

Bill S-3: Implementation and the Challenges for Urban Indigenous Populations

REPORT PREPARED FOR NATIVE WOMEN'S ASSOCIATION OF
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1.0 Introduction

On December 22, 2017, Bill S-3 brought about changes to the *Indian Act*, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada*, to address known sex-based inequities in registration. Further amendments were included on August 15, 2019, after the Government of Canada held consultations with First Nations and Indigenous groups. Discussions also touched on broader issues relating to the *Indian Act*. The challenges associated with applying for status under the *Indian Act* are unique for urban Indigenous communities. This report serves to outline the unique context of urban Indigenous communities, and identifiable barriers for those seeking status. I begin this report with an acknowledgement of the importance of language, followed by a review of literature related to urban Indigenous communities. This is followed by a high-level overview of Bill S-3 and concluded by an outline of recommendations to mitigate barriers. This report is not an exhaustive or comprehensive analysis of all subjective experience. Rather, it has been developed to provide tangible recommendations to improve the application process for urban Indigenous people.

2.0 The Importance of Language

I believe that the language we use in communicating ideas or statements is powerful, and that the language used to describe Indigeneity in Canada is heavily weighted in racist histories of colonization. Therefore, I feel that it is prudent to acknowledge at the outset of this report that some of the terms used are no longer acceptable and may be perceived as problematic, racist, or offensive. Language used to discuss Indigenous peoples and their experiences in Canada has evolved over time in an effort to more accurately reflect the manner in which Indigenous communities choose to identify themselves. Unfortunately, however, while the social context and rhetoric have begun the slow shift towards more appropriate terminology, there remains



fragments of racist or colonial ideologies within the Canadian legal framework. Generally, pan-Indigenous terminology lacks recognition of the diversity of Indigenous peoples in Canada.

Given this report is intended to focus on the operationalization of the *Indian Act* through the formal registration of Indigenous persons as “registered”, I will use the legal term defined in the legislation to ensure clarity and consistency. This does not mean, however, that I am abdicating responsibility for the acknowledgement that these terms may be hurtful. For greater clarity; given that the terms “Aboriginal”, “Indian”, “registered Indian” or “status Indian” are the accepted legal terms pursuant to the relevant legislation, and for the purpose of this report that requires reference to this legislation, the legal terms will be used hereafter where appropriate.

Finally, where an author is quoted as a part of the textual analysis completed for this report, the terminology used remains unchanged. Again, acknowledging that while terminology has evolved, the words used in texts reflects the societal context at the time of writing.

3.0 Indigenous and First Nations Peoples in Urban Spaces

Generally, the term “urban Indigenous peoples” refers to all Indigenous peoples – status and non-status – including “Indian”, Metis, and Inuit, who live in Canadian urban centres (Heritz 2018: 9). However, a 2010 study conducted by the Environics Institute found that, generally speaking, non-Indigenous Canadians are more aware of Indigenous peoples’ historical experiences than they are about the experiences of Indigenous peoples in urban centres. The report authors contend:

There is a lack of awareness and apparent uncertainty about the most important issues for Aboriginal peoples today, and in particular, about the problems faced by those living in cities. There is a significant gap between Aboriginal peoples’ socio-economic realities and the perceptions of non-Aboriginal Canadians. They believe Aboriginal people have the same socio-economic opportunities as any other Canadian (Environics Institute 2010:11).



A significant tension exists in Canadian society where Indigeneity is associated with remoteness, isolation, and reserves (Congress of Aboriginal Peoples 2019: 4). On-reserve, Indigenous identity is largely defined by the state and segregated. Urban Indigeneity is highly varied and is shaped by contextual surroundings including the nuanced differences of the urban community that surrounds them. However, the common belief remains that Indigenous identity and urban communities are not compatible (Deverteuil and Wilson 2010: 499). The continuing belief that Indigenous peoples are only defined by their relationship to the land is an over-romanticized trope that does not reflect the lived experiences of contemporary Indigenous people (Congress of Aboriginal Peoples 2019: 11). In reality, there has been limited research regarding the process of excluding Indigenous people from urban centres and the ongoing policies that have resulted from these actions.

Historical racist policies that were founded by the Eurocentric ideals of colonialism ensured that Indigenous peoples were connected to segregated reserve lands – moreover these policies are historically recent. For example, in the 1950s in Canada Indigenous peoples were required to ask permission from the Indian Agent to seek employment or education in urban centres (King et al 2001: 81). Movement off reserve lands was often viewed as assimilation and the assumed abandonment of Indigenous identity which subsequently abdicated the government for responsible programs and services for Indigenous people in urban centres (Congress of Aboriginal Peoples 2019: 6). Indeed, adjusting to city or urban life was – and continues to be – measured by how well an individual becomes accustomed to the dominant culture of the particular urban space (Neale 2017: 76). Functionally, systems of supports have been tied to the reserve system which has further segregated these communities. There remains continued exclusion from, “visibility, justice, and governance” (Porter, Libby and Yiftachel 2017: 3). This segregation continues to manifest lasting policy impacts that produce persistent social, economic, and health inequities (Deverteuil and Wilson 2010: 499).



