The Native Women's Association of Canada
L'Association des femmes autochtones du Canada

INEQUALITY AND THE INDIAN ACT: A HISTORY OF HARM AND THE HEALING PATH FORWARD

FOR OVER A CENTURY, CANADA HAS LEGISLATED WHO IS AND IS NOT ENTITLED TO INDIAN STATUS. THIS MAGAZINE EXPLORES HOW THE *INDIAN ACT* HARMS INDIGENOUS WOMEN AND THEIR FAMILIES, IDENTIFIES ONGOING ISSUES, AND SUGGESTS HOW TO MOVE FORWARD, TOGETHER.

Native Women's Association of Canada
L'Association des femmes autochtones du Canada

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THE FOLLOWING GUEST AUTHORS CONTRIBUTED THEIR TIME AND KNOWLEDGE TO THIS MAGAZINE:

Brenda Gunn is a proud Métis woman. She is a Professor at the University of Manitoba, Faculty of Law. She continues to combine her academic research with her activism pushing for greater recognition of Indigenous Peoples' inherent rights as determined by Indigenous Peoples' own legal traditions. Her current research focuses on promoting greater conformity between international law on the rights of Indigenous Peoples and domestic law. She developed a handbook on understanding and implementing the UN Declaration on the Rights of Indigenous Peoples that is quickly becoming one of the main resources in Canada on the UN Declaration and has delivered workshops on the Declaration across Canada and internationally.

Karl Hele is a member of the Garden River First Nation and a professor of Indigenous studies at Mount Allison University. He has published and presented numerous papers on the history of the Anishinaabeg and Métis of the Sault Ste. Marie region. He successfully challenged the Indian Registrar's decision to deny his daughter's status application on the basis of his mother's voluntary enfranchisement, paving the way for other families affected by voluntary enfranchisement.

Mary Ellen Turpel-Lafond (Aki-Kwe) is Cree and Scottish with kinship ties in First Nations in both Saskatchewan and Manitoba. She is the inaugural Director of the Indian Residential School History and Dialogue Centre and a professor with the Peter A. Allard School of Law at the University of British Columbia. As a lawyer and provincial judge, she has also been involved in projects relating to improving supports for Indigenous Peoples, especially in addressing the unique circumstances and needs of children and youth involved in the justice system.

The following NWAC staff wrote articles for this magazine:

Adam Bond
Laura Ezeuka
Leena Halees
Allison MacIntosh
Sarah Niman – Magazine Editor

A LETTER FROM NWAC'S CEO

WELCOME TO *INEQUALITY AND THE INDIAN ACT: A HISTORY OF HARM AND THE HEALING PATH FORWARD.*

THIS MAGAZINE REPRESENTS THE NATIVE WOMEN'S ASSOCIATION OF CANADA'S WORK TO RAISE AWARENESS ABOUT THE GENDER-BASED HARMS THE *INDIAN ACT* CREATED FOR INDIGENOUS WOMEN AND EXPLORES SOME OF THE REMAINING INEQUITIES IN THE LAW TODAY.

In this magazine, NWAC, along with several esteemed authors, provides histories of the *Indian Act* as a tool used to assimilate Indigenous Peoples, and thoughtful critiques of the membership rules that continue to impact Indigenous Peoples and their communities.

NWAC was founded in 1974 with the goal of enhancing the well-being of Indigenous women, girls and gender-diverse people and ending the violence and the discrimination within the colonial system. In her foreword, Mary Ellen Turpel-Lafond (Aki-Kwe) describes how she has seen NWAC advance Indigenous women's equality during her lifetime as a prominent Indigenous rights advocate.

Indian status laws under the *Indian Act* treated Indigenous women as less equal than Indigenous men by removing their right to pass status down to future generations, depending on who they married. NWAC's advocacy for Indigenous women's equality rights under the *Indian Act* has led to many complex legislative changes over the years.

In 2017, the federal government passed Bill S-3, claiming that this latest *Indian Act* amendment fixed all remaining sex-based inequities. However, in 2019, NWAC began consultations with the federal government to identify and address all remaining inequality in the *Indian Act* membership laws. This includes Indigenous families like Karl Hele's; in his article, he describes how Bill S-3 did not allow him to pass status to his daughter because his grandmother lost status protecting her family from the local Indian Agent's looming threats.

NWAC believes equality must reflect the rights guaranteed for Indigenous Peoples under section 35 of the *Constitution Act, 1982* and Article 44 of the *United Nations Declaration on the Rights of Indigenous Peoples*, as guest author Brenda Gunn writes in her article. These two provisions guarantee equality to male and female persons.

What these articles show us is how much work must be done before anyone can declare the *Indian Act* status free from discrimination. NWAC is committed to persisting in this work until the job is done. NWAC continues to push for equality for Indigenous women and gender-diverse people today, and for future generations.

I thank you for taking the time to turn these pages, learn about the *Indian Act*, and become familiar with the critiques remaining. Knowledge is power and this magazine is NWAC's way of bringing you knowledge and power.

MIIGWETCH.

LYNNE GROULX LL.L., J.D. | CEO

NATIVE WOMEN'S ASSOCIATION OF CANADA
L'ASSOCIATION DES FEMMES AUTOCHTONES DU CANADA

FOREWORD: CANADA'S ROLE IN SUSTAINING DISCRIMINATION IN REGULATING INDIAN STATUS AND MEMBERSHIP

BY DR. MARY ELLEN TURPEL-LAFOND (AKI-KWE)

WITHOUT THE NATIVE WOMEN'S ASSOCIATION OF CANADA (NWAC)'S ADVOCACY AND DETERMINED EFFORTS ORGANIZING WOMEN, PREPARING LEADERS, AND SPEAKING UP TO SURFACE RACISM, SEXISM AND DISCRIMINATION, THERE WOULD BE NO CULTURAL SAFETY TODAY TO SPEAK ABOUT THESE IMPORTANT ISSUES SURROUNDING INDIAN STATUS, MEMBERSHIP AND CITIZENSHIP.


Image Source: UBC

DR. MARY ELLEN TURPEL-LAFOND, (AKI-KWE) IS THE DIRECTOR OF THE INDIAN RESIDENTIAL SCHOOL HISTORY AND DIALOGUE CENTRE AND A PROFESSOR AT THE UNIVERSITY OF BRITISH COLUMBIA'S PETER A. ALLARD SCHOOL OF LAW. WITH PERMISSION OF UNIVERSITY OF BRITISH COLUMBIA.

NWAC created safe places for women to be heard, organize, and bring changes forward through political and legal avenues. This work reverses the colonialism Canada employed to impoverish the lives of women. I stand by NWAC, including present and past executive members, staff, and members, because without them there would be no meaningful change to the *Indian Act*.

NWAC's leaders have surfaced the gender and race discrimination in the *Indian Act*, naming it for what it is. NWAC's public advocacy to ensure Aboriginal and Treaty rights—as well as human rights-- are entrenched and protected in the Constitution of Canada must lead to concrete changes for Indigenous women.

