



Crown-Indigenous Relations
and Northern Affairs Canada

Relations Couronne-Autochtones
et Affaires du Nord Canada

Who can be registered under the *Indian Act*? Implementing changes brought by Bill S-3

June 2019



Canada



History of Amendments to the *Indian Act* Regarding Sex-based Inequities

1869 - 1876 <i>Gradual Enfranchisement Act and first Indian Act</i>	1951 <i>Indian Act</i>	Bill C-31 1985	Bill C-3 2011	Bill S-3 2017
<ul style="list-style-type: none"> • Several forms of enfranchisement introduced • Patrilineal rules of descent introduced • Sex-based discrimination • The term 'Indian' was defined 	<ul style="list-style-type: none"> • Creation of the Indian Registrar and the Indian Register • From band list to central register and management by the federal government 	<ul style="list-style-type: none"> • Reinstatement of women who married out and their children • Acquiring status through marriage stopped • Acquired rights protected • Enfranchisement abolished • Creation of ss.6(1) and 6(2) • Second generation cut-off • Section 10 and section 11 • 174,000 registered 	<ul style="list-style-type: none"> • Additional generation descendants of women who were married non-Indian men became entitled • Introduction of the 1951 cut-off • 37,000 registered 	<p><u>Immediate changes:</u></p> <ul style="list-style-type: none"> • In force on December 22, 2017 • <i>Descheneaux</i> case: <ul style="list-style-type: none"> • Cousins Issue • Siblings Issue • Omitted Minors Issue • Unknown or Unstated Parentage <p><u>Delayed changes:</u></p> <ul style="list-style-type: none"> • Removal of the 1951 cut-off <p><u>Other Obligations:</u></p> <ul style="list-style-type: none"> • Consultation • Report to Parliament - June 12, 2019





The *Descheneaux* Decision and the Federal Response

Descheneaux

- In August 2015 the Superior Court of Quebec declared that key provisions of the *Indian Act* unjustifiably violated equality rights under the *Charter* by perpetuating sex-based inequities in eligibility for Indian registration between descendants of the male and female lines and order Canada to amend the *Indian Act*.
- It also brought to light the long-standing and unaddressed broader issues relating to Indian registration, band membership and First Nation citizenship.

Canada's Two-stage Response:

1. Legislative Changes: amendments to 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)

2. Collaborative Process on Indian registration, band membership and First Nation citizenship: comprehensive consultations on broader issues with a view to future reform.

<https://www.canlii.org/en/qc/qccs/doc/2015/2015qccs3555/2015qccs3555.html?resultIndex=9>





Amendments in Bill S-3 in effect December 2017

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) received Royal Assent on December 12, 2017.

Immediate Amendments:

The bulk of the amendments came into force on December 22, 2017 to removed sex-based discrimination from September 4, 1951 to April 17, 1985 including changes to:

- Issues raised in *Descheneaux*: Cousins Issue and Siblings Issue
- Omitted Minors Issue
- Issues raised in *Gehl*: Unknown or Unstated Parentage
- Great-Grandchildren of: a Parent Affected by the Double-Mother Rule, the Siblings Issue and, an Indian Great-Grandmother who Parented Out of Wedlock with a Non-Indian
- 28,000 – 35,000 additional registrants

Other Obligations:

Consultation: Canada had 6 months to begin consultations - Launched June 12, 2018

Reporting: The Minister must report back to Parliament in three instances:

1. On the design of the consultations (co-design) – completed May 10, 2018
Report to Parliament on co-design - <http://www.aadnc-aandc.gc.ca/eng/1525287514413/1525287538376>
2. What was heard through the consultation process one year after consultations begin (tabled June 12, 2019)
3. Review of the registration provisions of the *Indian Act* to determine if all sex-based inequities have been addressed (by December 12, 2020)





Delayed Amendments in Bill S-3

What are the changes?

- The delayed amendments **will remove the 1951 cut-off from the *Indian Act* for determining eligibility for entitlement.**
- Whether an individual was born or adopted before OR after September 4, 1951 impacts whether they are entitled to be registered in situations where they have a grandmother who lost her status due to marriage to a non-Indian man and one of their parents was entitled to be registered under s. 6(2) of the *Indian Act* and the other is not entitled.
- Removing the 1951 cut-off will extend entitlement to Indian status, under 6(1)(a) paragraphs of the *Indian Act*, to women, and all her descendants if they were removed from band lists or not considered an Indian due to marrying a non-Indian man, going back to 1869 and were born prior to April 17, 1985 (or of a marriage prior to that date).
- 270,000 – 450,000 people who may become entitled to registration under the *Indian Act*.
Limitations include:
 - *Most disconnected from their First Nations and identity for many generations*
 - *Most live off-reserve and are more likely to be affected by the second-generation cut-off*
 - *Includes Métis*
- Expected to come into force before the October 2019 federal election.





Explaining How the 1951 Cut-off Works

Hypothetical Situation to demonstrate the differences between the various amendments to the <i>Indian Act</i> when an Indian woman lost entitlement due to marriage to a non-Indian man.							
<i>Annie and Sarah are siblings born to the same biological parents. Their mother Mary lost status prior to their births when she married a non-Indian. Following the Bill C-31 amendments, their mother regained her status under paragraphs 6(1)(c).</i>							
			Birthdate	C-31 (1985)	C-3 (2011)	S-3 (2017)	S-3 (delayed) (removal of the 1951 cut-off)
Mary			Feb.15,1908	6(1)(c)	6(1)(c)	6(1)(c)	6(1)(a.1)
Child	Annie			6(2)	6(2)	6(2)	6(1)(a.3)
	Children	Sam	May 2, 1947	Denied	Denied	Denied	6(1)(a.3)
		Sally	Mar.17,1949	Denied	Denied	Denied	6(1)(a.3)
		Steve	Dec.1,1950	Denied	Denied	Denied	6(1)(a.3)
Child	Sarah			6(2)	6(1)(c.1)	6(1)(c.1)	6(1)(a.3)
	Children	Jane	Jan.11,1949	Denied	6(2)	6(1)(c.2)	6(1)(a.3)
		John	Nov.5,1950	Denied	6(2)	6(1)(c.2)	6(1)(a.3)
		James	Feb.3,1953	Denied	6(2)	6(1)(c.2)	6(1)(a.3)
					See Note 1	See Note 2	See Note 3