In contrast to the over-romanticized tropes of historical Indigenous populations, historical Indigenous communities were varied, politically and socially complex, and economically diverse (Howard and Lobo 2013: 1). Accounts of colonial history have served to eradicate the importance of Indigenous peoples' urban histories and experiences (Edmonds 2010: 4).

Stephens (2015) asserts that, "the common image is of isolated communities cut off from the modern world, largely disengaged from the challenges and advantages of the urban future" (55). The Congress of Aboriginal Peoples (2019) states, "the idea that Indigenous peoples are divided by a rural/urban dichotomy undermines Indigenous peoples' place in urban settings while perpetuating notions of assimilation" (7).

Ironically, continuing racist policies and practices enforced by the Canadian government have served to support or force the move of Indigenous peoples to urban centres. Urban centres have served as administrative hubs from which settler policies and regulations would be developed and subsequently forced upon Indigenous peoples both on and off reserve. All levels of government have, in one way or another, maintained the separation of Indigenous identity from urban centres (Wilson and Peters 2005: 399). Collier (2020) notes that historical iterations of the *Indian Act* discriminated against First Nations women who would lose their status if married to a non-Indigenous man (2). As a result, many First Nations women left reserves and moved to Canadian urban centres. In 1905, the *Indian Act* was amended to require the forceful removal of Indigenous peoples "from reserves near towns with more than 8000 residents" (Bourgeois 2015: 1459). More generally, the movement of Indigenous peoples to urban centres is often the result of a lack of service availability on reserves. Indigenous peoples seeking services and programs such as education, healthcare, or employment, must move to urban cities (Collier 2020: 3). It is important to actively and intentionally work to deconstruct the assumptions about urban Indigenous communities (Neale 2017: 76).

While Rotonodi and associates (2017) assert that census data remains inadequate in accounting for Indigenous persons in Canada, the data can provide inferences regarding the



distribution of Indigenous peoples in urban centres across Canada. Over decades, the urban Indigenous populations have continued to increase. According to 2016 census data, 38 of status, and 74 of non-status Indigenous peoples in Canada live in urban centres (Statistics Canada 2016). Further, this data presents that 66 of Metis, and 30 of Inuit people live in cities, with the total off-reserve population being approximately 80 (Statistics Canada 2016). The Status First Nations population is younger than the non-Indigenous population. About 1 in 4 Status First Nations people living off reserve were younger than 15 years of age compared to 1 in 6 non-Indigenous people. 2016 census reporting shows that the population growth rate between 2006 was highest for status First Nations peoples off-reserve (46.5) versus status First Nations on reserve (12.0) and non-Indigenous populations (9.6). According to the 2016 Census, Status First Nations people aged 25 to 64 living on reserve had a lower employment rate (47 percent) than Status First Nations people living off reserve (60 percent). Employment rates were lower for both groups in 2016 compared with 2006. The employment rate for the non-Indigenous population was steady between 2006 and 2016 at 76 percent in both years. Also according to 2016 census data, the percentage of First Nations peoples with a high school diploma or equivalent is higher for those living off-reserve (68 percent) than on reserve (41 percent).

The United Nations Special Rapporteur made strong assertions to ensure services would be provided equally for Indigenous peoples “both on and off reserve, including in the areas of education, health and child welfare” (Anaya 2015: 166). However, all levels of government - federal, provincial, and municipal – continue to employ a policy orientation that does not take responsibility for urban Indigenous peoples (Belanger 2011: 141). As a result, federal, provincial, and municipal governments actively avoid clarifying jurisdictional responsibility for urban Indigenous populations, leaving the vast majority of Indigenous peoples without adequate services (Snyder et al. 2015). Policy decisions in Canada continue to “neglect Indigenous people’s need for culturally appropriate services and supports” in critical areas such “as education, employment, housing, and healthcare” (Alaazi et al. 2015: 31). As efforts to mitigate the policy-



programming gap for Indigenous communities, governments have continuously supported the development and creation of Indigenous service providers which serves to abdicate responsibility and burden for service provision away from federal and provincial governments onto Indigenous communities. While objectively this is viewed as a positive function, support for these initiatives is not reflected in adequate or sustainable funding. Indeed, Snyder and colleagues state that, “funding for urban [Indigenous] services has not matched the growth of the urban [Indigenous] population” and these services “remain grossly underfunded” (Snyder et al. 2015: 8). Moreover, a significant number of urban Indigenous peoples are non-status and “have few entitlements as [Indigenous] people”, and as a result there is “a massive hole in the effective provision of social and health services” (Evans et al. 2009: 13).

