

Bill S-3 An Act to amend the *Indian Act* (elimination of sex-based inequalities in registration)

Bill S-3 was introduced in the Senate and received First Reading on October 25, 2016. The Bill received Second Reading and was referred to the Standing Committee on Aboriginal People on November 17, 2016.

The proposed legislative amendments contained in Bill S-3 are in response to the Superior Court of Quebec decision in *Descheneaux v. Canada*, 2015 QCCS 3555.

The *Descheneaux* case involves three members of the Abenakis of Odanak First Nation in Quebec. In 2011 the three members filed a motion to the Quebec Superior Court challenging the constitutional validity of the rules for entitlement to registration under section 6 of the *Indian Act*. They argued that the rules contravene equality rights under section 15 of the *Charter of Rights and Freedoms* because they perpetuate different treatment in entitlement to registration between men and women.

The issues raised in the case deals with two specific situations affecting cousins and siblings. The “cousins” issue relates to the differential treatment in how status is acquired and transmitted among first cousins of the same family depending on the sex of the grandparent, in situations where the Indian grandparent was married to a non-Indian prior to 1985. This results in different abilities to acquire and pass along status between maternal and paternal lines. The “siblings” issue concerns the differential treatment in the ability to transmit status between male and female children born out of wedlock between 1951 and 1985 amendments to the *Indian Act*. Women in this situation cannot pass on status to their descendants, unless their child’s father is status. Unlike men in similar circumstances who can pass on status regardless of whether they parent with a non-Indian.

On August 3, 2015 the Superior Court of Quebec ruled that paragraphs 6(1)(a), (c), and (f) and subsection 6(2) of the *Indian Act* unjustifiably violates equality rights under the *Charter* because they perpetrate a difference in how status is acquired and transmitted between the maternal and paternal line. The Court struck down those provisions, but suspended the coming into force of its decision for 18 months, until February 3, 2017, to allow Parliament to make the necessary legislative amendments. The Court also advised that legislative amendments not be limited to the specific facts in the *Descheneaux* case.

The proposed amendments address known residual sex-based inequalities in registration. This includes the issues found in the *Descheneaux* case, as well as other issues such as the differential treatment of minor children who lost status due to their mother’s marriage to a non-Indian, when that marriage occurred after their birth.

In response to the *Descheneaux* decision the federal government has developed a two-stage process. The first stage involves the introduction of Bill S-3 to eliminate sex-based inequities in registration. Stage two involves a jointly designed, collaborative process with Indigenous groups to examine the broader and systemic issues relating to registration, band membership and citizenship. The purpose of this process will be to identify areas for future reform.

The full version of Bill S-3 is available online at

http://www.parl.gc.ca/content/hoc/Bills/421/Government/S-3/S-3_1/S-3_1.PDF

The full decision in *Descheneaux v. Canada* is available online at

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