Note 1: Because James was born after September 4, 1951, he and all his siblings became entitled to registration as their mother now met the criteria to be amended from section 6(2) to 6(1)(c.1). James' other parent is not entitled to registration.

Note 2: As James was born after September 4, 1951, he and his siblings meet all the criteria required to be amended from 6(2) to 6(1)(c.2) as a result of Bill S-3. Annie's children however are not entitled as none of them were born on or after September 4, 1951.

Note 3: Once the changes to remove the 1951 cut-off come into effect, section 6(1)(a.1), and(a.3) will extend entitlement to descendants of children born prior to 1951.



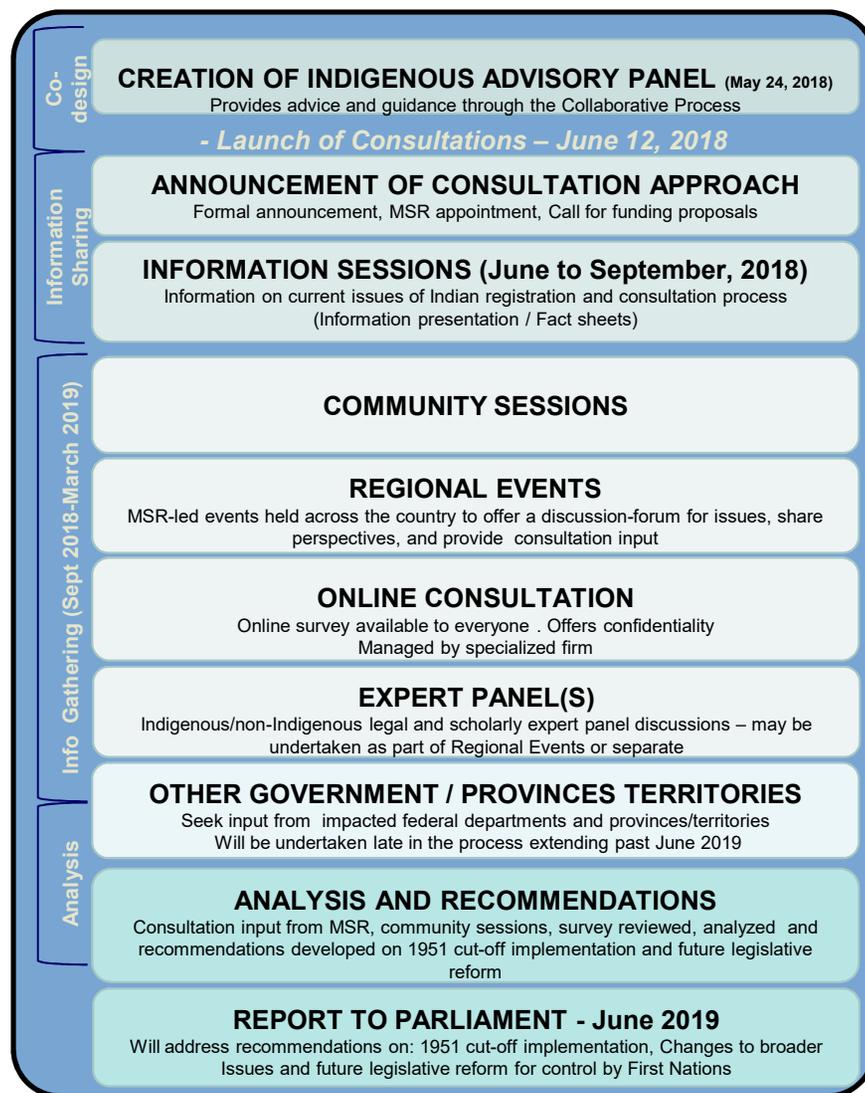


Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship

The Government launched the Collaborative Process with First Nations and other Indigenous groups to consult on the broader related issues of Indian registration, Band membership and First Nation citizenship to identify areas for future reform.

Consultations under the process were conducted from October 2018 to April 2019.

Input from regional events, the reports submitted by First Nations and Indigenous groups, the online survey and any written submission that was provided to the Department by April 10, 2019 was used in the preparation of the Report to Parliament on the consultations that was tabled on June 12, 2019.





What was discussed under the Collaborative Process

1) Implementation of the removal of the 1951 cut-off

- Implementation of the delayed coming-into-force of the removal of the 1951 cut-off, how best to implement the changes to ensure adequate resources are provided and any unintended consequences are mitigated.

2) Remaining inequities related to registration and membership under the *Indian Act*

- Adoption, the second generation cut-off, unknown/unstated paternity, enfranchisement, deregistration, children of same sex parents, categories in Indian registration, cross-border issues and non-cisgender identities as it relates to Indian registration and band membership.

3) First Nations exclusive responsibility for determining membership /citizenship (moving beyond the *Indian Act*)

- Federal versus First Nation role and the development of options for First Nations to take exclusive responsibility for the determination of the identity of their members or citizens.