The varied and complex urban Indigenous community has not been meaningfully engaged in the process of social policy development and therefore are not expressly represented in social policy in practice (Heritz 2018). There continues to be a growing need for culturally safe service provision for urban Indigenous communities, however this has largely been left to Indigenous communities themselves (Neale 2017: 82). Because urban Indigenous communities are varied, complex and unique to the particular community they are in, blanket approaches to provide services are quite challenging. Cidro and associates (2015) have argued that despite challenges, Indigenous-led organizations and infrastructure have worked to provide cross-cultural services and support activities such as arts and culture events. Due to funding limitations, many organizations have been forced to choose which work to undertake, and proactive advocacy is often lower on the priority list given the importance and immediacy of support services and crisis intervention. Howard (2016) asserts that this has caused many Indigenous-led organizations to appear “apolitical” with a more limited “deployment of culture) (217). As a result, many urban Indigenous communities have formed strong networks to promote advocacy work through their own self-organizing institutions (DeVerteuil and Wilson 2010: 501). Heritz (2018) has stated that many services that do exist in urban environments function with an assimilationist objective that do not represent the urban Indigenous communities (602). Therefore, the importance of



Indigenous-led organizations and advocacy work is incredibly important. A report completed by the Congress of Aboriginal Peoples (2019) stated, “Government has been able to shift the burden of services that have problematic “colonial legacies” and where the state has a “less than positive record” onto Indigenous communities while appearing to concede to Indigenous demands” (15). For greater clarity, the government has been able to shift the burden of service provision to Indigenous communities while maintaining colonial powers through legislated authorities such as managing the registration of status Indians. Further, Indigenous communities are often tied to government through systems of funding that is both inadequate and necessary – a difficult dichotomy.

This dichotomy is most represented in the colonial and oppressive authority the Canadian government is afforded through legislation to determine who is – and is not – considered to be “status” (Maddison 2013: 289). The Congress of Aboriginal Peoples (2019) have argued that these policies have, in turn, functioned to affect how Indigenous peoples experience their own identity. The United Nations Human Right’s Committee decision in the McIver case further acknowledges that some Indigenous persons in Canada link status with Indigenous identity, while others suffer because eligibility for status should be borne out of connect to community (2019). This is further complicated in urban Indigenous communities as Indigenous identity in Canada is often perpetuated by the reserve system through government policy. Even though the large majority of Indigenous people in Canada live in urban areas, policies and legislation continue to perpetuate the idea that rights and identity must be tied to specific land – and this complicates the experiences of urban Indigenous communities (Wilson and Peters 2005: 400).

In 1999, the Supreme Court of Canada recognized that First Nations people living off-reserve received differential treatment regardless of status. Eligibility for many federal programs is generally based on a combination of factors: residency on reserve, status, or membership in a First Nations band (Standing Committee on Human Rights 2013: 15). One of the most significant program areas available to First Nations people off-reserve is health although this is resultant



from research that indicates First Nations peoples are far less likely to receive consistent treatment from a family physician and report generally poorer health. As a part of the study regarding service provision for First Nations people off reserve, the Standing Committee on Human Rights stated:

Many First Nations witnesses noted the lack of services to support fundamental needs within communities such as safe, affordable housing. Others addressed the challenges created by the lack of sustainable funding for community programs, which often meant that highly valuable and successful programs were cancelled because they had only received short term funding. Even if additional funding could be found, there may already have been gaps in service or lay-offs. Inez Vystrcil-Spence, Health Director with the Manitoba Keewatinowi Okimakanak called the failure to address the needs of First Nations people “supervised neglect” (Standing Committee on Human Rights 2013: 29)

There are a number of current programs that provide greater rights and protections to First Nations persons on reserve. These areas include: matrimonial real property; on-reserve income assistance; residential rehabilitation programs; and tax exemptions. This perpetuates differential treatment for Indigenous peoples off-reserve who can not take advantage of these opportunities.

While the experiences of Indigenous peoples across Canada is highly varied and unique depending on contextual information, surroundings, and community organization, so too is the experience of urban Indigenous communities. The relationship between urban Indigenous communities and the operationalization of provisions in the *Indian Act* are unique and require focussed attention to address. While mitigation strategies for challenges experienced by Indigenous Canadians are often tied to reserves, and thus perpetuating segregation, challenges of urban Indigenous communities are also unique and perpetuate a rent and novel form of social and physical segregation. This report will serve to explore the barriers faced by urban Indigenous people when applying for status under the *Indian Act*. This report will further serve to elucidate the continued challenges existing despite recent legislative amendments to the Act that



broadened eligibility for status application. Finally tangible recommendations to adjust policy objectives and application to remove the identified barriers are advanced for consideration.

4.0 Methodologies

The methodologies used for this report included both qualitative literature reviews and critical reviews. A qualitative literature review brings together research on a topic, systematically searching for research evidence from primary qualitative studies and drawing the findings together. A critical review includes analyzing the available literature using a critical lens. Both literature and critical reviews involve empirical research that synthesizes, analyses, and interprets findings across available resources to seek an answer to an overarching question. For the purpose of this report, the overarching research questions have included:

- What are the unique challenges faced by newly eligible urban Indigenous populations seeking status after the implementation of Bill S-3?
- What are recommendations that may address the challenges faced by newly eligible urban Indigenous populations seeking status after the implementation of Bill S-3?

5.0 Findings

The findings relayed in the subsequent sections were derived from a review of related literature and policy analysis. Findings support that further work is required to mitigate significant barriers faced by urban Indigenous persons seeking status under the *Indian Act*, including those newly eligible after the implementation of Bill S-3.