I offer these views with personal experience and gratitude for having been part of the NWAC staff as a lawyer and advisor in the past. In 1985, I graduated from law school after being involved with Indigenous women's organizations during my student years. I joined NWAC to assist with the advocacy during the first wave of *Indian Act* amendments to address gender discrimination as section 15 of the *Canadian Charter of Rights and Freedoms* came into force and those discriminatory provisions could no longer stand. At the time, I found it upsetting that Canadian leaders and justice officials waited until the very last minute to bring needed changes to the *Indian Act* into effect.

The year 1985 was not the first time Canada acknowledged discrimination in the *Indian Act*; Canada knew that women were excluded, experienced a forced diaspora, and lost connections to family, community, culture, language, and basic Indigenous rights. Canada let the clock run until the very last moment on change. It was years after Jeanette Lavelle took the matter to the highest court, and Sandra Lovelace took it further to the United Nations. There was never an easy path. Canada was never a supportive partner in removing racism and discrimination on the basis of gender and identity from the *Indian Act*.

In 1982-1985, Canada addressed the first wave of gender discrimination with Bill C-31. Canada grossly underestimated the number of women and their family members the Bill impacted. Those women and families required assistance for reinstatement; Canada under-resourced those efforts. This caused frustration and conflict within organizations scrambling to assist women. Canada grossly under-resourced communities who needed infrastructure to provide a welcoming and safe environment for women and their families making a safe return and reintegration to community, when they wanted to (many did). Canada further pitted women against Chiefs and Council as newcomers arrived, making

demands on services, causing a crisis in housing, health services, and other social development service areas.

Canada provided no cultural services or supports to assist the healing work required for reintegration, nor did it address the backlash these women faced. Blame-shifting on women is toxic and needs to be called out. It is cultural loading no women today should carry in recovering from colonial policies and practices.

Canada was heavy-handed and forced women to give up civil rights to get Indian status in the first wave of *Indian Act* changes. To regain status, women and their children had to waive all previous claims to benefits during the period of discrimination that other families' members would have received. This was repugnant then and continues to bother me as a breach of fiduciary obligation, and something we must remedy in the future. I knew this was oppressive and legally suspect from the outset, but Canada would not budge on these things. The resistance to change was astounding on all fronts, and some of that remains to this day.

Bill S-3 came into force in 2019, leaving "remnant" cases of discrimination. Even the language used is offensive and often discriminatory: The "cousins" problem, the "siblings" issue, the "omitted children" issue, the "unstated paternity" problem. Dismantling racism and sexism is not about "problems," it is about a system that is flawed and discriminatory at its core. The current revisions push the problem back onto colonialism's victims.

Has justice been achieved in this effort with Bill S-3? Far from it. But the current state of decolonization is not attributable to the Indigenous women who have taken up advocacy, initiated and pursued legal avenues of redress through many court cases. Nor have women stopped exposing the continuing impacts of intergenerational gender and race discrimination and the remaining stains this leaves embedded in Crown policies and practices. For these actions, Indigenous women must be recognized, heard, and supported.

It is hard to watch the continual silencing, shunning and disrespect shown to Indigenous women leadership. Sometimes this included the political power group of men within Indigenous organizations. Today there is progress, and I am immensely happy there is a strong and supported Anishinaabe women in leadership at the Assembly of First Nations (AFN). She is a pathbreaker and time will tell if her voice, which is the voice of a woman in leadership, is welcomed and heard. I remain optimistic, although the need for women to speak truth about Canadian policies and actions that enmeshed discrimination against women into the fabric of law and policy requires many women's voices to be heard. There is not one voice, although we need one voice united against racism, sexism, homophobia, and ageism.

Despite its serious limitations, Bill S-3 is a major and hard-fought achievement. Every change to strip gender and race discrimination from legislation is a major achievement. To implement it seems the even bigger problem. Canada likes nice words but falls short on the actions needed. This is why I am grateful for NWAC, the leadership of Indigenous women and girls, and the continued push to decolonize and remove racism, sexism and discrimination from Canadian laws, policies, and practices. There is a glimmer of light, but there are unconscionable delays and harms visited on the generations excluded. There are young people who did not get post-secondary funding or services they needed. They carry feelings of not belonging or being worthy.

Decolonizing and removing discrimination from the *Indian Act* is far from a completed task. It appears the colonial policy of deny rights, ignore harms, and underfund the services needed to fix the mistakes has been the prime policy of Canada for the past 40 years, and longer. Despite this, NWAC and sister organizations have never wavered from the task. NWAC marshalled resources and has been persistent in advocating for three waves of *Indian Act* reforms. Today, NWAC stands on a strong foundation promoting self-determination and the inherent right of self-government that is inclusive of women. The ground has shifted.

This has been difficult work, and I bore witness to much of it at a critical time in the organization's history. I can say with confidence that there would not have been change over successive periods of hard fought and needed change to the *Indian Act*, without the work of Indigenous women's provincial and territorial organizations, and their collaborations through NWAC at the national and international level. We will need to re-examine the implementation of Bill S-3 from an independent lens in the next few years to determine if these legislative and policy changes worked, or whether they left women and our families exposed, yet again, to new ways of backlash, discrimination, and delayed benefits.

HOW TO APPLY FOR STATUS REGISTRATION UNDER THE *INDIAN ACT*

BY LAURA EZEUKA

DID YOU BECOME ELIGIBLE TO APPLY FOR STATUS UNDER BILL S-3 AND DO YOU WANT TO APPLY?

The following are the steps you need to take in order to apply to register for status under the *Indian Act*:

Step 1: Obtain an application form. Application forms are available in various ways: If applying as an adult 16 or older, get the Application for Registration on the Indian Register and for the Secure Certificate of Indian Status (SCIS), Form 83-168:

- by mail, by calling Public inquiries; or
- in person, at any Indigenous Services Canada (ISC) regional office.

If applying for a child 15 or younger or dependent adult, get the Application for Registration on the Indian Register and for the Secure Certificate of Indian Status (SCIS), form 83-171:

- by mail, by calling Public enquiries; or
- in person, at any ISC regional office.

Step 2: Find a guarantor. A guarantor is a person who can confirm your identity when you are applying for registration under the *Indian Act* as an adult or as the parent or legal guardian of a child or dependent adult.

You need a guarantor if you are:

- applying by mail;
- providing valid identification that does not meet the requirements;
- submitting an application in person on behalf of an adult or on behalf of a parent or legal guardian applying for a child or dependent adult; or
- submitting a photo using the SCIS Photo App.

The person acting as guarantor must:

- be 18 or older;
- have known you for at least two years;
- be available and capable of answering questions about you, (for example, your name, approximate age, place of birth, physical description and place of residence), if contacted by ISC; and
- be registered under the *Indian Act* or employed in an eligible occupation:
- First Nations representatives and employees, (for example, chief, councillor, Indian Registration Administrator);
    - > employees of Indigenous organizations;
    - > elected and appointed officials, (for example, mayor, member of Parliament or of the Legislative Assembly, senator);
    - > Canadian federal, provincial, territorial or municipal government employees;
    - > justice and public safety officials, (for example, judge, magistrate, lawyer, notary, paralegal, police officer, parole officer);
    - > military personnel from regular or reserve forces;
    - > medical professionals, (for example, dentist, medical doctor, optometrist, pharmacist, chiropractor, nurse);
    - > social services professionals, (for example, social worker, social service worker, counsellor);
    - > education professionals, (for example, teacher, professor, administrator, school board member);
    - > financial professionals, (for example, accountant, financial advisor, actuary);
    - > veterinary professionals, (for example, veterinarian, veterinary technician);
    - > scientific professionals, (for example, engineer, chemist, geoscientist); or
    - > religious officials.

