

SECTION 11

ELIGIBILITY FOR DEPARTMENTAL BAND LISTS

Eligibility criteria for Departmental Band Lists today are the same as that for the Register. (See Section 6)

(1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

(a) the name of that person was entered in the Band List for that band, immediately prior to April 17, 1985;

(b) that person is entitled to be registered under paragraph 6(1)(b) as a member of that band;

(c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

(d) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(f) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

(2) Commencing on the day that is two years after the day that an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under Section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band.

(a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

(b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living was at the time of death entitled to have his name entered in the Band List.

- A person may acquire band membership through parents who died before April 17, 1985 provides that his/her parents would have qualified under this Section.

(3)(a) a person whose name was omitted or deleted from the Indian Register or a Band List in the circumstances set out in paragraph 6(1)(c), (d) or (e) who was no longer living on the first day on which the person would otherwise be entitled to have the person's name entered in the Band List of the band of which

the person ceased to be a member shall be deemed to be entitled to have the person's names so entered; and

(b) a person described in paragraph 2(b) shall be deemed to be entitled to have the person's name entered in the Band List in which the parent referred to in that paragraph is or was, or is deemed by this section to be, entitled to have the parent's name entered.

- If a person was eligible to be a member of a band that had amalgamated with another band, he/she is entitled to membership in the newly created band.
- If a person was eligible to be the member of a band that divided to form new bands, he/she is entitled to membership in the new band to which he/she has the closest family ties.

(4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which he has the closest family ties, as the case may be.

SECTION 12 TRANSFERS

- A person on the Indian Register and/or a Departmental Band List can be placed on another Departmental Band List with the consent of the admitting band council.

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(a) (a person) is entitled to be registered under Section 6, but is not entitled to have his name entered in the Band List maintained in the Department under section 11, or

(b) is a member of another band,

is entitled to have his name entered in the Band List maintained in the Department for a band if the council of the admitting band consents.

SECTION 13

NAMES ON THE DEPARTMENTAL BAND LIST

- A person's name cannot appear on more than one Departmental Bands List.

Notwithstanding sections 11 and 12, no person is entitled to have his name entered at the same time in more than one Band List maintained in the Department,

SECTION 13.2

RETURN OF BAND LIST TO DEPARTMENT

- A band that has maintained its List can return control to the Department if a majority of the electors of the band consent.

(1) A band may, at any time after assuming control of its Band List under section 10, decide to return control of the Band List to the Department if a majority of the electors of the band give its consent to that decision.

- After a Band List has been returned to the Department, the membership criteria for further applicants will be the same as that for all other bands under Departmental control.

(3) Where a notice is given under subsection (2) in respect of a Band List, the maintenance of that Band List shall be the responsibility of the Department from the date on which the notice is received and from that time the Band List shall be maintained in accordance with the membership rules set out in section 11.

SECTION 13.3 MAINTAINING THE RETURNED BAND LIST

If a band returns control of its List to the Department, all persons whose names appear on it will continue their membership in that band whether or not they would be entitled under Departmental membership criteria.

A person is entitled to have his name entered in a Band List maintained in the Department pursuant to section 13.2 if that person was entitled to have his name entered, and his name was entered, in the Band List immediately before a copy of it was provided to the Minister under subsection 13.2(2), whether or not that person is also entitled to have his name entered in the Band List under section 11.

SECTION 14 NOTICES

In the case of Departmental Band List, the Registrar must provide bands with information regarding additions and deletions to their Lists every two months. The band must post this information.

(2) Where a Band List is maintained by the Department the Registrar shall, at least once every two months after a copy of the Band List is provided to the council of a band under subsection (1), provide the council of the band with a list of the additions to or deletions from the Band list not included in a list previously provided under this subsection.

(3) The council of each band shall, forthwith on receiving a copy of the Band List under subsection (1), or a list of additions to and deletions from its Band List under subsection (2), post the copy or the list, as the case may be, in a conspicuous place on the reserve of the land.

