

Overview of the Collaborative Process

Consultations on Indian Registration, Band Membership and First Nation Citizenship

Context

In August 2015, a decision was rendered in the Descheneaux case by the Superior Court of Quebec which declared key provisions of the *Indian Act* inoperative, because they unjustifiably violated equality rights under the *Canadian Charter of Rights and Freedoms* by perpetuating sex-based inequities in eligibility for Indian registration between descendants of the male and female lines. The Descheneaux decision highlighted residual sex-based inequities in Indian registration carried forward following the 1985 and 2011 amendments to the *Indian Act*. It also brought to light long-standing and unaddressed broader issues relating to Indian registration, band membership and First Nations citizenship.

In July 2016, the government launched its approach to respond to the Descheneaux decision. It includes two parts:

- legislative changes to immediately amend the *Indian Act: An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* (Bill S-3); and
- a collaborative process on Indian registration, band membership and First Nations citizenship.

Legislative changes were introduced in October 2016 under Bill S-3. The act received royal assent on December 12, 2017 and came into force on December 22, 2017. Bill S-3 not only remedied the issues identified in the Descheneaux decision, it also includes provisions to remove what is commonly known as the 1951 cut-off (the practice of linking registration reform to the date of the creation of the modern Indian registry in 1951), but with a delayed coming into force to allow for consultation on an implementation plan. The act also requires that Canada consult broadly on issues around Indian registration, band membership and First Nations citizenship.

Finally, the legislation mandates that the consultation process must be conducted through the lens of the United Nations Declaration on the Rights of Indigenous Peoples, the *Canadian Charter of Rights and Freedoms* and, if applicable, the *Canadian Human Rights Act*.

Co-design of the Collaborative Process: October 2017 to March 2018

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) sought input from First Nations and Indigenous groups to co-design the consultations under the collaborative process from October 31, 2017 to March 31, 2018. The co-design phase provided First Nations and Indigenous groups an opportunity to determine:

- how the consultation process would take place;
- the issues to be examined under this process; and
- the types of activities to be undertaken by participants.

On May 10, 2018, the government tabled *A Report to Parliament on the Design of a Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship*¹. A

¹ www.canada.ca/first-nation-citizenship

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Consultation Plan² was prepared based on the input on design and Claudette Dumont-Smith was appointed as the Minister's Special Representative (MSR) to lead an inclusive, flexible and collaborative process. In addition, an Indigenous advisory panel was established in May 2018 to provide advice and guidance to the government throughout the collaborative process.

Consultation Activities: June 2018 to March 2019

Three discussion streams were identified for the process:

- the removal of the 1951 cut-off from the *Indian Act*;
- remaining inequities related to Indian registration and Band membership under the *Indian Act*; and
- First Nations' exclusive responsibility for determining membership/citizenship (moving beyond the *Indian Act*).

From June to October 2018, the Department provided 46 sessions to First Nations to provide foundational information in anticipation of the comprehensive consultations that began in the fall and will end in March 2019. All First Nations received invites to send representatives to information sessions.

The Department has also conducted two calls for funding proposals for First Nations and Indigenous organizations to hold consultation sessions in their communities and organizations. All First Nations received multiple invitations to submit proposals for funding to be involved. A total of 179 funding proposals have been approved for a total of \$3.55 million. Departmental Representatives and the Minister's Special Representative are available to attend these consultation activities in communities and organizations.

Fifteen (15) regional events led by the Minister's Special Representative are being held across the country ending March 31, 2019. All First Nations are receiving invites to attend these sessions. Through these events, First Nation representatives are coming together to share their perspectives on the issues related to the Collaborative Process.

An online survey on the issues defined under the discussions streams was launched on January 15, 2019 to collect information from Indigenous individuals including those located in urban centers.

It is expected that the consultation activities will conclude by March 31, 2019. This will allow time for the preparation of the next report to Parliament on the progress of the consultations which needs to be submitted by June 12, 2019, as required under *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* (Bill S-3).

² www.canada.ca/first-nation-citizenship