



## What is the history of this issue and how does it impact First Nations?

The registration and definition of the term “Indians” by the Government of Canada is inherently problematic, as it denies First Nations sacred laws and systems of governance. Under amendments to the Indian Act, brought on by Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, the Government of Canada estimates 270,000-450,000 new registrants. It is unclear of the effect this may have on Canada’s already flawed managing of its responsibilities and commitments to First Nations.

The 1869 *Gradual Enfranchisement Act* and the 1876 *Indian Act* created explicit gender-based barriers to First Nations kinship and citizenship systems. Decades of First Nations advocacy, largely led by First Nations women, have culminated in a series of successful court cases addressing legally embedded gender-based discrimination. The [Mclvor](#) case of 2009 and the [Descheneaux](#) case of 2015 revealed Canada’s complicity in human rights violations against First Nations women and families across generations. As a result, Canada made amendments to the *Indian Act* through the creation of Bill C-3, *Gender Equity in Indian Registration Act* in 2011 and Bill S-3 in 2017.

Following Bill S-3 the federal government established a collaborative process to address additional amendments to the *Indian Act*. Key issues that Bill S-3 sought to address relate to adoption, unstated paternity, enfranchisement, and the federal government’s role in determining Indian Status and Band membership.

First Nations-in-Assembly have identified numerous issues associated with discriminatory registration. This includes resources to support these individuals, investments in critical infrastructure to support citizens, and how to honour traditional governance and citizenship laws within an imposed colonial system. First Nations retain the inherent self-determined right to live in autonomy and to exercise First Nations’ self-determined governance, economies, and legal operatives.

With the passage of the *UN Declaration on the Rights of Indigenous Peoples Act* (UNDA) on June 21, 2021, Canada is now obliged to confront the fact that defining ‘Indians’ under the *Indian Act* is not consistent with the *UN Declaration on the Rights of Indigenous Peoples* (UN Declaration) and this must be addressed.



### How has the AFN's recent advocacy affected this area?

First Nations in Assembly have mandated the AFN's work in this area. AFN Resolutions 36/2015, *Indian Status Application Process*; 53/2015, *The Right of First Nations to Determine their individual and Collective identities*; 59/2016, *First Nations Citizenship*; 71/2016, *Ducheneaux Decision: First Nation jurisdiction on Citizenship and Identity*; and 30/2017, *Inherent Authority to Define Citizenship* all provide direction to ensure First Nations move towards exercising their inherent right to defining citizenship.

In 2021-2022, the AFN advocated for \$301 million for First Nations, to assist members who have regained their status in returning home. Canada did not make this investment in Budget 2022.

The AFN has continued to develop and share information, materials, and discussion papers that explain the current amendments to the *Indian Act* on status and registration. The AFN will continue to advocate and fulfill First Nations-in-Assembly mandates to support First Nations' assertion of self-determination as a basic human right to define and implement their Nationhood practices and systems of governance as they relate to citizenship, regardless of gender.

### Where do we hope to go in the future?

The passage of the UNDA is a historic milestone for First Nations that commits Canada to aligning laws with the UN Declaration. Of all laws, the *Indian Act* is identified as a priority. The immediate return of 'status' to potentially hundreds of thousands of disenfranchised individuals is a necessary and just goal. However, First Nations must be supported through funding for critical infrastructure and community-defined needs to identify their citizens utilizing their own laws and legal orders. Bringing our people home safely must be done in a manner that does not disrupt the healing of our communities.

The AFN will continue to monitor and provide information to update First Nations on active processes undertaken by the federal government on this issue. The AFN Rights and Lands Sectors will continue to advocate through research of public materials, academic writing, and policy analysis to explore and develop options for radically increasing the resources to support First Nations needs and priorities throughout this process as well as developing First Nations-led models of funding distribution. As these options are developed, the AFN will provide them to the First Nations-in-Assembly for consideration and assessment in order to guide future advocacy.

The AFN will continue to uphold First Nations community experiences with the impacts of Bill S-3 and to advocate for First Nations' inherent rights to self-determination. The AFN will also



## SECTOR UPDATE

### RIGHTS & JUSTICE BRANCH: RIGHTS SECTOR

#### ISSUE: BILL S-3 AND FIRST NATIONS CITIZENSHIP

July 2022

continue to support First Nations in understanding current processes and charting their own paths, as the rights holders, in the intersection between Bill S-3, band membership and membership codes, and the capacity to change membership processes we inherently hold as First Nations and as a right to self-determination.