5.1 Indigenous Identity in Urban Centres

The needs of Indigenous people who live in cities have been largely disregarded through colonial processes and governance that have tied Indigenous people to remote and urban spaces. Tomiak (2011) argues that prior to the 1990s, as far as policy makers were concerned, urban Indigeneity did not exist. Therefore the neglect of service provision – essentially inaction – for



Indigenous people in urban spaces is an active form of colonial oppression. It is one, however, that is seemingly muted by normalized rhetoric of assimilation. Further, the Government of Canada (2011) completed engagement sessions with Indigenous persons after the implementation of Bill C-31 and found that First Nations participants differentiated between citizenship in an Indigenous nation, status under the *Indian Act* and membership within the context of an *Indian Act* Band. Indeed, most participants in discussions viewed the issue of citizenship through complex and inter-related lenses of nationhood, nation-affiliation, nation-(re)building and self-determination, but importantly not exclusively within the meaning of a status Indian under the *Indian Act*. Decisions regarding the governance of Indigeneity and the organization of the reserve system is not inherent to actual Indigeneity itself but, rather, the construction of the governance of Indigeneity in Canada that is heavily influenced by broader social and political factors.

Neoliberalism operationally replaced Keynesianism and the welfare state between the 1970s and 1990s and has become the global standard in democratic countries (Kaplan-Lyman, 2012). This shift perpetuated the existence of new social conditions and patterns of policy development through a different form of governance that gave corporate and economic elites (upper class) greater influence over political practice (Kaplan-Lyman, 2012). David Harvey (2005) defined neoliberalism as follows:

Neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free market, and free trade. The role of the state is to preserve an institutional framework appropriate to such practices (Harvey 2005: 2).

As such, neoliberalist governance emphasizes small governments and marketplace solutions for both social and economic problems. Differentiated from welfare state conceptualizations of governance, neoliberalist governments assert that state intervention in individual or community, social and economic issues should remain at a minimum. Government support abated for



unemployment insurance, occupational disability insurance, affordable housing and job training (Kaplan-Lyman, 2012). Marked by increasingly individualistic philosophy, neoliberalism assumes the individual citizen to be entirely responsible for his or her economic success (or failure) without the assistance of government. Though neoliberalism is an economic ideology, its effects have determinant social effects that exacerbate systems of social inequalities. Harvey states, “...in so far as neoliberalism values market exchange as an ethic in itself, capable of acting as a guide to all human action and substituting for all previously held beliefs...it seeks to bring all human action into the domain of the market” (Harvey, 2007b: 3). As governments are less likely to address problem behaviours and systemic inequalities through social structures, as was previously the case for countries characterized by welfarism, neoliberalism perpetuates a need for the control of populations through punitive policies and practices. Though counterintuitive, neoliberalist governments have concentrated on funding increasingly punitive efforts to control members of the population, thus, perpetuating systems of inequity. A significant challenge with neoliberalism as it related to Indigenous peoples in Canada, is that centuries of oppressive and violent colonization have perpetuated an inaccurate portrayal of Indigenous people as peoples who are unable to govern themselves. Therefore, an incorrect assumption is made that while Indigenous people in Canada require a paternal relationship with the state, Indigenous people are similarly neglected through the neoliberalism frameworks that push self-reliance. Canada has, in essence, creative a self-fulfilling and nonsensical approach to addressing the tragic colonial history with unique, diverse, and strong Indigenous communities – including those in urban spaces. Again, as is the case with respect to jurisdictional responsibility, the perpetuation of neoliberalist frameworks leave urban Indigenous people in a grey area.

A consequence of the neoliberal framework has been the over-reliance on Indigenous communities and individuals’ responsabilization through market policies. Rather than looking to Metis, Inuit, and First Nations governments for their well-being and social health, urban Indigenous communities often must rely on volunteer organizations as the result of systemic



failures of the government to address community concerns. So, while in a neoliberal context the ideal citizen is one that is both self-reliant and self-regulating, Indigenous self-determination falls outside of the scope of policy initiatives. As colonial control over urban spaces is not stable nor is it indeterminate, processes of self-determination to decolonize urban spaces must be adequately supported and prioritized. Indigenous self-determination in the urban setting refers to the liberation from colonial domination and the impacts of displacement and dispossession (Green 2001: 2003). Additionally, this requires a fundamental restructuring and redevelopment of policies and reimagining of Indigenous nationhood and sovereignty to include urban spaces and the “collective right to be” (Green 2001: 716). Indeed, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as an international instrument adopted by the United Nations on September 13, 2007, to ensure the rights that “constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world” does not differentiate between urban and rural spaces. It is to be adopted holistically.

Indigenous identity is of fundamental importance to Indigenous peoples living in cities, particularly due to the multifaceted nature of identity construction and retention (Proulx 2006: 406). Urban Indigenous people have a more complex relationship with their surroundings as there is a dichotomous relationship driven by the common Canadian stereotype that Indigenous people either live on reserve or have assimilated through residing in urban spaces. It can be more challenging in urban centres to find supportive avenues that celebrate Indigeneity in a way that is more fundamental as opposed to superficial. This is, at least in part, a systemic reason for which services for Indigenous people in urban centres is often inadequate or simply not culturally safe. It is easier for government to shift responsibility of service provision to the reserve system as it is an identifiable body that supports and advocates for the needs of community members. Indeed, it is much more challenging to develop a service provision structure outside of the reserve system that includes less identifiable central organizations that advocate for broad community with different groups that are distinct.