Report to Parliament

Tabled on June 12, 2019, the report summarized what the Department heard on the three consultation streams. The key messages were summarized as follows:

- 1) **Support for removal of the 1951 Cut-off.**
- 2) **Need for funding for programs and services**
- 3) **Need for land.**
- 4) **More time needed for First Nations to consult with members**
- 5) **Other inequities under the Indian Act also need to be addressed**
- 6) **Impacts of cultural disconnection need to be addressed.**
- 7) **Recommendations for the Government:**
 - Provide funding and resources for programs and services (health, education, housing, child and family services)
 - Provide increased support and resources for First Nation registration/membership administrators.
 - Provide funding and resource support for First Nations to engage with off-reserve members and ensure cultural preservation.
 - Simplify and streamline the registration application process
 - Provide access to genealogical information and records





MSR Report and Recommendations

- Claudette Dumont-Smith was appointed as Minister Bennett’s Special Representative to lead the consultations and provide a summary report with recommendations.
- The MSR report to Minister Bennett was included as Annex A to the report to Parliament and included a number of recommendations on each of the subject streams:
- **On the removal of the 1951 Cut-off**

1.1	The 1951 cut-off date be removed through an Order-in-Council by June 2019.
1.2	That Indian women and her descendants from 1869 onwards obtain an equal status and category of membership as those of Indian men and their descendants.
1.3	Canada provide funding to communities to carry out information sessions with community members on the 1951 cut-off and future legislative reform.
1.4	Canada provide the necessary funds to increase the administrative financial and human resources capacity at the community and national levels.
1.5	Change current funding formulas for federally-funded programs, as noted above, available to First Nations to meet the increased need for services to Indian women and her descendants in a timely manner.
1.6	Respond in a more efficient and timely manner to the Additions to Reserve requests upon implementation of the removal of the 1951 cut-off.





MSR Report and Recommendations (cont.)

- **On other inequities under *the Indian Act***

Second generation cut-off	
2.1	First Nations in collaboration with the Government, urgently raise the awareness of this issue and its' impact on First Nation communities.
2.2	A separate and more in-depth consultation process begin to develop solutions to address this inequity and in removing the second generation cut-off.
Enfranchisement	
2.3	Provide the names of all persons who have been enfranchised as far back as 1876 to their community of origin so that they can trace the lineage of their descendants for re-instatement.
2.4	All persons who are currently categorized as 6.2 as a result the enfranchisement process should be re-instated as a 6.1
Categories in Indian registration	
2.5	Amend the women's category from 6(1)(c) to 6(1)(a) status by June 2019 to address the on-going discrimination of Indian women and descendants resulting from the 6(1)(c) category.
Cross-border issues	
2.6	Regardless of country of citizenship of the Indian parents, children born of Indian and Native American Indian citizens be classified as 6(1) Canada.
2.7	Children born of Indian and Native American Indians should be given dual citizenship at birth.





MSR Report and Recommendations (cont.)

- On other inequities under *the Indian Act* continued

Adoption	
2.8	The Government must assist First Nations in identifying individuals who were adopted out by providing access to adoption lists/records in respect of privacy laws.
2.9	The Government must raise this issue at Roundtables to develop strategies to give First Nations access to provincial/territorial ‘closed’ adoption lists/records where those exist.
2.10	The Government must recognize and grant Indian status and Canadian citizenship to children who were adopted out in other countries.
2.11	First Nation communities should determine if adopted children can become registered as Indians of their band.
Children of same-sex parents	
2.12	Allow the names of same-sex couples as parents of the children.
Deregistration	
2.13	A provision should be included to allow individuals to deregister as a status Indian.
2.14	Descendants of individuals who deregister would not have their names removed from the <i>Indian Act</i> .
2.15	Persons who wish to identify as Métis should be permitted to deregister upon request.
Non-cisgender identities	
2.16	The registration to Indian status and status cards must include a non-binary option to reflect that choice.





MSR Report and Recommendations (cont.)

- **On First Nations' exclusive responsibility for their membership and citizenship**

3.1	The Government and First Nations work collaboratively to begin the process of transferring the exclusive responsibility for determining membership and citizenship to First Nations.
3.2	Canada provide funding to First Nations to do the necessary groundwork to carry out research, develop membership codes, protocols and criteria to develop plans based on their beliefs, traditions and customs.





Next Steps

- 1) Develop an implementation plan for the removal of the 1951 cut-off;
- 2) continue to inform First Nations on the issues identified in the Collaborative Process and changes to the registration provisions under *An Act to amend the Indian Act in response to the Superior Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* (Bill S-3);
- 3) work to assess, address and simplify aspects of the application process and registration requirements and provide better support and information for applicants;
- 4) work collaboratively with First Nations to develop measures for addressing other inequities related to registration and membership under the *Indian Act*; and
- 5) continue discussions with First Nations on how to move towards First Nations controlling membership and citizenship.





