(e)(ii)); and
- individuals who were part of a band that had been enfranchised (new section 6(1)(a.1)(iv)) (there is currently no provision relating to entitlement to register for members of bands that had enfranchised).[58]

By moving existing sections 6(1)(e)(i) and 6(1)(e)(ii) to section 6(1)(a.1), the direct descendants of the individuals to whom those sections apply are entitled to register, subject to the same provision that for an individual born after 16 April 1985 to be registered, the individual's parents had to have been married to each other before 17 April 1985. In the case of an individual born before 17 April 1985, it does not matter whether the parents were married to each other at the time of the individual's birth.

Clauses 4(2), 4(3), 5(1), 5(2) and 7 contain consequential amendments reflecting the deletion of sections 6(1)(d) and 6(1)(e).

2.4 MEMBERSHIP RULES: MARRIED WOMEN (CLAUSE 5(3))

Section 11 of the *Indian Act* relates to the band membership rules for Band Lists maintained by the department (as noted above, meaning that a First Nation has not assumed control of its membership under section 10 of the *Indian Act*). Prior to 1985, a woman who was a member of a band lost her membership in that band when she married a person who was not a member of that band. If she married a person who was a member of another band, she automatically became a member of her husband's band. Clause 5(3) of Bill C-38 adds section 11(3.2) to the Act, which entitles a person to have their name entered on the department Band List if they had ceased to be a member of that band because they married someone who was not a member of that band. If a direct descendant of that person is also entitled to be registered, that descendant is also entitled to have their name entered on the Band List.

2.5 NO LIABILITY (CLAUSES 10 AND 11)

Clause 10 provides that no claim may be made against the Crown, an employee or agent of the Crown, 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" in relation to a person whose name or whose parent's, grandparent's or other ancestor's name was removed by application of the person, the person's parent, grandparent or other ancestor.

Similarly, clause 11(a) provides that no claim may be made against any of those mentioned above in relation to a person not being registered, or not having the person's name entered in a Band List immediately before the provisions of this section come into force and the person or the person's parent, grandparent or other ancestor is entitled to be registered under revised section 6(1)(a.1) or section 6(1)(a.3) (direct descendants of those entitled to be registered). Clause 11(b) provides that no claim can be made in relation to a person whose name or whose parent's, grandparent's or other ancestor's name was removed from the department's Band List due to marrying a person from another band.

"No liability" clauses were included in both former Bill C-3 and former Bill S-3. During the then House of Commons Standing Committee on Aboriginal Affairs and Northern Development's consideration of former Bill C-3 (the *McIvor* amendments), that committee deleted the "no liability" clause from the bill.[59] That clause, however, was restored at report stage.[60] Similarly, in its report reviewing the amendments made by Bill S-3 and the implementation of those provisions, the Standing Senate Committee on Indigenous Peoples recommended repealing the non-liability provisions contained in former Bill C-31, former Bill C-3 and former Bill S-3.[61]

The "no liability" clause contained in former Bill C-3 is the subject of a class action suit in *Sarrazin v. The Attorney General of Canada*.[62] In that lawsuit, which has not yet proceeded to trial,[63] the plaintiffs seek, among other things, declarations "that the 1985 amendments to section 6 of the *Indian Act* are discriminatory and therefore unconstitutional"; and "that the doctrine of state immunity or section 9 [the no liability clause] of the 2010 amendments do not protect the state from being ordered to compensate the damage sustained as a result of this discriminatory provision."[64]

With respect to the "no liability" clause, the Department of Justice's Charter Statement on Bill C-38 asserts that

> [t]he Bill's disallowance of claims for compensation by individuals who were previously not entitled to registration or to have their name entered on a Band List may be considered a race-based distinction because it is imposed in a context exclusive to Indigenous persons. The following considerations support the consistency of this provision with section 15. The provision does not impose a new limit or one specific to Indigenous persons. Rather, the provision confirms for greater certainty an immunity that already exists under the law, and that applies generally to any claim for damages by any person based on good faith conduct in relation to a law subsequently found to be unconstitutional.[65]