As most Indigenous people in Canada live in urban centres, there is a significant need to de-link services from the reserve system to more adequately support Indigeneity in cities. This will require an investment in complex networks of Indigenous support systems in urban areas. Through Neoliberal lens, it must be recognized that governments have left Indigenous peoples to fend for themselves with respect to understanding registration entitlements and application processes. Informal Indigenous networks can be formalized through government support and the subcontracting of Service Canada functions without the corresponding downloading of responsibility that usually follows such service shift. This may mean more robust and culturally sensitive service provision specific to Indigenous communities being provided in urban service hubs (Service Canada), or the development of new spaces in urban communities that are supported by legislation (see previous section) and do not rely on volunteer organizations who often struggle to maintain adequate levels of funding.

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1. *It is recommended that services and programs to support Indigenous people in understanding new Indian status registration entitlements, and the associated application process, be at least partially **de-linked** from the reserve system.*
 - a. *It is further recommended that service provision specifically for Indigenous people must be provided within urban spaces through either existing infrastructure with modifications to be more culturally safe (Service Canada) or new infrastructure built for this purpose.*
 - b. *It is further recommended that should culturally safe services regarding new Indian status registration entitlements be provided through existing infrastructure like Service Canada, full-time equivalent positions should be designated positions.*
 - c. *It is further recommended that service provision for Indigenous people in urban spaces cease being downloaded to volunteer organizations that struggle to maintain adequate levels of government.*
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5.2 Culturally Safe Spaces

Policy reform in Canada to support urban Indigenous communities has often been based on the work of social scientists to determine how integration rather than assimilation could be supported (Langford 2016: 3). This work, however, functions to erase colonial histories and important facets of Indigeneity in order to ‘fit in’ with the dominant culture of an urban space or community. This further perpetuates processes of colonization and erasure of important Indigenous histories and experiences in order to mute cultural identity. However, as the Royal Commission on Aboriginal Peoples argues, “strong cultural identities were an important element of [Indigenous] people’s success in cities” (Peters 2011: 79). Urban Indigenous communities also continue to face racism, stereotyping, and oppression – but Indigenous identity remains important in urban environments.

Continued colonialism and the pervasiveness of racism against Indigenous peoples in urban environments have highlighted the importance of culturally safe spaces. There are a limited number of culturally safe spaces and therefore Indigenous organizations serve an important function for urban Indigenous peoples. Indigenous organizations, constrained by limited and inadequate funding, often find difficulty in providing the necessary cross-cultural services that reflect the unique and diverse urban Indigenous communities. These spaces, however, provide urban Indigenous peoples with an important and safe outlet for culturally safe services, cultural activity and networking. The weight of supporting urban Indigenous communities should not rest solely on Indigenous organizations. Government and non-Indigenous organizations must also participate in decolonizing urban spaces.

The experiences of urban Indigenous peoples shows that there is a lack of clear and “systemic” policy orientations that support Indigeneity (Hanselmann 2011: 170). Further the Congress of Aboriginal Peoples (2019) argue that there is inadequate national representation of urban Indigenous peoples due to the reliance on nation-to-nation engagement frameworks based on selective invitation (Congress of Aboriginal Peoples 2019: 29). Representation is



important. Representation matters. Adequate advocacy at the national level requires the involvement of representation for urban Indigenous communities. This will ensure policies reflect the lived realities of urban Indigenous communities that are diverse, unique, and cross-cultural.

To apply for status under the Indian Act, an applicant is required to provide a guarantor if they apply by mail, or are unable to provide required identification. A guarantor is also required when applying in person on behalf of an adult or on behalf of a parent or legal guardian applying for a child or dependent adult. The requirements of a guarantor include having known the applicant for at least two years, being able to answer questions about the applicant, and either holding Status under the Indian Act or be employed in an eligible occupation.

The requirements of a guarantor can be difficult to meet. Specifically, should the individual not hold status, they must be employed by one of the approved positions. If an applicant is unable to find an adequate guarantor, the applicant may find two references for which the threshold of adequacy is lower. The applicant is required to provide the information of the two references and subsequently must sign a form in the presence of a person authorized by law to administer oaths and declarations. This often has a fee associated and this may be prohibitive for some people. It is inappropriate, in the context of applying for status under the Indian Act, to require applicants to pay for the services of a person authorized by law to administer oaths or declarations. The Government of Canada should be responsible for all costs associated with the application process, inclusive of the cost to have an appropriate person witness the applicant's signature of the statutory declaration form.

