



ASSEMBLY OF FIRST NATIONS
Special Chiefs Assembly

December 5-7, 2023

Shaw Centre – Ottawa, Ontario

Ottawa is located on the unceded unsundered Territory of the Algonquin People.

ASSEMBLÉE DES PREMIÈRES NATIONS
Assemblée extraordinaire des Chefs

Du 5 au 7 décembre 2023 - Centre Shaw - Ottawa (Ontario)

Ottawa est située sur le territoire non cédé et non abandonné du peuple algonquin.



Bill C-38 and Citizenship

History

Through the imposition of the *Indian Act*, the Government of Canada enforced an oppressive system of legislative assimilation which continues to unilaterally define First Nations identity. The *Indian Act* system of membership is a denial of First Nations self-determination and has caused severe harm to First Nations, including to generations of First Nations women and their descendants.

In response to litigation from First Nations, the Government of Canada has incrementally removed certain discriminatory elements of the *Indian Act* through policy, regulatory, and legislative measures. In 2017, the Government of Canada initiated Bill S-3, *An Act to Amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procurer general)*. Bill S-3, which was designed to remove all gender-based discrimination in the *Indian Act*, came into force in 2019. This Bill failed to address the broader denial of self-determination in the registration provisions of the *Indian Act*.

In 2021, a group of plaintiffs launched a constitutional challenge (*Nicholas v AGC*) to address ongoing inequities faced by individuals with a family history of enfranchisement under the *Indian Act*. After a brief period of engagement, Minister of Indigenous Services Patty Hajdu introduced Bill C-38, *An Act to amend the Indian Act (new registration entitlements)*, in Parliament to remedy the impacts of historical enfranchisement. Bill C-38 completed first reading in Parliament in December 2022 and advanced to second reading in October 2023.

AFN's recent advocacy

First Nations-in-Assembly passed AFN Resolution 42/2022, *Demand for Consultation on Amendments to the Indian Act (1985)*, which calls on the Government of Canada to not table any legislative amendments until it has adequately consulted with First Nations and provided the necessary resources for community engagement. The AFN has continued to monitor Bill C-38 and has called on the Government of Canada to provide adequate resources to all First Nations to engage with their community members. Former AFN National Chief Archibald sent a letter to Minister Hajdu in March 2023 calling for the immediate withdrawal of Bill C-38.

Next Steps

The AFN will continue to provide information to update First Nations-in-Assembly on active processes undertaken by the Government of Canada that may impact First Nations citizenship. The AFN will also continue to call on the Government of Canada to provide First Nations with adequate resources to engage with their community members and exercise self-determination over their citizenship processes.

Finally, the AFN will participate in the Indigenous Advisory Process (IAP) to support the collaborative development of a process to address the second-generation cut-off in the *Indian Act*. The IAP, which will formally launch on November 20, 2023, will bring together First Nations regional and national organizations to provide guidance to Indigenous Services Canada (ISC) on how to consult and cooperate with First Nations to address the second-generation cut-off. The AFN will use this opportunity to advocate for the Government of Canada to engage in meaningful consultation with First Nations in order to seek their free, prior, and informed consent prior to making any changes to the *Indian Act*.