In addition, the 23 February 2023 Government Response to the Seventh Report of the Standing Committee on Indigenous Peoples, *Make it Stop! Ending the remaining discrimination in Indian Registration* states that:

> [t]he Government of Canada does not accept the recommendation to repeal non-liability clauses in those Acts, as the validity of these clauses is being assessed and determined by the courts.
>
> There may be distinct legal implications between 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).
>
> The non-liability clauses in the 2010 and 2017 amendments to the *Indian Act* codify a jurisprudential principle of the Supreme Court of Canada, which excludes the possibility of obtaining damages with regard to actions taken in good faith under a law that is later declared constitutionally invalid. This is also known as the principle of limited executive immunity.
>
> This principle was affirmed by the Supreme Court of Canada in the *Mackin* case,[66] which indicated that in the absence of clearly wrongful conduct, bad faith or abuse of power, courts will not award damages for harm suffered as a result of a law subsequently declared unconstitutional. The non-liability clauses in the 2010 and 2017 amendments to the *Indian Act* apply to the executive responsible for implementing and administering the *Indian Act* passed by Parliament, in this case, the Indian Registrar.[67]

NOTES

1. Bill C-38, An Act to amend the Indian Act (new registration entitlements), 1st Session, 44th Parliament.
2. *Indian Act*, 1985, c. I-5.
3. Government of Canada, "Who is eligible," *Treaty Annuity Payments*.
4. See Ryan Beaton, Power Law, Brief to the Standing Senate Committee on Aboriginal Peoples, *Summary of Charter challenge to Indian Act registration provisions and remedy sought*, 2 May 2022.
5. Indigenous Services Canada, *First Nations families and Canada agree to put litigation on hold while working to end the legacy of "enfranchisement" under the Indian Act*, News Release, 3 March 2022.
6. The term "Indian" is widely seen as outdated and rooted in colonialism, and First Nations is the preferred term. However, it is still the term used in the *Indian Act* and has legal meaning. It is used in this legislative summary when necessary, particularly when quoting the *Indian Act* or historical documents.
7. The Superintendent General is now the Minister of Indigenous Services. See *Indian Act*, R.S.C. 1985, c. I-5, s. 3.

8. For details on the "second generation cut-off rule," see the Native Women's Association of Canada, *Ongoing Indian Act Inequity Issues, Second Generation Cut-off Rule*.

9. Government of Canada, *How to Apply for Indian Status*.

10. *Indian Act*, R.S.C. 1985, c. I-5, ss. 2 and 5. The Band List contains the names of all members of a band.

11. Government of Canada, *Application forms for Indian status and status cards*.

12. Patty Hajdu, Minister of Indigenous Services, Government Response to the Seventh Report of the Standing Committee on Indigenous Peoples, entitled, "*Make it Stop! Ending the remaining discrimination in Indian registration"*, tabled on 23 February 2023.

13. Government of Canada, "Who is eligible," *Treaty Annuity Payments*.

14. *An Act for the better protection of the Lands and Property of the Indians of Lower Canada*, S. Prov. C. 1850, c. 42.

15. Ibid.

16. Mary C. Hurley and Tonina Simeone, *Legislative Summary of Bill C-3: Gender Equity in Indian Registration Act*, Publication No. 40-3-C3E, Library of Parliament, 15 November 2010.

17. Library of Parliament, "Bill C-31, An Act to amend the Indian Act," Canadian Parliamentary Historical Resources, Database, 28 February 1985, p. 583.

18. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

19. Government of Canada, *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019*.

20. *Attorney General of Canada* v. *Lavell – Isaac v. Bédard*, [1974] S.C.R. 1349.

21. United Nations, Human Rights Committee, *CCPR/C/DR(XIII)/R.6.24*, 31 July 1981.

22. *Gender Equity in Indian Registration Act*, S.C. 2010, c. 18.

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

24. See Mary C. Hurley and Tonina Simeone, *Legislative Summary of Bill C-3: Gender Equity in Indian Registration Act*, Publication No. 40-3-C3E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 15 November 2010.