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2. *It is recommended that urban Indigenous organizations be adequately funded to ensure culturally safe service provision.*
 - a. *It is further recommended that funding be provided to organizations providing services related to genealogical research for Indigenous clients.*



3. *It is further recommended that urban Indigenous communities are represented appropriately at the national level to advocate for policy decisions relevant to the urban context.*
 4. *It is recommended that the Government of Canada subsidize all costs associated with the application process for status under the Indian Act.*
 - a. *For greater clarity, costs associated with the application include;*
 - i. *Postage*
 - ii. *Travel*
 - iii. *Costs for service of a person authorized by law to administer oaths and declarations*
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5.4 Awareness of Eligibility

The recommendations in the following five sections are more directly tied to the implementation of Bill S-3 and the challenges faced by urban Indigenous communities.

Perhaps the most fundamental challenges faced by Indigenous peoples in urban spaces in understanding the impacts of Bill S-3 is simply a lack of awareness of what the new Bill provides, and a further lack of awareness about newfound eligibility. For the purpose of this report, I will separate these to facets of awareness to ensure clarity.

Broad dissemination of legislative changes in Canada largely relies on interest by the media and announcement by government. Further, individuals who follow legislative changes are often those who self-select. In other words, those who are promptly aware of legislative changes are most likely to be those who are already engaged in significant political and social discourse. As a result, those who are not generally involved in the political sphere are less likely to be aware of significant changes that may impact their lives. Further still, as the federal government has often tied methods of consultation to the reserve system, urban Indigenous communities are often not engaged in a manner that would increase broad awareness for legislative and policy changes.



Legislative changes can have tangible effects on the lives of citizens. It is therefore appropriate to ensure that dissemination of the information pertaining to these changes is distributed broadly and through creative channels. This has not, however, been common practice. Instead, government has typically recycled existing models of information delivery such as government media releases or through engagement with communities on reserve. Indeed, in April 2019, Crown-Indigenous Relations and Northern Affairs Canada engaged with First Nations communities through training sessions provided to Band Council members and Band managers. In subsection 7.3, the process of de-linking service provision and engagement of Indigenous persons from solely those practices focused on the reserve system is vital for information distribution. It is therefore recommended that the distribution channels be broadened and include more accessible channels for urban populations that may not have direct connection to a reserve. This could include proactive messaging through existing infrastructure such as schools, Service Canada, and community organizations. The proposed channels must also consider that not all people living in Canada have reliable access to the internet. Therefore, any awareness campaign must consider how to communicate with diverse groups in unique environments that do not solely rely on internet and social media – although of course internet-based channels are also useful.

To ensure a consistent approach to reaching the most people, a policy should be implemented that would require a communications package be prepared for public distribution to support broad dissemination of all significant legislative changes. Packages can be prepared and distributed to existing networks to be further distributed to community-based groups to present. A policy would ensure that this process is consistent and sustainable. Packages should include technical briefing material, plain language summaries, presentation templates, and distributable materials (one-page take home materials in plain language). Resulting from this distribution will be the decentralization of information dissemination.



Apart from awareness of legislative changes more generally, awareness of new eligibility to apply for status under Bill S-3 can also be unclear. This is more challenging for urban Indigenous communities that may not have direct access to resources or histories that would provide information pertinent to knowing whether or not eligibility is established. As will be further discussed in subsection 7.5 and 7.6, the onus must be on the federal government to disprove an application of eligibility rather than on the applicant to provide information. It is further argued that as the holder of most relevant documents necessary for proving eligibility, the federal government should work to be more proactive in identifying newly eligible individuals. As records become centralized to be more accessible for potential applicants (pursuant to subsection 7.6), the government should establish a working group to review relevant documents and proactively attempt to identify those who may be newly eligible via mail notifications. Mail notifications would provide newly eligible individuals the ability to make individual decisions about applying for status, without requiring these individuals to make any justification for their decision which may have been the case if communications were to occur through other channels such as telephone. This practice would be particularly valuable for those in urban Indigenous communities that have not been engaged through the initial sessions held by the government of Canada that targeted reserve communities through Band Council members and Band managers.

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5. *It is recommended that the Government of Canada implement broad-reaching policy directives that require the preparation of an awareness campaign package for all new legislation or legislative amendments related or affecting the lives of Indigenous people in Canada.*
 6. *It is recommended that the Government of Canada develop a broad reaching awareness campaign respecting the implementation of Bill S-3 and the subsequent impact on Indigenous people in Canada.*
 - b. *It is further recommended that the Government of Canada consider creative outlets of information dissemination - of which some must not be reliant on internet.*



- c. *It is further recommended that the Government of Canada consider the following paths of dissemination that would specifically benefit urban Indigenous peoples:*
 - i. *Presentations to 12th grade high school students;*
 - ii. *Presentations to university students;*
 - iii. *A requirement for all urban Service Canada locations to hold information sessions;*
 - iv. *Broad media strategies inclusive of TV, radio, social media, and newsprint;*
 - v. *Presentations at community events; and/or*
 - vi. *Presentations through the friendship centre system.*
 7. *It is recommended that the Government of Canada be active in identifying and informing newly eligible Indigenous persons of their ability to apply for status under Bill S-3. More detail respecting the access to records is provided in subsection 7.6.*
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5.4 Policy Position