A family member can only act as guarantor if they meet those conditions.

A parent or legal guardian cannot act as guarantor when applying on behalf of a child or dependent adult.

If you cannot find a guarantor, you must provide two references. A person acting as a reference must:

- be 18 or older;
- have known you personally for at least two years;
- not be a relative; and
- be available and capable of answering questions about you, for example, your name, approximate age, place of birth, physical description and place of residence, if contacted by ISC.

Step 3: Fill out the Application form. You will need to provide information about yourself (or child or dependent adult for whom you are applying). You will also need to provide information about your parents or grandparents or their parents or grandparents. This information includes their:

- legal name;
- date of birth;
- First Nation or band name;
- registration number;
- contact information; and
- adoption information, if applicable.

Indicate which First Nation or band you (or the child or dependent adult) and your parents, grandparents or ancestors are affiliated with. if your or their parents are from different bands, state a band preference.

To help establish entitlement to registration, it is also helpful to provide:

- the names of any relatives, (for example, brothers, sisters, aunts, uncles, cousins), who are or were registered under the Indian Act and any information that may help to identify them in ISC records;
- information about ancestors, such as their band numbers and the names of any of their family members who are or were registered, and any other information that may help to identify them in ISC's records with evidence that links them to you (or the child or dependent adult).

If you (or the child or dependent adult) have no registered parents or grandparents, provide as much information as possible about your (or the child or dependent adult's) Indigenous ancestors.

Step 4: Sign and date the form. Before submitting the application form, make sure that you have filled out all relevant sections of the form, including the checklist of the documents required, then sign and date the form. If the application is for a child or dependent adult, a parent or a legal guardian must sign the application form. You must provide all required documents.

Where do you apply?

You may apply:

- any ISC regional office;
- any First Nation or band office, if applicable; or
- by mail, to:

  Application Processing Unit
  Indigenous Services Canada
  Box 6700
  Winnipeg MB. R3C 5R5

If one of your biological parents is not listed on the proof of birth document, but is registered or entitled to be registered, you may submit, (if available):

- an original amended proof of birth document listing the unstated parent's name;
- statutory declarations from the parent listed on the proof of birth document naming the unstated parent and from the unstated parent acknowledging parentage;
- a court order declaring parentage; or
- DNA testing results evaluated by a laboratory accredited by the Standards Council of Canada demonstrating a conclusive parent-child relationship.

If you cannot submit any of those documents, you may submit other relevant information, such as:

• statutory declarations from family members, close relatives, Elders, or community members;

- census records;
- church records;
- hospital records;
- school records;
- band council resolutions;
- First Nation membership or citizenship list; or
- any other credible evidence.

Image Source: Canva

UNKNOWN AND UNSTATED PATERNITY: A VIOLENT BURDEN OF PROOF

BY ALLISON MACINTOSH

THE GOVERNMENT OF CANADA SPENT 32 YEARS IN A DRAWN-OUT COURT BATTLE TO RECOGNIZE DR. LYNN GEHL'S ENTITLEMENT TO REGISTER FOR STATUS UNDER THE *INDIAN ACT*.

Dr. Gehl is an Algonquin-Anishinaabe woman with over five generations of Indigenous ancestry. She applied for Indian status in 1994 but was denied because her grandmother had not identified the man with whom she became pregnant. Dr. Gehl provided documentation to support the conclusion that her ancestor was entitled to status, but for a long time, this was not good enough.

Under Canada's "proof of paternity" policy at the time, if a father was not listed on a child's birth certificate, then the father was presumed to be non-Indigenous. Dr. Gehl saw the clear gender-based discrimination and took Canada to court to challenge the policy.

In 2017, the Ontario Court of Appeal decided Dr. Gehl's documents were enough to show she was entitled to status. The court also declared the proof of paternity policy requiring applicants to provide the name of both biological parents was unfair, because the standard of proof prevented some Indigenous Peoples from rightfully being able to obtain status.

Canada sought to update the *Indian Act* to reflect this paternity policy change, but its changes were less than impressive.

When Canada replaced the "proof of paternity" policy, the new one did very little to fix the problems Dr. Gehl brought to the court's attention. The new policy requires the Indian Register to consider all relevant and credible evidence about a status applicant's parent, grandparent or other ancestor who is unknown or unstated. The Register must weigh this evidence on a balance of probabilities.

What does it mean to consider the evidence "on a balance of probabilities"? The analysis requires the decision-maker to consider all of the applicant's evidence and then ask, "is it more probable than not that the parent, grandparent or other ancestor is entitled to be registered?" Under the new policy, it is no longer presumed that an unknown or unstated ancestor is non-Indigenous. Instead, the Indian Registrar must try to reach every reasonable conclusion that would support granting the applicant status.

At the end of the day, the new policy still requires an Indigenous woman to gather evidence to prove her or her child's ancestry. The requirement to prove paternity can be risky for some women and can unfairly deny children status benefits that they have every right to access.

It is inescapable that one biological parent can prove their own parentage by virtue of birthing the child.

There are many reasons why an Indigenous woman may not know or may be unwilling or unable to safely identify her child's biological father. These reasons can include the mother may have had multiple partners, the father may deny paternity, or the mother may have been subjected to violence, sexual assault, or incest. Requiring an Indigenous woman to identify the biological father and have him sign birth paperwork could result in risk or harm.

The paternity proof requirement is but one of many racist, sexist, and patriarchal colonialist policies forced onto Indigenous women over the years. Obtaining status gives Indigenous People access to a legal bundle of rights, including social, economic and health benefits. The new policy can still create challenging or impossible barriers for those trying to prove parentage and perpetuates the disadvantages Indigenous women and their children face.

The new policy requires applicants to produce documents that rely on some sort of participation and identification of the biological father or his relatives. This requirement does not remedy possible safety concerns a woman may have, nor does it prevent re-traumatization should she experience past or ongoing violence in gathering the required proof. Many of the required documents and evidence, like DNA testing or affidavits, are also costly and may be inaccessible.

Ultimately, the new proof of paternity policy forces some Indigenous women into situations where they must choose to risk their emotional or physical safety so their child(ren) can access status benefits to which they are rightfully entitled.

Some advocates suggest the Government of Canada should eliminate the two-tier registration system under the *Indian Act* (sections 6(1) and 6(2)) and the requirement to prove both parents' status. Instead, the Registrar could require status applicants only need to provide evidence of their ancestry from one parent and entitle everyone to one type of status. This would give all women and their descendants same status as males, eliminating the "second-generation cut-off" and other gender-based status differences once and for all.

Other still suggest the Government of Canada should eliminate the *Indian Act* altogether and instead, work with Indigenous Peoples in a nation-to-nation relationship to honour their ideas around status registration and all other membership issues that affect their community.