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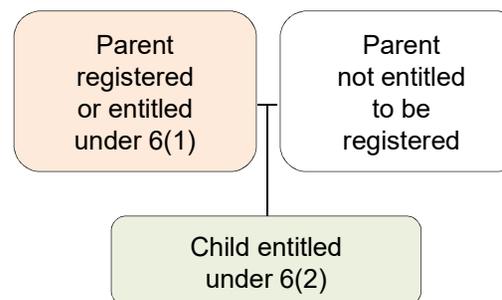
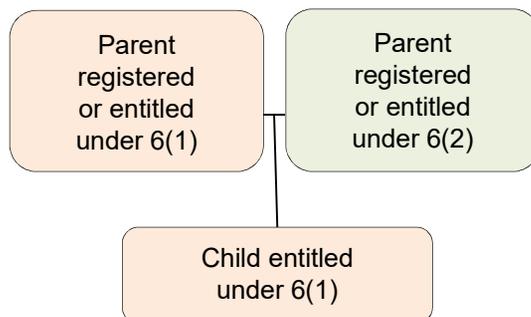
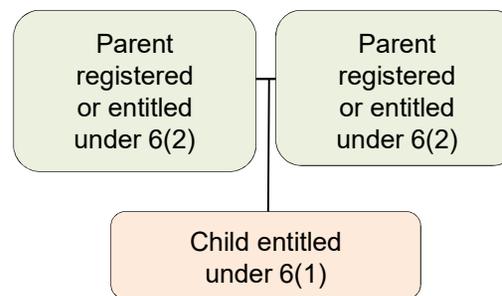
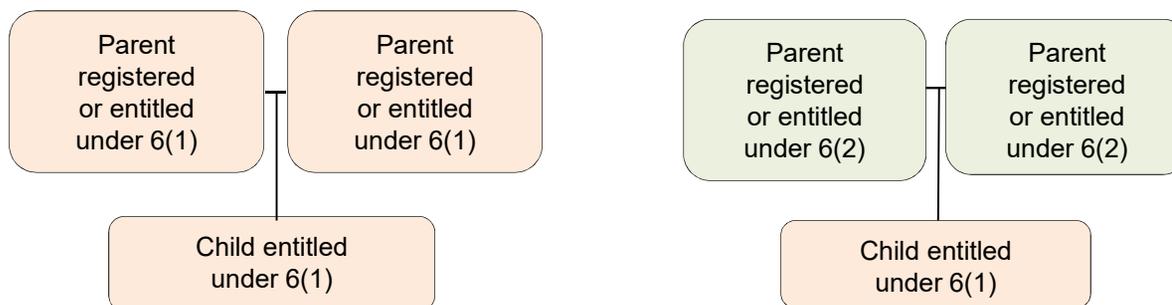
Annex A

More details on Indian Registration

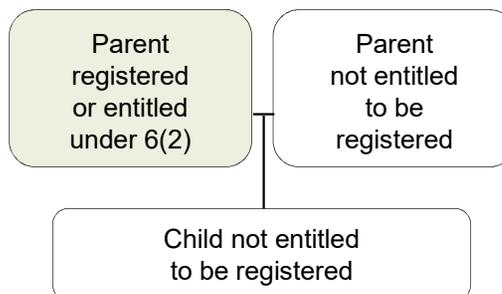




Section 6 and the second generation cut-off



2nd generation cut-off





Membership under the *Indian Act*

Currently, under Bill C-31 two separate regimes were created for the control of band membership:

- **Section 10** grants the opportunity for First Nations to take control of their band membership by developing membership rules/codes to be approved by the Minister of Crown-Indigenous Relations Canada.
- **Section 11** band membership lists are maintained by the Indian Registrar.
- First Nations can also take control of their membership through modern treaty or self-government agreement with Canada.

Prior to 1985, Band membership and registration under the *Indian Act* were more closely tied together and determined by section 11(1) of the 1951 *Indian Act* and individuals were included on the Indian register based on:

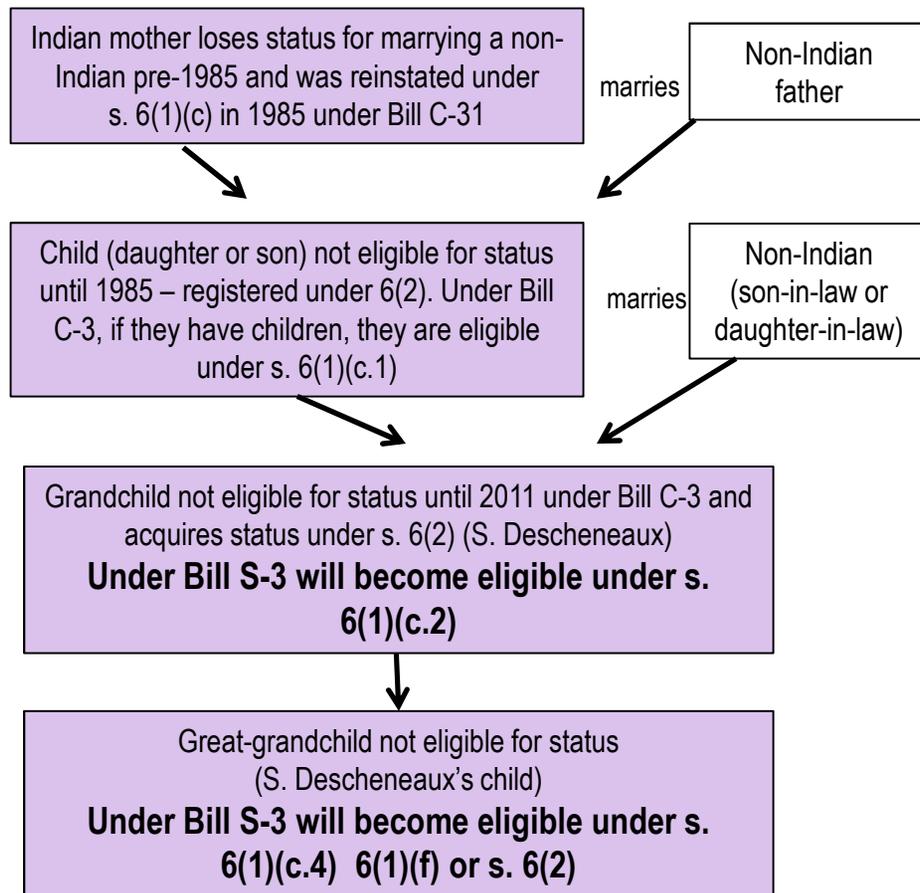
- Persons eligible under previous legislation
- Persons who were members of a Band
- The illegitimate male children of an Indian man
- Legitimate children of parents were married to each other at the time of the child's birth
- The non-Indian wife or widow of an Indian man.