25. Ibid.

26. Government of Canada, "What is the '1951 cut-off'?" *Removal of the 1951 cut-off*, Fact Sheet.

27. *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, S.C. 2017, c. 25.

28. See Norah Kielland and Marlisa Tiedemann, *Legislative Summary of Bill S-3: An Act to amend the Indian Act (elimination of sex based inequities in registration)*, Publication No. 42-1-S3-E, Library of Parliament, 12 March 2018.

29. United Nations, Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2020/2010*, CCPR/C124/D/2020/2010, 20 November 2019, para. 9.

30. United Nations, Committee on the Elimination of Discrimination against Women, *Views adopted by the Committee under article 7(3) of the Optional Protocol, concerning communication No. 68/2014*, CEDAW/C/81/D/68/2014, 11 March 2022, para. 18.10.

31. See Ryan Beaton, Power Law, Brief to the Standing Senate Committee on Aboriginal Peoples, *Summary of Charter challenge to Indian Act registration provisions and remedy sought*, 2 May 2022.

32. Indigenous Services Canada, *First Nations families and Canada agree to put litigation on hold while working to end the legacy of "enfranchisement" under the Indian Act*, News Release, 3 March 2022.

33. *Gehl v. Canada (Attorney General)*, 2017 ONCA 319 (CanLII), para. 53.

34. Royal Commission on Aboriginal Peoples, "Volume 4: Perspectives and Realities," *Report of the Royal Commission on Aboriginal Peoples* (RCAP Final Report), 1996, p. 24. The 1857 law was *An Act to encourage the gradual Civilization of the Indian Tribes in the Province, and to amend the Laws respecting Indians.*

35. The "voluntary" nature of enfranchisement has been questioned. As the Native Women's Association explains in *Final Report: Indigenous Gender-Based Analysis of Bill S-3 and the Registration Provisions of the* Indian Act (May 2022):

> The *Indian Act* offered financial incentives for status persons to enfranchise and many parents felt that enfranchisement was the only way to protect their children from the residential school system. Thus, the coercive nature of 'voluntary' enfranchisement strongly indicates that many people enfranchised under conditions of significant pressure. (p. 6).

36. *Hele c. Attorney General of Canada*, 2020 QCCS 2406 (CanLII).

37. RCAP Final Report, p. 27.

38. For historical versions of the *Indian Act*, see Gail Hinge, *Consolidation of Indian Legislation, Volume II: Indian Acts and Amendments, 1868-1975*.

39. Government of Canada, *Remaining inequities related to registration and membership*, Fact Sheet.

40. Government of Canada, *The Exploratory Process on Indian Registration, Band Membership and Citizenship: Highlights of Findings and Recommendations* [ARCHIVED].

41. Ibid.

42. Canadian Feminist Alliance for International Action and Pamela Palmater, *Submission to United Nations Committee on the Elimination of Discrimination against Women*, Day of General Discussion on the Rights Of Indigenous Women, 18 June 2021.

43. Government of Canada, *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Consultation Plan*.

44. Senate, Standing Senate Committee on Aboriginal Peoples, *Sixth Report*, 30 May 2017.

45. Government of Canada, *Report to Parliament on the Design of a Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship*, 10 May 2018.

46. Government of Canada, *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019*.

47. Claudette Dumont-Smith, Minister's Special Representative, "Annex A: Minister's Special Representative final report on the collaborative process on Indian registration, band membership and First Nation citizenship," May 2019, in Government of Canada, *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019*.

48. Government of Canada, *The Final Report to Parliament on the Review of S-3: December 2020*.

49. Senate, Standing Senate Committee on Indigenous Peoples, *Make it Stop! Ending the Remaining Discrimination in Indian Registration*, *Seventh Report*, June 2022.