At the end of the day, the Government of Canada has found itself correcting its registration rules to eliminate discrimination against Indigenous women numerous times. Denying Indigenous women, a seat at the table when making decisions about policies that directly affect them and have historically discriminated against them, makes Indigenous women vulnerable to further violence.

The Government of Canada will never get it right or achieve reconciliation until it values and respects Indigenous women's voices.

Let's hope that, unlike Dr. Gehl, the solutions do not take another 32 years.

INDIAN STATUS AND MEMBERSHIP: A SUMMARY

BY LEENA HALEES

BEING "INDIAN" IN CANADA IS MORE THAN JUST A CULTURAL IDENTITY—IT IS ALSO A LEGAL CATEGORY OF PEOPLE. CANADA HISTORICALLY LEGISLATED WHO IS "INDIAN" THROUGH THE *INDIAN ACT*, RATHER THAN THROUGH INDIGENOUS COMMUNITIES.

The *Indian Act* is federal legislation governing Indigenous Peoples' societies, politics and economies. Indian status registration and membership give Canada regulatory power and control over Indigenous Peoples' identities and communities.

Before colonization, Indigenous communities were sovereign nations with their own histories, laws, political systems, and institutions. Indigenous communities applied various methods and practices to determine identity and membership. Canada used the *Indian Act* to ignore and suppress Indigenous self- governance.

The *Indian Act* was first enacted in 1876, and defined an "Indian" as:

- Any male person of Indian blood reputed to belong to a particular band;
- Any child of such person;
- Any person who is or was lawfully married to such person.

Under section 5 of the *Indian Act*, the Indian Registrar is responsible for maintaining the Indian Register—the official record used to identify persons registered as status Indians. The Registrar decides who is and who is not an Indian and maintains the Register by adding or removing people based on *Indian Act* eligibility criteria.

The *Indian Act* also introduced enfranchisement, a legal process for voluntarily or involuntarily terminating a person's Indian status in exchange for Canadian citizenship. Giving up one's status also meant giving up culture and traditions, rights to land, and the right to live on the reserve, including any benefits associated with it. *Indian Act* provisions enfranchised individuals if they became a lawyer, doctor, or clergy, received a degree from a university, or joined the military.

In 1951, Canada amended the *Indian Act* with section 12(1), which meant any Indian woman who married a non-Indian man lost her entitlement to status. Children born to mothers who married a non-Indian man were not entitled to be registered for status either. In contrast, an Indian man who married a non-Indian woman would maintain his status and pass on Indian status to his spouse and children.

Status loss through enfranchisement disproportionately affected direct descendants of those who married a non-status man. Also, descendants of people who "voluntarily" enfranchised insist their parents, grandparents or other ancestors were forced or coerced into enfranchisement.

In 1985, corresponding with the equality provisions of the new *Canadian Charter of Rights and Freedoms*, Canada passed Bill C-31, introducing considerable amendments aimed to remove gender discrimination from *Indian Act* registration provisions. This meant individuals who had previously lost status were entitled to have it reinstated. Marital status no longer determined whether an individual lost or gained Indian status.

Although Bill C-31 was meant to eliminate sex-based discrimination and assumed neutrality with respect to an individual's gender or marital status, the new rules ultimately created new forms of discrimination.

Case in point: The second-generation cut-off rule. Since Bill C-31's revised framework essentially redefined who was eligible for Indian status under two new subcategories (sections 6(1) and 6(2) of the *Indian Act*), this new system terminated Indian status after two consecutive generations of mixed Indian and non-Indian parentage. This posed a disadvantage for descendants (children born before April 17,1985) of Indigenous women who married non-Indian men and regained status under

section 6(1). Their children were registered under section 6(2), making them ineligible to transfer status to the next generation, if they married non-Indians.

In other words, the second generation cut-off rule meant the women's grandchildren could not gain status. This did not affect the children of Indian men registered under section 6(1) who married non-Indian women. In fact, although they shared the same ancestral linage as section 6(2) registrants, the men were still able to pass status to their descendants, even if they married non-Indian spouses. Those descendants, registered under section 6(2), could continue to pass down status for at least another generation.

The differences between status under sections 6(1) and 6(2) create trickle-down implications for many Indigenous communities in Canada. The sections operate to distill and eventually disqualify status eligibility. There has been a considerable decline in the Indian status population, and a growing number of people living on the reserves without status as a result of Section 6(2).

The status rules also directly impact land. It is unclear what will happen when there are no more status-eligible Indigenous Peoples, since section 91.24 of the *Canadian Constitution Act* gives Canada jurisdiction over "Indians and Lands Reserved for Indians."

Who will remain to protect the environment on Traditional Territories? How would it affect the individual and collective rights of Indigenous Peoples guaranteed by domestic and international treaties?

Before the 1985 amendments, Indian band membership, like Indian status, was defined in the *Indian Act*; entitlement to Indian status usually accompanied entitlement to band membership.

This changed when Bill C-31 gave Indian bands full control over their membership rights and processes. The new way created two separate modes for determining membership under the *Indian Act*. At times, this division resulted in individuals being entitled to status, but not to membership within their band.

In 2019, Canada passed Bill S-3 to address gender-based discrimination in status registration, but membership provisions have not changed. Some First Nations decided to further restrict their membership codes, to keep out those who would gain status under the Bill S-3 recent changes. Bands face limited availability of reserve lands, resources and funding to distribute among band members and status Indians. Many Indigenous Peoples express a growing sentiment that Indigenous communities should determine who belongs, not Canada.

Today, status eligibility and rights exist in tension with Canada's human rights laws. The Supreme Court upheld Indigenous Peoples' inherent right to self-determination. The outlier *Indian Act* ultimately continues to impede those who seek to exercise this right.

Image Source: Getty

GRADUAL GENOCIDE: A SHORT HISTORY OF THE *INDIAN ACT* REGISTRATION RULES

BY ADAM BOND

CANADA FIRST PASSED THE *INDIAN ACT* IN 1876, BUT AFFECTED CULTURAL GENOCIDE AGAINST INDIGENOUS PEOPLES THROUGH LEGAL INSTRUMENTS SINCE WELL BEFORE CONFEDERATION. COLONIAL GOVERNMENTS CREATED LAWS AND POLICIES CLEARLY DESIGNED TO ELIMINATE INDIGENOUS IDENTITIES. SOME MAY ARGUE THESE GENOCIDAL INSTRUMENTS ARE RELEGATED TO THE PAGES OF HISTORY, BUT THE LEGAL MECHANISMS PERSIST TODAY.

The *Indian Act's* origins extend back to the *Royal Proclamation of 1763*. While this document guaranteed Indigenous Peoples' rights to exclusive possession of their un-ceded territories, the Royal Proclamation only guaranteed this right under the assertion of Crown sovereignty over those territories.

The Province of Canada enacted *An Act for the Protection of Indians in Upper Canada* in 1850. This Act reiterated the "Indian" right to exclusive possession of un-ceded territories expressed in the Royal Proclamation but introduced limitations that would eventually shape the *Indian Act*.

The *Act for the Protection of Indians* codified certain rights for "Indians" and "any person intermarried with any Indian" as long as they lived on un-ceded lands. This concept of "marrying in" to Indigenous rights would persist in Canadian legislation until the enactment of Bill C-31 in 1985.