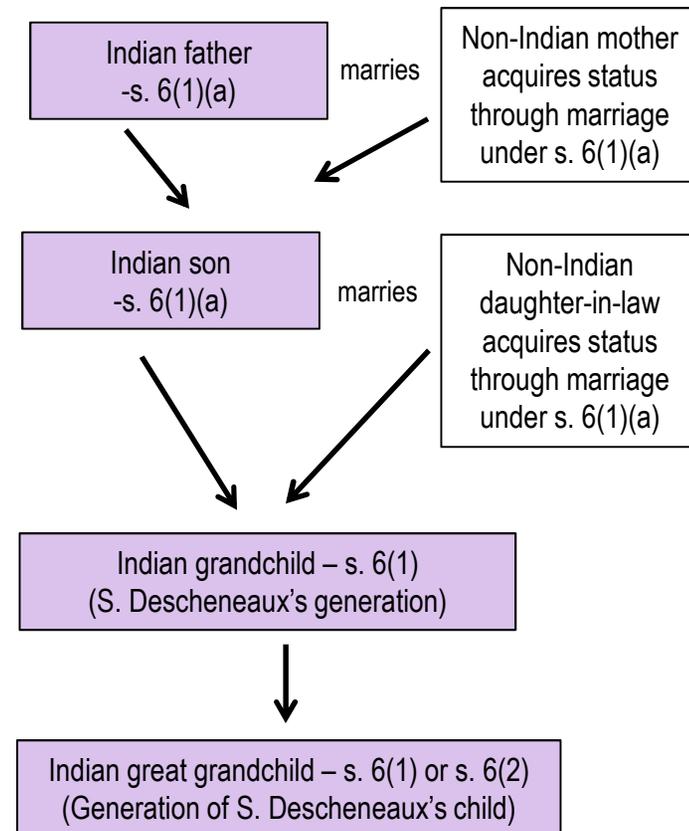


Bill S-3 - Addressing the Cousins Issue

Maternal Line (Situation of Stéphane Descheneaux)



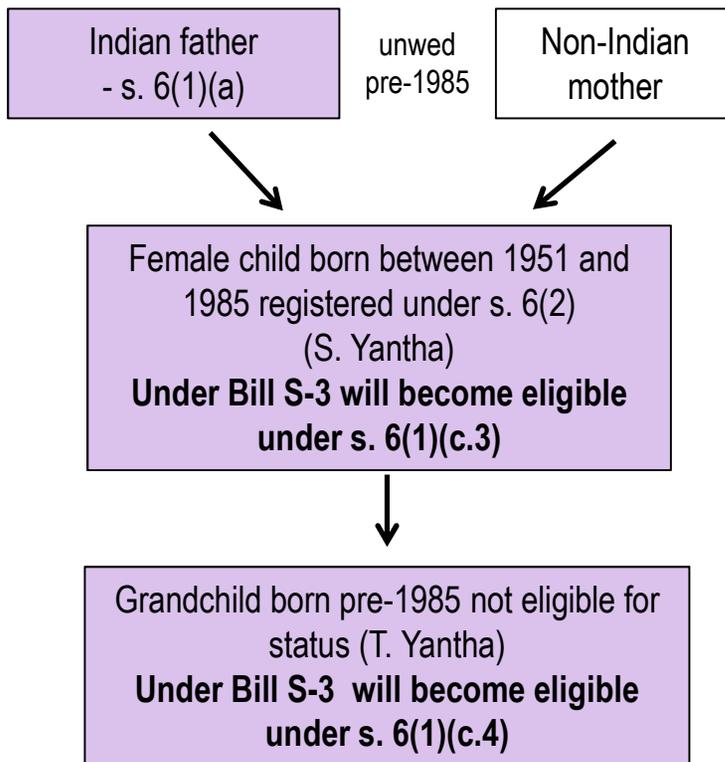
Paternal Line (Comparator Group)