SECTION 14.1 INQUIRIES

- The Registrar must provide information regarding registration and membership if a person wishes to know if he/she is or is entitled to be on the Register or a Departmental Band List.

The Registrar shall, on inquiry from any person who believes that he or any person he represents is entitled to have his name included in the Indian Register or a Band List maintained in the Department, indicate to the person making the inquiry whether or not that name is included therein.

SECTION 14.2 PROTESTS

- Additions to or deletions and omissions from the Indian Register or Departmental Bans List can be protested.
- The protest must be lodged within three years from the date on which a person's name is included, added, omitted or deleted from the Register or a Departmental Bans List.

(1) A protest may be made in respect of the inclusion or addition of the name of a person in, or the omission or deletion of the name of a person from, the Indian Register, or a Band List maintained in the Department, within three years after the inclusion or addition, or omission or deletion, as the case may be, by notice in writing to the Registrar. containing a brief statement of the grounds therefor.

- Protests regarding Department Band List can be lodged by the person involved, his/her representative, a band council or a member of the band.

(2) A protest may be made under this section in respect of the Band List of a band, by the council of the band, any member of the band or the person in respect of whose name the protest is made or his representative.

· Protest regarding the Indian Register can be lodged by the person involved or his/her representative.

(3) A protest may be made under this section in respect of the Indian Register by the person in respect of whose name the protest is made or his representative.

· The onus of proof lies with the protester.

(4) The onus of establishing the grounds of a protest under this section lies on the person making the protest.

· In the event of protest, the Registrar will investigate and make a decision. The decision is final and conclusive subject to an appeal to the courts.

(5) Where a protest is made to the Registrar under this section, he shall cause an investigation to be made into the matter and render a decision.

(6) For the purposes of this section, the Registrar may receive such evidence on oath, on affidavit or in any other manner, whether or not admissible in a court of law, as in his discretion he sees fit or deems just.

(7) Subject to section 14.3, the decision of the Registrar under subsection (5) is final and conclusive.

SECTION 14.3

APPEALS

· An appeal of the Registrar's decision to the courts can be made within six months after the decision is handed down.

· After hearing an appeal, the court may affirm, vary, or reverse the decision or refer the appeal back to the Registrar for further investigation or consideration.

(1) Within six months after the Registrar renders a decision on a protest under section 14.2,

(a) in the case of a protest in respect of the Band List of a

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band, the council of the band, the person by whom the protest was made, or the person in respect of whose name the protest was made or his representative, or

(b) in the case of a protest in respect of the Indian Register, the person in respect of whose name the protest was made or his representative,

may, by notice in writing, appeal the decision to a court referred to in subsection (5).

(4) the court may, after hearing an appeal under this section,

(a) affirm, vary or reverse the decision of the Registrar; or

(b) refer the subject-matter of the appeal back to the Registrar for reconsideration or further investigation.

SECTION 17

AMALGAMATION AND DIVISION OF BANDS

- The Minister of the Department can amalgamate bands if a majority of electors request amalgamation.
- The Minister of the Department can constitute a new band if requested by a group of persons proposing to form a new band.

(1) The Minister may, whenever he considers it desirable,

(a) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated; and

(b) constitute new bands and establish Band Lists with respect thereto from existing Band Lists, or from the Indian Register, if requested to do so by persons proposing to form the new bands.

- No protest can be lodged regarding additions and deletions from Band Lists in bands created under this Section.

(3) No protest may be made under section 14.2 in respect of the deletion from or the addition to a Band List consequent on the exercise by the Minister of any of his powers under subsection (1).

SCRIP

- The current legislation is silent on the subject of scrip.
- It does not specifically bar scrip-takers or their descendants from entitlement to registration. Nor does the legislation provide for their automatic reinstatement.
- Scrip-takers and their descendants, however, can be considered for registration under Section 6.