The Government of Canada began to engage with First Nations and other Indigenous groups in July 2016, to discuss the proposed legislative amendments to the *Indian Act* based on the findings within the Descheneaux decision. These sessions were held specifically to discuss the amendments proposed to address existing sex-based inequities. The Federal government met with First Nations and Indigenous organizations and groups. Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada* was introduced in the Senate of Canada in October, 2016. As a result of this process, multiple amendments were introduced and included a new provision to the *Indian Act* that would allow the Indian Registrar greater flexibility to consider various forms of evidence in determining eligibility for registration in situations of an unstated or unknown parent or other ancestor. The addition of this provision is a response to the Gehl decision granted by the Ontario Court of Appeal. Further, and despite the implementation of Bill S-3, the estimated uptake remains quite low. Therefore, there are clear barriers that newly eligible people face that may deter moving through the application process, or moving through the process successfully. One area for



consideration is the onus on the applicant to provide evidence that meets the standard of the Registrar.

In the *Gehl versus Attorney General of Canada* case, the applicant's paternal grandfather was unknown, and the applicant's father had married a non-status woman. The applicant provided some information that suggested the paternal grandfather indeed had status, however, the application was not approved by the Registrar. The Registrar based the decision on the fact that the evidence that applicant provided did not meet an adequacy standard for evidence. The court found that this decision was unreasonable, and the applicant's evidence should be accepted in absence of evidence to the contrary. The resulting provision to the Indian Act provides greater flexibility for the Indian Registrar to consider various forms of evidence in determining eligibility for registration. Specifically, in cases of unknown or unstated parentage, sub-section 5(6) of the *Indian Act* states [emphasis added]:

*If a parent, grandparent or other ancestor of a person in respect of whom an application is made is unknown — or is unstated on a birth certificate that, if the parent, grandparent or other ancestor were named on it, would help to establish the person's entitlement to be registered — the Registrar shall, without being required to establish the identity of that parent, grandparent or other ancestor, determine, after considering all of the relevant evidence, whether that parent, grandparent or other ancestor is, was or would have been entitled to be registered. In making the determination, the Registrar shall rely on any credible evidence that is presented by the applicant in support of the application or that the Registrar otherwise has knowledge of **and shall draw from it every reasonable inference in favour of the person** in respect of whom the application is made.*

The inclusion of language respecting the requirement of the Registrar to draw every reasonable inference is intended to lessen the burden on the applicant to provide evidence to a specific threshold. It should be noted, however, that this language still places the burden for providing evidence on the applicant. Access to records required to present to the Registrar are not always easily accessible. This is further exasperated in instances in which parentage is unknown or unstated. It is therefore unreasonable to require an applicant to move through the already



laborious application process, and subsequently only require the Registrar to make “every reasonable inference”. Language should be clarified to reverse onus and place the burden on the Registrar to disprove eligibility. Indeed, many Indigenous people in Canada would argue that applying for status from the Government of Canada under the *Indian Act* is in itself an active process of racist and oppressive continued colonization. Therefore, the burden placed on the applicant is insult to injury. It is inappropriate and a concerning barrier for those First Nations persons who choose to apply for status.

8. *It is recommended that the Government of Canada make all best efforts to connect Indigenous peoples with support services to assist in the application for status process.*
 9. *It is recommended that the Government of Canada work with Indigenous communities through National working groups to expand access to government records in support of new registration entitlements.*
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5.5 System Navigation

Systems navigators are specialized positions that assist people with navigating complicated and interrelated systems. They further act as the primary source of communication between the system and individuals, acting as an advocate and guide. Generally, these positions are often tied to the healthcare system and provide service to patients of acute care from interdisciplinary teams. It can be argued, however, that health care systems are not the only system that is complex, convoluted, and difficult to understand. It is clear that culturally safe assistance for Indigenous people accessing government services would be a fundamental change to service provision to better support those wishing to move through complex processes.



The steps associated with applying for Indian status, and registering for a status card, include the following (for those 16 years of age and older):

- Understanding eligibility
- Understanding registration category
- Collating supporting documents
- Finding a guarantor
- Receiving the application forms
- Completing the application forms including establishing entitlement to registration
- Protesting the Indian Registrar

The Government of Canada states that the processing time for complete registration applications under the *Indian Act* can take 6 months to 2 years, depending on the complexity of the file. It can be difficult, frustrating, and retraumatizing to wait significant periods of time for response from government institutions. Further, the process can be elongated if components of the application are not completed correctly and yet without real-time assistance it can be challenging to identify application deficiencies. Government is a large and unforgiving machine with bureaucratic layers of complexity. While these layers may provide necessary checks and balances, it is clear that investing in assistance for understanding them would lead to increased understanding and efficiencies. Indeed, eliminating the submission of incomplete or incorrectly filled out applications through providing assistance on the front end is valuable.

A system navigator position should be established to assist those looking to apply for status under the Indian Act to ensure the process is smooth and culturally safe. This position should provide liaison support inclusive of walking a potential applicant through the applications and connecting the applicant to appropriate support services should they be required. Looking through historical records and reliving traumatizing experiences can be extremely difficult. It is appropriate to build in systems of support to ensure revictimization is mitigated. Further, for



many Indigenous peoples in Canada, directly contacting the federal government can be extremely difficult due to histories of colonialization and cultural genocide.