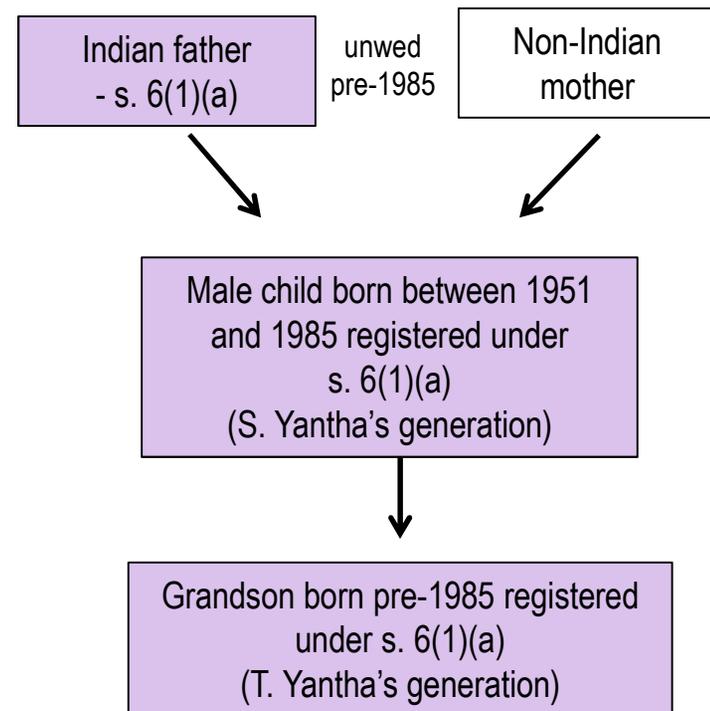


Bill S-3 - Addressing the Siblings Issue

**Female child born out of wedlock to Indian male
between 1951 and 1985 (Situation of Susan and
Tammy Yantha)**



**Male child born out of wedlock to Indian
male between 1951 and 1985
(Comparator Group)**

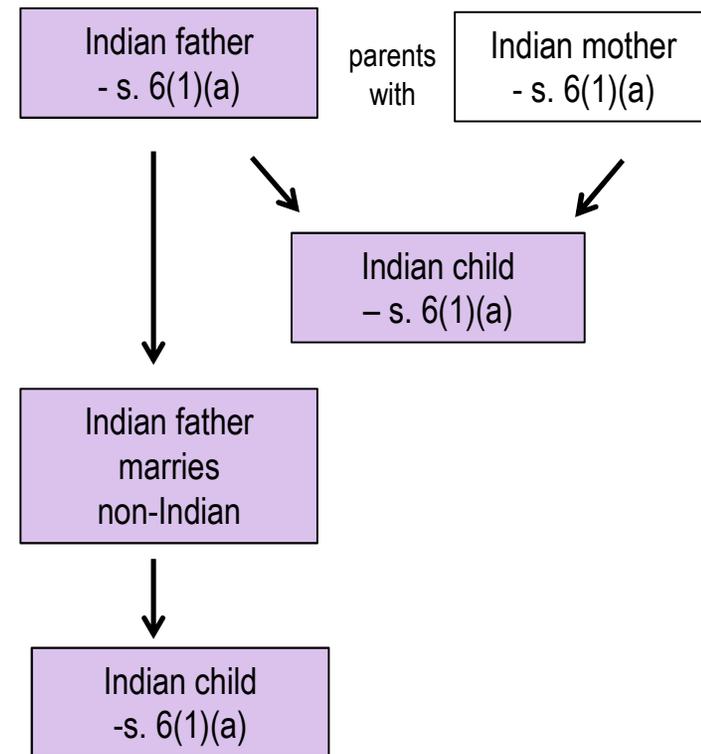
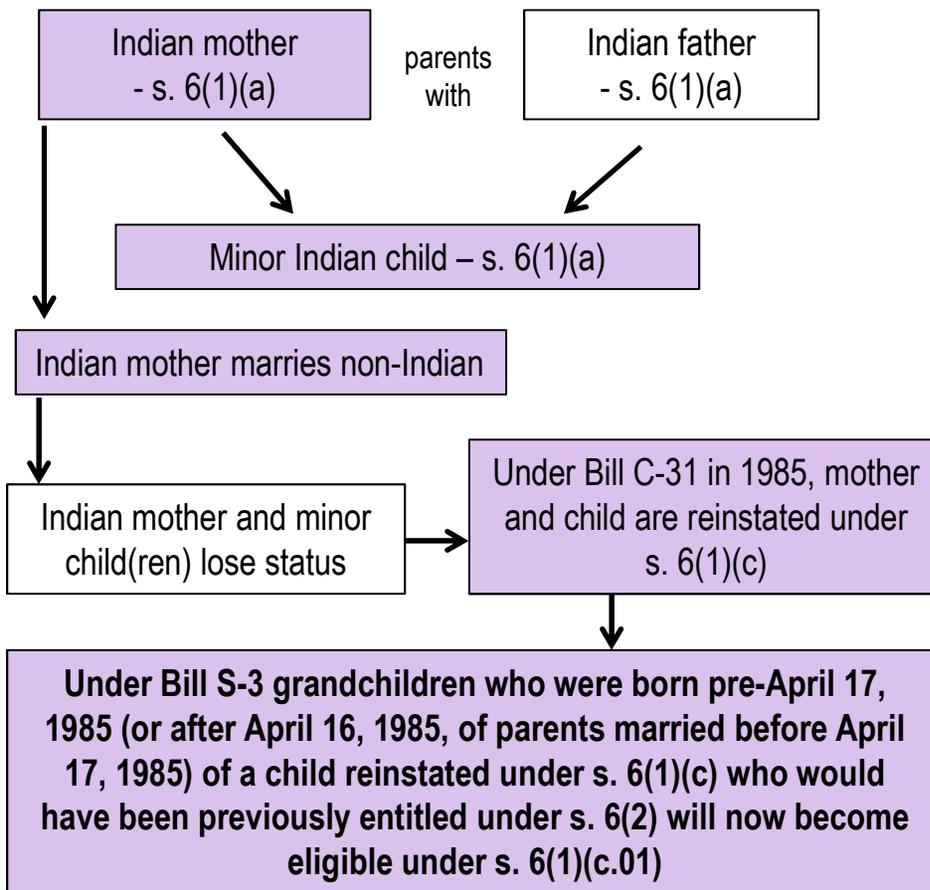




Bill S-3 - Addressing the Issue of Omitted or Removed Minors

Minor child born of Indian parents; mother marries a non-Indian man, between 1951 and 1985, after the birth of the minor child; minor child loses status

