

4. CURRENT LEGISLATION: 1985

When the government passed Bill C-31, the Act to Amend the *Indian Act*, on June 28, 1985, the objective was to uphold three fundamental principles:

- **one**, that all discrimination be removed from the *Indian Act*;
- **two**, that Indian status within the meaning of the *Indian Act* and band membership rights be restored to persons who had lost them; and
- **three**, that Indian bands have the right to control their own membership.

The new provisions had a major impact on entitlement rules and procedures. The most important changes were:

- women no longer gain or lose entitlement to registration as a result of marriage;
- the practise of enfranchisement, a process by which Indians could apply to give up status and band membership, is abolished;
- the marriage of parents is no longer be a factor in the entitlement of children; and
- bands can now choose to control their own membership.

In this chapter, the current legislation is organized numerically by Sections of the *Indian Act*. Each Section contains headers which summarize and explain the legislation that follows. In those Sections referred to most frequently by Directorate personnel, the Section and subsection numbers and letters are provided in the boxed headers.

This chapter of the manual does not include the complete text of the 1985 legislation. In particular, provisions regarding procedural matters or those that were time-sensitive and are now out of date have been omitted. The provisions included are those which:

- alter previous legislation;
- state new concepts; or
- continue significant policies.

SECTION 2 DEFINITIONS

- Bands have the right to control their own Band Lists.

"Band List" means a list of persons that is maintained under section 8 by a band or in the Department:

- A *child* is defined in far broader terms than in earlier legislation:
 - The distinction between legitimacy and illegitimacy is eliminated.
 - An adopted child can now acquire Indian status through adoption by Indians.
 - Adoption by Indian custom is now recognized.

"child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom;

SECTION 5 THE INDIAN REGISTER

- The Indian Register is to be continued, and the powers of the Registrar remain the same as in previous legislation.
- This Section clarifies the responsibility for registration which lies with the individual, not with the Department. Persons seeking registration must apply first. The Department is not obliged to seek out and register all those persons now eligible who were denied under previous legislation.

(5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

SECTION 6 ELIGIBILITY FOR REGISTRATION

- Eligibility for registration is significantly changed from previous legislation.

(1) Subject to section 7, a person is entitled to be registered if

- 6(1)(a) - Previous entitlements continue.

(a) that person was registered or entitled to be registered immediately prior to April 17, 1985;

- 6(1)(b) - Members of newly created bands are entitled to registration.

(b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be band for the purpose of this Act;

- 6(1)(c) - Restoration of Indian status to:

- Women who had lost status by marrying non-Indians.
- Children enfranchised as a result of their mother's marriage to non-Indians.
- Persons removed from the Register as a result of protests based on non-Indian paternity.
- Persons omitted or deleted from the Register under the double-mother clause.
- The illegitimate children of Indian women born prior to August 14, 1956 who were omitted or deleted because of non-Indian paternity.

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(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii), pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions.

6(1)(d) - Enfranchisement is abolished. The following persons are now eligible for registration:

- A person enfranchised prior to april 17, 1985 whose name appeared on an enfranchisement order.
- A person deemed to be enfranchised with his/her parent(s) prior to September 4, 1951, but whose name did not appear on an enfranchisement order;

but
- A wife who had no status prior to marriage to an enfranchised Indian is eligible only if it is now established that she had entitlement independent of her marriage.

(d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

- The child of a non-Indian woman who gained her status only through marriage to an Indian is not eligible if his/her father is not an Indian.
- However, if the mother at the time of her marriage was eligible for status or now has an entitlement in her own right through her descent from Indians, then the child may be eligible for registration.

(1)(b) a person who is the child of a person who was registered or entitled to be registered under paragraph 11(1)(f), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and is also the child of a person who is not entitled to be registered.

(3) Paragraph (1)(b) does not apply in respect of the child of a female person who was, at any time prior to being registered under paragraph 11(1) (f), entitled to be registered under any other provision of this Act.

SECTION 8 BAND LISTS

- Each band must have a Band List which includes the names of all members.

There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

SECTION 9 DEPARTMENTAL BAND LISTS

- The Department maintains Band Lists until a band assumes control of its own List.

(1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the by the Registrar.

(3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is

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entitled or not entitled, as the case may be, to have his name included in that list.

(5) The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry therein is made to the Registrar.

SECTION 10 BAND-CONTROLLED BAND LISTS

A band controlling its List can set its own requirements for eligibility.

(1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.

Membership rules require the consent of electors of the band.

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

(b) provide for a mechanism for reviewing decisions on membership.

(3) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.

- A band's membership rules can not deprive a person of previously acquired rights to membership.

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before then the rules came into force.

(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

- Once a band controls its List, the Registrar has no power to make additions or deletions and the Department has no further responsibilities regarding the Band List.
- The band may make additions and deletions to its List in accordance with its membership rules.

(8) Where a band assumes control of its membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6) and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.

(9)A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph 7(b), and, subject to section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.

(10)A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled as the case may be, to have his name included in that list.