The Province of Canada introduced An *Act to Encourage the Gradual Civilization of the Indian Tribes in this Province* in 1857 with the objective of eliminating cultural and legal distinctions between Indigenous and non-Indigenous peoples in the province. This Act created the framework for enticing, compelling and coercing First Nations people to surrender their Indigenous rights – and the rights of their spouses and children. Canada's new Parliament embraced this concept following Confederation.

Canada enacted the first post-Confederation law to determine entitlement to "Indian" status in 1868 with An *Act Providing for the Organization of the Department of the Secretary of State of Canada*. This Act recognized "Indian" status for all persons of "Indian blood" belonging to a First Nations community or group, as well as their children and wives.

In 1869, Canada passed *An Act for the Gradual Enfranchisement of Indians* which deprived women and their children of "Indian" status when marrying non-status men.

Canada passed the first version of the *Indian Act* in 1876. That Act carried on the previous legal definitions of "Indian" and introduced status exclusion for "illegitimate" (non-marital) children. Under these laws, a man could extend status entitlement to his non-status wife, but a woman would lose her status for marrying a non-status man. Multiple amendments of the Act throughout the late-19th and early-20th centuries introduced and removed various mechanisms for enfranchisement, all toward the goals of assimilation and cultural genocide.

Canada introduced major amendments to the Act in 1951, including an official Indian Register position and detailed rules setting out who was (and was not) entitled to status reserved for First Nations people. The 1951 amendments also introduced the "Double Mother Rule," which deprived individuals of their status at the age of 21 if their mother and paternal grandmother obtained status through marriage.

The *Indian Act* largely stayed the same from 1951 until 1985, when Canada's equality guarantees under section 15 of the *Canadian Charter of Rights and Freedoms (the Charter)* came into force. The equality guarantee required the *Indian Act* be amended to remove discrimination against women in the registration rules. Alongside the *Charter* came a damaging decision from the United Nations Human Rights Committee, which found the *Indian Act* infringed international human rights. Canada made major amendments to the Act in 1985 with Bill C-31.

While Canada tried to remove the sex-based discrimination from the Act through Bill C-31, these amendments actually created new bases of sex-based discrimination. Bill C-31 eliminated enfranchisement from the *Indian Act* and even worked to correct historical injustices by recognizing entitlement to register for status for individuals who had lost status under discriminatory rules. However, Bill C-31 also created an ostensibly gender-neutral provision that limited status entitlement to at most two consecutive generations of parents in which only one parent is entitled to status. This is known as the "Second Generation Cut-Off Rule."

Several individuals led a series of successful court challenges because they suffered discrimination under the 1985 amendments. These court cases led to further legislative reforms; the latest amendment came fully into force in 2019, under Bill S-3.

The Bill S-3 amendments addressed much of the continuing inequities within the *Indian Act* registration rules, but left many remaining concerns about the details and broader concepts of the *Indian Act*. Some of these concerns include potential discrimination in the Second-Generation Cut-Off Rule, differential treatment on the basis of age and marital status, and an unfair burden of proof related to unknown and unstated parentage.

Canada passed the *United Nations Declaration on the Rights of Indigenous Peoples Act* in 2021, which puts pressure on Canada to conform its laws with the Declaration. It is highly unlikely the *Indian Act* can survive such scrutiny. Canada must turn away from continuing to tinker with the registration rules and turn toward a much larger challenge, answering: How can Canada finally repeal a law that perpetuates cultural genocide against Indigenous Peoples, while simultaneously protecting the rights codified within that same law?

Image Source: Library and Archives Canada

Image Source: Getty

IMPLEMENTING S-3

BY INDIGENOUS SERVICES CANADA

CANADA INTRODUCED BILL S-3 IN 2016 AS A RESPONSE TO THE 2015 *DESCHENEAUX* DECISION. THIS CASE FOUND THE REGISTRATION PROVISIONS IN SECTION 6 OF THE *INDIAN ACT* VIOLATED EQUALITY RIGHTS UNDER THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*. THESE PROVISIONS TREATED INDIAN WOMEN AND THEIR DESCENDANTS DIFFERENTLY THAN INDIAN MEN AND THEIR RESPECTIVE DESCENDANTS.

Bill S-3 partially came into force on December 22, 2017 and removed some sex-based inequities identified by the Court. These inequities related to the differential treatment of cousins, siblings, and minor children omitted from the Indian Register. The amendments also included the measures to address concerns of unknown and unstated parentage laid out in the 2017 *Gehl* decision.

The remaining provision of Bill S-3, the removal of the 1951 cut-off, was delayed from coming into force until after consultations with First Nations. Between 2018 and 2019, Crown Indigenous and Northern Relations Canada (CIRNAC) consulted with First Nations and partners as part of the Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship. In June 2019, a report to Parliament was submitted on the results of this consultation, where it was determined that there was general support for the removal of the 1951 cut-off and the remaining inequities in registration.

Removing the 1951 cut-off came into force in August 2019 and eliminated sex-based inequities in section 6 of the *Indian Act*. Now, applicants whose fathers married non-status mothers before April 17, 1985, may be entitled to register under the *Indian Act*.

The full implementation of Bill S-3 aligns matrilineal and patrilineal lines, correcting historical wrongs in the registration provisions of the *Indian Act*. This accomplishment is a testament to the perseverance and advocacy of Indigenous women, leaders, and allies over decades. It responds to Call to Justice number 1.2 in the National Inquiry into Missing and Murdered Indigenous Women and Girls. It is a victory for gender equality.

Based on independent demographic estimates of effects on population, Indigenous Services Canada (ISC) anticipates that there could be 270,000 to 450,000 newly entitled persons as a result of S-3 amendments. Of persons who were already registered but were previously unable to pass entitlement on to their descendants, ISC proactively amended the registration categories of 125,000 already-registered individuals. In doing so, 57,000 individuals are now able to pass on status entitlement to their descendants. By proactively amending individuals on the register, ISC can process descendants' applications in a more expedited manner because files will have the most up-to-date information. Today, ISC has processed over 80 per cent of applications received and registered more than 20,000 people.

The Minister of Indigenous Services tabled The Final Report to Parliament on the Review of S-3 on December 11, 2020. This report summarizes S-3 implementation efforts and confirms the elimination of sex-based inequities in the registration provisions. The report acknowledges the legacy impacts and persistence of non-sex-based inequities in registration. While all known sex-based inequities in the registration provisions have now been eliminated, Canada recognizes that non-sex-based inequities, such as the "second generation cut-off," enfranchisement and the Métis scrip system continue to impact Indigenous Peoples. ISC continues to collaborate with Indigenous Peoples and other partners to address the remaining inequities in registration.

In keeping with the commitment to reconciliation and a renewed nation-to-nation relationship with Indigenous Peoples, Canada has committed to work with Indigenous Peoples and other partners to make legislative changes to address registration concerns and broader issues. Since the full implementation of S-3, Canada continues to engage with First Nations and Indigenous groups to address remaining inequities in registration. These collaborative efforts include working with organizations such as the Assembly of First Nations (AFN), Native Women's Association of Canada (NWAC), and Feminist Alliance for International Action (FAFIA) on outreach and awareness activities to reach individuals who may be newly eligible for registration.