50. Ibid, p. 32.

51. See for example Ontario, *Substitute Decisions Act*, 1992, S.O. 1992, c. 30: "'incapable' means mentally incapable, and 'incapacity' has a corresponding meaning" (s. 1.1), in addition, "A person is incapable of managing property if the person is not able to understand information that is relevant to making a decision in the management of his or her property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision" (s. 6); Nova Scotia, *Adult Capacity and Decision-making Act*, Chapter 4 of the Acts of 2017, amended 2019, c. 8, s. 179 "'capacity' means the ability, with or without support, to (i) understand information relevant to making a decision, (ii) appreciate the reasonably foreseeable consequences of making or not making a decision including, for greater certainty, the reasonably foreseeable consequences of the decision to be made" (s. 3(d)); and British Columbia, *Adult Guardianship Act*, RSBC 1996, Chapter 6 (the Act does not define incapable; rather, the test for incapability are set out in the *Statutory Property Guardianship Regulation* made pursuant to the Act).

52. Claudette Dumont-Smith, Minister's Special Representative, "Annex A: Minister's Special Representative final report on the collaborative process on Indian registration, band membership and First Nation citizenship," May 2019, in Government of Canada, *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Report to Parliament June 2019*.

53. Métis National Council, *Citizenship*.

54. In 2011 in *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, the Supreme Court of Canada concluded that the provisions of Alberta's *Metis Settlements Act* that preclude an individual who has voluntarily registered under the *Indian Act* from membership in a Métis settlement do not infringe either section 7 (right to "life, liberty and security of the person") or section 15 (equality rights) of the *Canadian Charter of Rights and Freedoms*.

55. Native Women's Association of Canada, *Final Report: Indigenous Gender-Based Analysis of Bill S-3 and the Registration Provisions of the Indian Act*, May 2022.

56. United Nations, Committee on the Elimination of Discrimination against Women, *CEDAW/C/81/D/68/2014*, 11 March 2022.

57. These enfranchisement provisions were repealed by *An Act to amend the Indian Act*, S.C. 1920, c. 50 (clause 3).

58. Bands could apply for enfranchisement. As the RCAP Final Report explains:

> [The] *Indian Act* permitted entire bands to be enfranchised, a provision that the Wyandotte (Wendat) band of Anderdon, Ontario took advantage of in 1881, finally receiving letters patent enfranchising them in 1884. This move greatly encouraged subsequent generations of Indian affairs officials in their civilizing and assimilating endeavour. Bands could still apply for voluntary enfranchisement until 1985. Only one other band [the Michel Band in Alberta] was enfranchised voluntarily during the period when the *Indian Act* contained band enfranchisement provisions. (p. 264).

The Friends of Michel Society in Alberta has been seeking reinstatement, see Friends of Michel Society, *Home*; and Chris Stewart, "Feds say reinstating Michel Band not possible under Indian Act," *APTN National News*, 21 August 2019.

59. See House of Commons, Standing Committee on Aboriginal Affairs and Northern Development, *Evidence* and *Minutes of Proceedings*, 27 April 2010.

60. House of Commons, *Debates*, 22 November 2010.

61. See Senate, Standing Senate Committee on Indigenous Peoples, *Make it Stop! Ending the Remaining Discrimination in Indian Registration*, *Seventh Report*, June 2022, recommendation 7.

62. "Motion for Authorization to Institute a Class Action and to Obtain the Status of Representative," *Sarrazin v. The Attorney General of Canada*, 1 March 2012.

63. *Sarrazin v. The Attorney General of Canada* is reportedly scheduled to be heard in December 2023. See Isaac Phan Nay, "They fought for decades to be recognized as Indigenous. Now they want to take the federal government to court," *Canada's National Observer*, 8 February 2023.

64. See Merchant Law Group LLP, *To any person in Canada whose grandmother lost her Indian status by marrying a non-Indian*, Notice of Authorization.

65. Government of Canada, *An Act to amend the Indian Act (New Registration Entitlements): Charter Statement C-38*, 31 January 2023.

66. *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, 2002 SCC 13.

67. Patty Hajdu, Minister of Indigenous Services, *Government Response to the Seventh Report of the Standing Committee on Indigenous Peoples, entitled, "Make it Stop! Ending the remaining discrimination in Indian registration"*, tabled on 23 February 2023.