System navigators should be provided robust training by the Government of Canada. Further, the positions should be funded by the Government of Canada. A call for proposals should be established to ensure diverse networks, organizations, and local governments can be eligible to support system navigator positions. This may follow the structure of related programs such as the Indigenous Courtworker Program. The Indigenous Courtworker Program was established in 1978 as the Aboriginal Courtwork Program. The program is funded through contribution agreements with provincial governments and are delivered by Indigenous service delivery agencies under contract. A system navigator program for those applying for status under the *Indian Act* could follow a similar process, however, the contract of service should not include a provincial intermediary. Such an intermediary would download responsibility of contribution agreement management to provincial governments rather than ensuring the federal government maintains responsibility for the program.

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10. *It is recommended that the Government of Canada develop a System Navigator program to assist newly eligible applicants to move through the complex application process.*
 11. *It is recommended that the role of System Navigator be a designated federally funded position that is established within existing networks of service provision including Indigenous organizations, urban Service Canada locations, and municipal government offices.*
 - d. *A call for proposals should be established and advertised to access funding for System Navigator positions.*
 - e. *Potential sites for System Navigators should be proactively sent the call for proposals information.*
 12. *It is recommended that the Government of Canada develop an Indigenous legal network that provides a specified period of legal advice free of charge to Indigenous persons looking to understand their legislative entitlements.*



- a. It is further recommended that this legal network follow the same structure as the federally supported Independent Legal Advice (ILA) programs in provinces that functions to provide free, independent legal advice to adult survivors of sexual assault.*
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Annex A: Recommendations Respecting the Implementation of Bill S-3 and Urban Indigenous Populations

1. *It is recommended that services and programs to support Indigenous people in understanding new Indian status registration entitlements, and the associated application process, be at least partially **de-linked** from the reserve system.*
 - a. *It is further recommended that service provision specifically for Indigenous people must be provided within urban spaces through either existing infrastructure with modifications to be more culturally safe (Service Canada) or new infrastructure built for this purpose.*
 - b. *It is further recommended that should culturally safe services regarding new Indian status registration entitlements be provided through existing infrastructure like Service Canada, full-time equivalent positions should be designated positions.*
 - c. *It is further recommended that service provision for Indigenous people in urban spaces cease being downloaded to volunteer organizations that struggle to maintain adequate levels of government.*
2. *It is recommended that urban Indigenous organizations be adequately funded to ensure culturally safe service provision.*
 - a. *It is further recommended that funding be provided to organizations providing services related to genealogical research for Indigenous clients.*
3. *It is recommended that urban Indigenous communities are represented appropriately at the national level to advocate for policy decisions relevant to the urban context.*
4. *It is recommended that the Government of Canada subsidize all costs associated with the application process for status under the Indian Act.*
 - a. *For greater clarity, costs associated with the application include;*
 - i. *Postage*
 - ii. *Travel*
 - iii. *Costs for service of a person authorized by law to administer oaths and declarations*
5. *It is recommended that the Government of Canada implement broad-reaching policy directives that require the preparation of an awareness campaign package for all new legislation or legislative amendments related or affecting the lives of Indigenous people in Canada.*



6. *It is recommended that the Government of Canada develop a broad reaching awareness campaign respecting the implementation of Bill S-3 and the subsequent impact on Indigenous people in Canada.*
 - a. *It is further recommended that the Government of Canada consider creative outlets of information dissemination - of which some must not be reliant on internet.*
 - b. *It is further recommended that the Government of Canada consider the following paths of dissemination that would specifically benefit urban Indigenous peoples:*
 - i. *Presentations to 12th grade high school students;*
 - ii. *Presentations to university students;*
 - iii. *A requirement for all urban Service Canada locations to hold information sessions;*
 - iv. *Broad media strategies inclusive of TV, radio, social media, and newsprint;*
 - v. *Presentations at community events; and/or*
 - vi. *Presentations through the friendship centre system.*
7. *It is recommended that the Government of Canada be active in identifying and informing newly eligible Indigenous persons of their ability to apply for status under Bill S-3.*
8. *It is recommended that the Government of Canada make all best efforts to connect Indigenous peoples with support services to assist in the application for status process.*
9. *It is recommended that the Government of Canada work with Indigenous communities through National working groups to expand access to government records in support of new registration entitlements.*
10. *It is recommended that the Government of Canada develop a System Navigator program to assist newly eligible applicants to move through the complex application process.*
11. *It is recommended that the role of System Navigator be a designated federally funded position that is established within existing networks of service provision including Indigenous organizations, urban Service Canada locations, and municipal government offices.*
 - a. *A call for proposals should be established and advertised to access funding for System Navigator positions.*
 - b. *Potential sites for System Navigators should be proactively sent the call for proposals information.*



12. *It is recommended that the Government of Canada develop an Indigenous legal network that provides a specified period of legal advice free of charge to Indigenous persons looking to understand their legislative entitlements.*
 - a. *It is further recommended that this legal network follow the same structure as the federally supported Independent Legal Advice (ILA) programs in provinces that functions to provide free, independent legal advice to adult survivors of sexual assault.*