THROUGH THESE PARTNERS, AS WELL AS WITH INDIGENOUS LINK, ISC DISTRIBUTED A ROBUST COMMUNICATIONS PACKAGE ON S-3 AND REGISTRATION TO OVER 20,000 INDIVIDUALS AND OVER 700 WOMEN'S ORGANIZATIONS.

ISC continues to meet with First Nations and stakeholders to deliver this information and encourage registration through outreach and awareness sessions. Furthermore, ISC has developed a national monitoring approach to identify, evaluate, and assess the effects and impacts of S-3 on communities across Canada.

With these efforts, Canada continues to take steps to right past wrongs against Indigenous women. Implementing Bill S-3 shifts towards confronting Canada's history. It ensures that Canada continues to renew and rebuild its relationship with Indigenous Peoples based upon affirming rights, respect, cooperation, and partnership.

Image Source: Canva

"BEYOND BLOOD QUANTUM: DEFINING INDIGENOUS PEOPLES AND THE *UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES*"

BY BRENDA GUNN

NOT ONLY HAS THE *INDIAN ACT* DISCRIMINATED AGAINST WOMEN IN ITS REGISTRATION PROVISIONS, BUT THIS DISCRIMINATION WAS INTENTIONAL AS PART OF THE GENDERED WAR ON FIRST NATIONS.

Image Source: Author

BRENDA GUNN (MÉTIS) IS THE ACADEMIC AND RESEARCH DIRECTOR FOR THE NATIONAL CENTRE FOR TRUTH AND RECONCILIATION

There have been many attempts to address the sex discrimination based on the decades of advocacy by many First Nations women. To better align with international human rights law, it is important to first understand the implications of ongoing sex discrimination and explore the need to determine Indian status and broader understandings of Indigeneity. First Nations women have long turned to the international human rights arena after all the frustrations and failures of the Canadian legal system.

The Canadian approach to *Indian Act* registration is problematic for many reasons. One such reason is the way the *Indian Act* perpetuates measuring one's Indigeneity based on how much "Indian" blood one has. Indigeneity is not about blood quantum, but about nationhood. As long as Canada continues to see *Indian Act* status as connected to blood

quantum, it will continue to undermine equality, and fail to uphold the fundamental human rights of Indigenous Peoples.

One of the main human rights instruments relevant to Indigenous Peoples is the UN *Declaration on the Rights of Indigenous Peoples*. The UN General Assembly adopted the Declaration on September 13, 2007. The Declaration has been described as the "most comprehensive and advanced of international instruments dealing with Indigenous Peoples' rights" as it recognizes a full range of Indigenous Peoples' inherent civil, political, economic, social, cultural and environmental rights.

THE DECLARATION RECOGNIZES INDIGENOUS PEOPLES' INHERENT RIGHTS ARE GROUNDED IN THEIR OWN CUSTOMS, LAWS AND TRADITIONS. THESE RIGHTS ESTABLISH THE MINIMUM STANDARDS ALL STATES MUST ADHERE TO IN ORDER TO PROTECT INDIGENOUS PEOPLES AROUND THE WORLD.

Canada endorsed the Declaration and committed to implement it. One way the government is implementing the Declaration is through the *UN Declaration Act* (formerly Bill C-15). As Canada engages in the process of implementing the Declaration, it is crucial we address the ongoing sex discrimination in the *Indian Act*. We must ensure that new approaches to Indigenous Peoples' rights do not perpetuate problematic understandings of Indigeneity, such as blood quantum.

When thinking about who has rights under the Declaration, we must first understand who international law views as Indigenous Peoples. There is no universal definition of 'Indigenous Peoples' in international law and it is widely viewed that a set definition is not required to protect Indigenous Peoples' human rights. Nevertheless, over the past few decades, several criteria provide guidelines to determine whether the term 'Indigenous Peoples' applies to a particular group.

In the early 1980s, the Working Group on Indigenous Populations (WGIP) outlined four factors to help identify Indigenous Peoples:

- Prior occupation of a specific territory;
- A distinctive culture including language, social organization, religion and spiritual values, modes of production, laws and institutions;
- Collectively self-identified as Indigenous, and are recognized by others or state authorities as a distinctive collective; and
- Typically experienced subjugation, marginalization, dispossession, exclusion or discrimination irrespective of whether those conditions persisted.

What is notably missing from this description is any measure of blood quantum. These factors do not define Indigenous Peoples by determining how much 'Indian' blood someone has, like the approach taken by the *Indian Act*.

Once recognized as an Indigenous People, international law recognizes several rights, including those in the Declaration. Self-determination is a foundational right from which all other rights flow. One aspect of self-determination is self-government. Indigenous Peoples have the right to be autonomous and to self-govern their internal and local affairs. This includes the right to maintain and develop their political, economic and social systems or institutions (UNDRIP Articles 4, 5 and 20.1).

It is particularly relevant to Indigenous Peoples' right to self-government that each Indigenous person has the right to be Indigenous and to self-define. This right is found extensively throughout the Declaration:

- Indigenous Peoples have the right to a nationality (Article 6) and to belong to an Indigenous community or nation in accordance with their traditions and customs (Article 9).
- Indigenous Peoples have to right to determine their own identity or membership in accordance with their customs and traditions without impairing their right to obtain citizenship of the States in which they live (Article 33.1).
- Indigenous Peoples can determine these structures and membership criteria in accordance with their own procedures (Article 33.2) including the responsibilities of individuals to their communities (article 35).

What is often missed in this conversation is the Declaration's provision on gender equality. Article 44 provides "All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals." When we discuss Indigenous Peoples' rights to belong to an Indigenous community or nation, this applies equally to Indigenous women and men. Importantly, gender equality also informs Indigenous Peoples' right to determine their own membership in accordance with their customs and traditions.

PROMOTING GENDER EQUALITY IN DETERMINING MEMBERSHIP IS IMPORTANT TO ENSURE FIRST NATIONS MEN AND WOMEN CAN EQUALLY EXERCISE THEIR RIGHTS, INCLUDING TO PRACTICE THEIR DISTINCTIVE CUSTOMS AND CULTURE IN ACCORDANCE WITH INTERNATIONAL HUMAN RIGHT STANDARDS (ARTICLE 34).

Image Source: Getty

SECOND GENERATION CUT-OFF: WHAT IT MEANS TO BE CUT OFF

BY SARAH NIMAN

STATUS IS NOT JUST A STAMP ON A CARD, IT IS A BUNDLE OF RIGHTS. IT IS A RIGHT TO LIVE ON AND USE RESERVE LANDS, THE RIGHT TO RECEIVE MONEY FOR NATURAL RESOURCES ON THEIR LANDS, AND THE RIGHT TO RECEIVE FEDERAL FUNDING FOR EDUCATION, HEALTH COSTS AND ACTIVITIES.

Under the *Indian Act*, when a First Nations woman married a non-Indian, she lost all her status rights, including the right to live in her home on her reserve. Even if she later divorced that partner, she could never return home.

Sharon McIvor was born in 1948. She grew up knowing she was not entitled to status, even though she lived as a member of the Lower Nicola Indian Band. Her family tree included several partnerships between First Nations women and non-Indian men, so she understood her entitlement to status was severed several times over, under *Indian Act* status rules at the time.