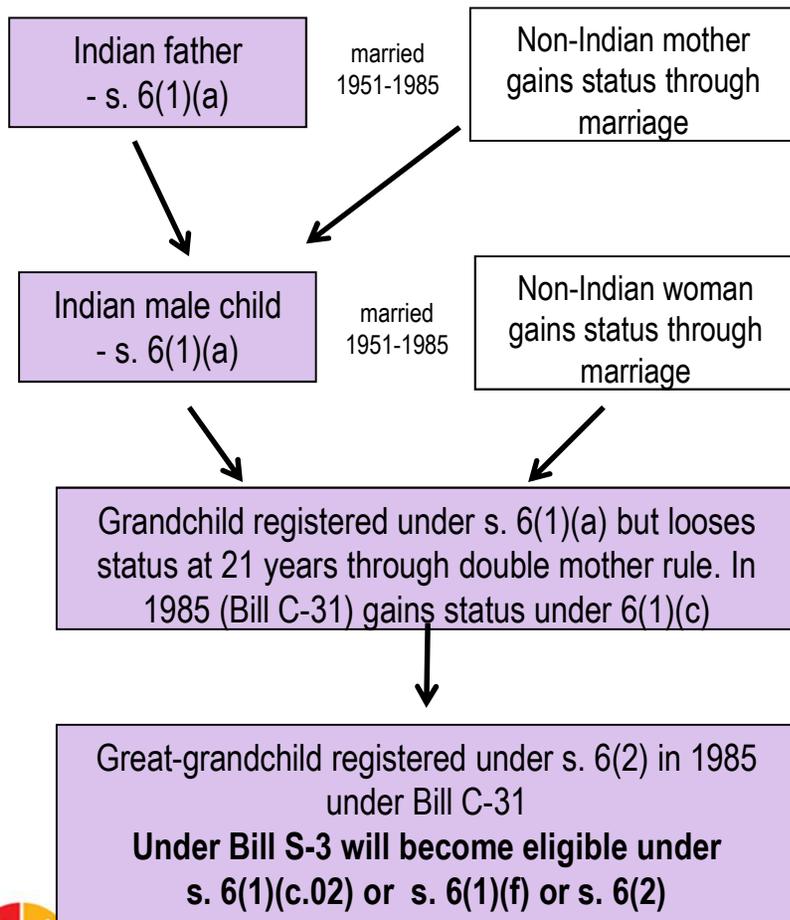
Child born of Indian parents; father marries a non-Indian woman, between 1951 and 1985, after the birth of the child; child retains status



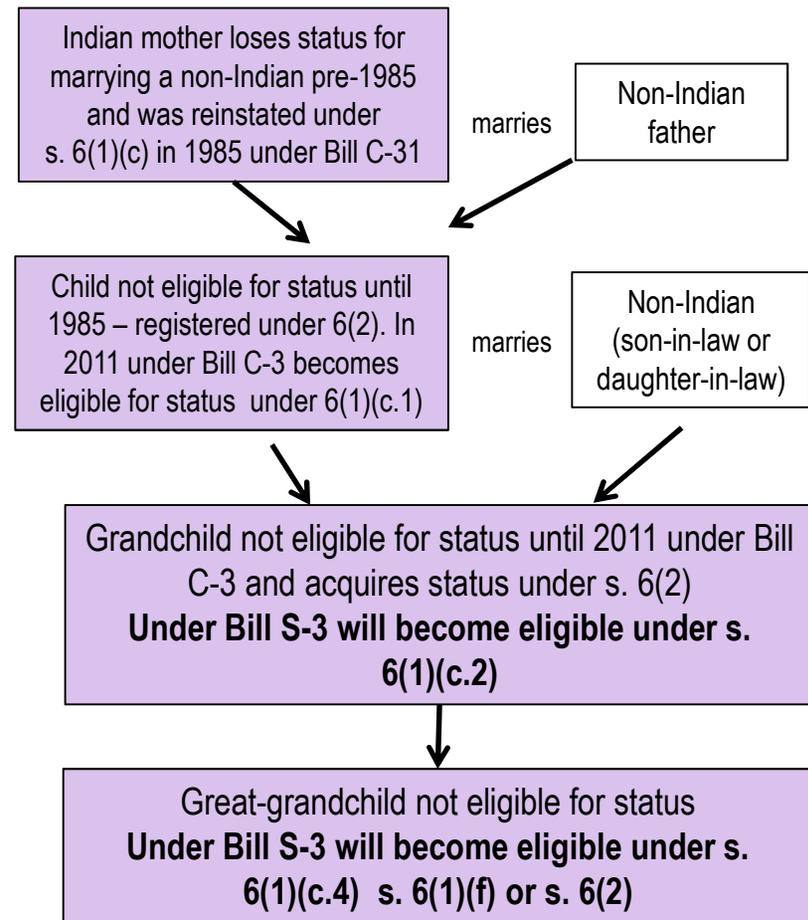


Bill S-3 - Addressing the Issue of Great-Grandchildren Born Pre-1985 of a Parent Affected by the Double-Mother Rule

Remedy for Great-Grandchildren Affected by Double-Mother Rule



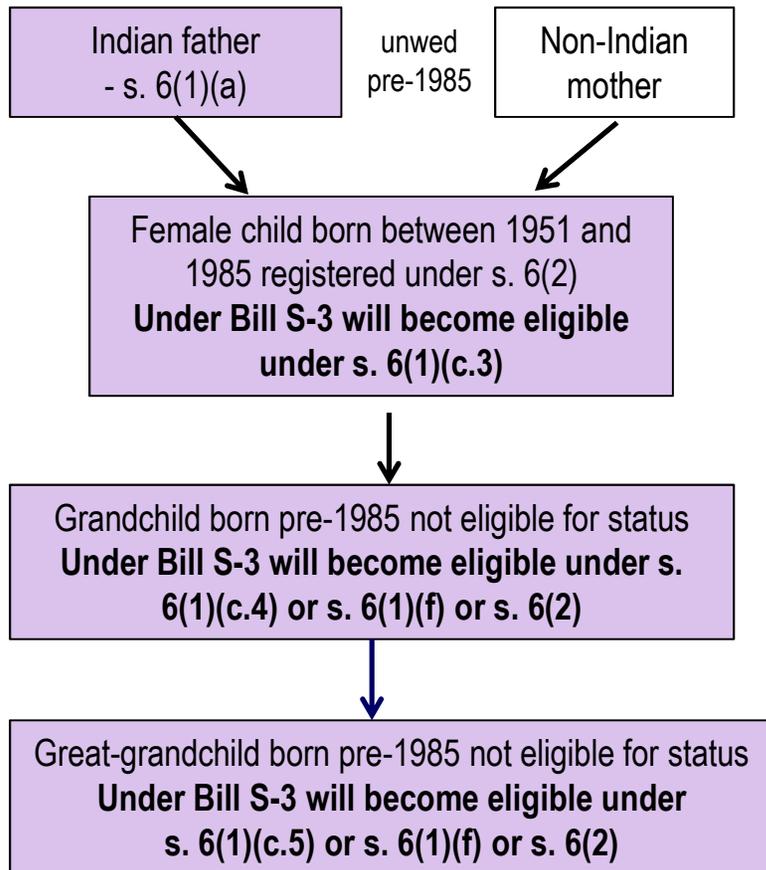
Remedy for Cousins Issue (New Comparator Group)