As a girl, when she harvested berries and roots, or went hunting and fishing in the traditional way, she and her siblings had to do it covertly. They had suffered the public shame of seeing their father arrested for fishing and hunting in the traditional custom, all because he was not status.

Sharon grew up, married a non-status man, and raised a family.

In 1985, she applied for and was granted status when Canada changed the rules to conform to the new *Charter of Rights and Freedoms*.

Sharon also applied for status for her children, but they received status they could not pass onto their children. In Sharon's case, her children were the end of the line because her lineage followed a pattern of First Nations women marrying non-Indian men. This is known as the Second Generation Cut-Off Rule. The rule holds that after two subsequent generations where a status First Nations person marries a non-status person, status entitlements are cut off. If Sharon had come from a line of First Nations men who married non-Indian women, there would not have been a problem passing status onto future generations because the pre-1985 Act permitted men, and not women, to extend entitlement to status through marriage.

Sharon's son Jacob was born in 1971. He grew up knowing he was not entitled to status, even though he lived as a member of the Lower Nicola Indian Band. His father was non-Indigenous, and Sharon did not receive status until 1985. Like his mother, Jacob participated in traditional land-based activities like hunting and fishing covertly as a young boy, tagging along with status-holding friends. He could never learn to catch the fish or shoot game because he did not have status entitlement to legally engage in these acts on his Traditional Territory.

Jacob was excluded from participating in the annual Native hockey tournament, a big community event, because he did not have status. While his status-holding friends received funding to cover hockey registration fees in the regular season, Jacob's family had to pay out of pocket, sometimes struggling to do so.

Jacob's cousins had status, but he did not. He said while he was growing up, it hurt to be treated as if he was not a "real Indian" by members of his community because he did not have status. He believed that he was a "real Indian", but the exclusion caused him to doubt who he was and to make him feel as if he did not belong anywhere.

Jacob eventually was granted status, married a non-Indian woman and had children. He could not pass status to his children, however, because his mother and grandmother had married non-Indian men.

In 2007, Sharon and Jacob sued Canada, arguing the Indian Act status rules discriminated against applicants based on whether their status-entitled ancestors were men or women. The Court agreed and struck down s.6 altogether. Canada appealed, and in 2009, the BC Court of Appeal left s.6 intact, repealing only narrow sections of it. This did not solve the sex-based discrimination, nor the Second Generation Cut-Off rule.

After the McIvor court case, Canada changed the rules again, this time allowing for people like Jacob to have status under s. 6(1). This meant he could pass status to his children, but his children would only have s. 6(2) status, since their mother was non-Indian. Jacob's children could not pass status to their children.

Dissatisfied by the legal conclusions in Canada, Sharon took her complaint to the United Nations Human Rights Committee in 2020. The Committee agreed Canada's status rules discriminated against Indigenous women and their descendants. The UN told Canada to remove all remaining discrimination in order to comply with Canada's international human rights commitments.

Canada changed the rules again, under Bill S-3, in 2017. Today, the *Indian Act* still uses a two-tier system, sections 6(1) and 6(2), to register status Indians. Under section 6(1), the status holder can pass down status to their children. Under section 6(2), status parents can only pass down status to their children. If their children marry partners who are non-Indigenous and not entitled to status, their children are not eligible for status.

The *Indian Act* rules continue to perpetuate a system where status is distilled through subsequent generations, depending on whether status-entitled parents marry non-Indigenous partners.

As we know from Sharon and Jacob's lived experience, this is not just denying people a piece of paper, it is denying their Indigenous identity, roles in their community, and entitlement to all of the bundle of rights associated with Indian status.