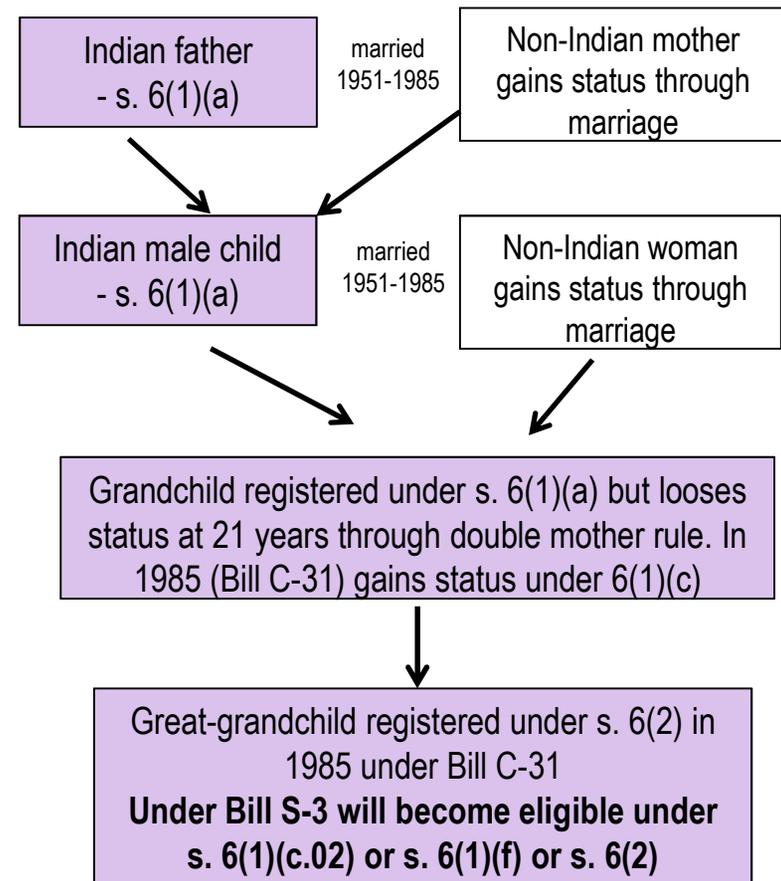


Bill S-3 - Addressing the Issue Great-Grandchildren, Born Pre-1985, of A Parent Affected by the Siblings Issue

Remedy for Great-Grandchildren Affected by Siblings Issue



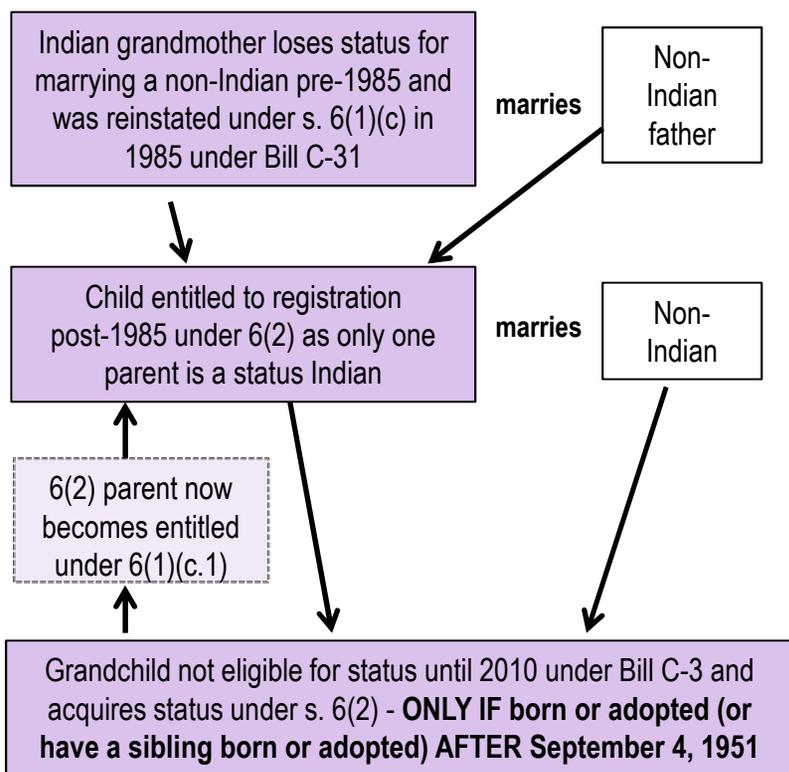
Remedy for Great-Grandchildren Affected by Double-Mother Rule (New Comparator Group)





The 1951 Cut-Off under the *Mclvor* Amendments

For individuals born or adopted on or after September 4, 1951



For individuals born or adopted before September 4, 1951