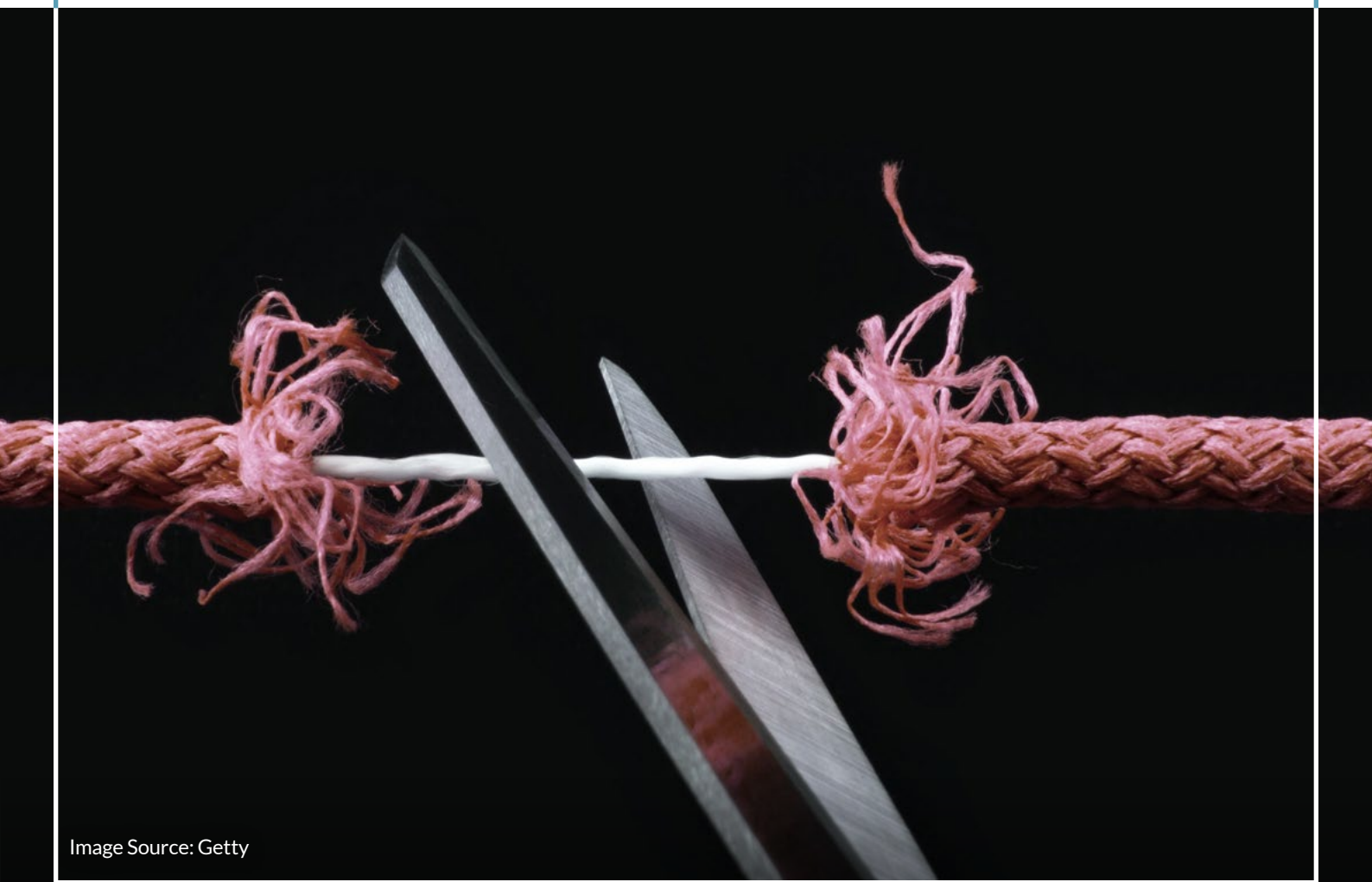

Image Source: Getty

ENFRANCHISEMENT: UNMARRIED WOMEN'S CAPACITY TO VOLUNTARILY ENFRANCHISE

BY KARL HELE

IN LATE JULY 2020, MERE DAYS BEFORE MY DAUGHTER'S 10TH BIRTHDAY, JUDGE BABAK BARIN OF THE QUÉBEC SUPERIOR COURT DELIVERED A WONDERFUL BIRTHDAY PRESENT: THE HELE DECISION. HE RULED THE INDIAN REGISTRAR HAD ERRED IN LAW WHEN IT ALLOWED MY MOTHER, AN UNMARRIED INDIAN-STATUS WOMAN, TO VOLUNTARILY ENFRANCHISE IN 1965. SIMPLY, THE *INDIAN ACT* WHEN REVISED IN 1951, AND IN FORCE TO 1985, DID NOT ALLOW FOR UNMARRIED WOMEN TO VOLUNTARILY RENOUNCE THEIR STATUS.

Image Source: Author

KARL HELE IS A MEMBER OF THE GARDEN RIVER FIRST NATION AND A PROFESSOR OF INDIGENOUS STUDIES AT MOUNT ALLISON UNIVERSITY.

Shortly after my daughter's birth in 2011, I submitted her status registration forms to the Indian Registrar. I assumed the *McIvor* decision in British Columbia and Bill C-3 (2010) extended status to the grandchildren of women who married out. From my knowledge, my mother Margaret, had lost her status when marrying a non-Indian in 1969. With the passage of Bill C-31 in 1985 both my mother and I were able to register for status. When the Registrar rejected my child's application in April 2012, the rejection letter told me my mom had voluntarily enfranchised in 1965.

In conversation with my mom, I learned she indeed voluntarily enfranchised in an effort to shield her mother and sisters from harassment. After graduating high school, Margaret (my mom) obtained a teaching certificate and moved to different cities throughout Ontario for work. While she was away from the Garden River reserve, her mother began to be harassed by Band Councillors and others from the reserve, demanding that all her children living away from the community enfranchise. These individuals insisted all women who lived away from the reserve would marry non-Indians and would have to enfranchise anyway. Mom decided the best way to end the harassment and threat was to voluntarily enfranchise. Mom told me the thought of marrying a non-Indian also crossed her mind, but did not play a significant role in her decision.

Indian Affairs could not locate and has not located my mother's request for enfranchisement. Her voluntary enfranchisement was anything but 'voluntary'; it was coerced by threats and harassment. After listening to my mother's story, I decided to look at the *Indian Act*.

I am a university professor who partly specializes in *Indian Act* history. In fact, I regularly teach a course about this piece of colonial legislation. I knew the *Indian Act* provided a means for both involuntary and voluntary enfranchisement and, since 1985, there were residual aspects of gender discrimination within. I found a copy of the Act from 1951 and 1952 and read the section that allowed for voluntary enfranchisement – section 108.

From my initial and subsequent readings, it appeared that unmarried women were legally incapable of voluntarily enfranchising. Only men, married women, and minor children could voluntarily enfranchise. From my perspective, this meant my mom had been voluntarily enfranchised contrary to the rules in force in 1965.

I sought a lawyer's advice about the Registrar's denial of my daughter's registration. The lawyer offered to appeal the Registrar's letter and began preparing a case file. The Registrar upheld the decision, so we decided it was incredibly important for my daughter, as well as an unknown number of women and their descendants, to seek justice through the courts. We filed an appeal in 2018.

In January 2020, we spent two days arguing the Indian Registrar's decision not to register my daughter was based on a misreading of a 1952 Indian Act rule, which led to an unauthorized or illegal enfranchisement in 1965 that, in turn, impacted my status under the 1985 amendments.

Judge Barin's July 2020 ruling confirmed my mother could not have voluntarily enfranchised in 1965 and held that any unmarried women could not have voluntarily enfranchised between 1951 and 1985.

All this leads me to conclude that the much-touted 'equality' of the current Indian Act relies on the now invalidated, rejected, repealed, and decried colonial sexist and racist notions of enfranchisement.

In his ruling, Justice Barin offered his opinion regarding how the courts in enfranchisement cases should proceed in future. In denying my daughter's application, the Registrar "in a way required the Indigenous peoples of Canada and Canadian society at large to continue to assume the unfortunate consequences of an undesired past." His words highlight the fact that the Indian Act amendments in 1985, 2011, 2016, and 2019, reinforced and relied upon enfranchisement policies from 1869 through 1985.

The judge also determined section 108(1) must be read in the "light of the current societal, political and legal context." Since enfranchisement was abolished in 1985, contemporary Canadian courts should not be required to uphold dubious enfranchisement rulings. To do so would be "nonsensical", in his words.

The Crown declined to appeal, meaning the ruling affects all unmarried women who 'voluntarily' enfranchised between 1951 and 1985. My daughter is registered for status. Despite the personal and financial costs of the case, born largely by myself and my mother, we felt vindicated by the ruling. It has helped my family, and an unknown number of women and their descendants.

The decade-long process, while positively affecting my family, has had a larger impact for voluntarily enfranchised unmarried women and their descendants across Canada.

Image Source: Getty

APPLICATION PROCESS FOR REGISTRATION

WHAT INFORMATION IS NEEDED TO APPLY FOR INDIAN STATUS?

Applicants may apply at any Regional Office of Indigenous Services Canada or by completing the Indian Registration application form, providing all documents (see Indian Registration checklists) and mail it to the following address:

Application Processing Unit
Indigenous Services Canada
PO Box 6700
Winnipeg, Manitoba R3C 5R5

Applicants must submit:

1. Completed Adult Application for Registration (#83-168) or Child/Dependent Adult Application for Registration (#83-171). The application forms can be found at www.canada.ca/indian-status;
2. Original birth certificate (long form version listing parents' names);
3. A copy of one (1) piece of valid supporting identification that includes the applicant's or the parent/legal guardian's (if applying on behalf of a child/dependent adult) name, date of birth, photo and signature. The identification must be issued by a federal provincial/territorial/state government authority, or equivalent issued abroad.

Alternatively, certified copies of two (2) valid pieces of supporting identification that together include the applicant's name, date of birth, photograph, and signature may be provided. If the applicant cannot meet the supporting identification requirements, they may provide a Guarantor Declaration Form (#83-169) or a Statutory Declaration Form in Lieu of a Guarantor (#83-170); and

Optional

Two (2) Canadian passport-style photographs. If photos are not submitted with the application and the applicant is found to be eligible for Indian Status, the applicant's name will be added to the Indian Register, but a secure status card will not be issued.

You can now take your own photo when applying for a Secure Certificate of Indian Status (SCIS), or secure status card, and submit it with your guarantor's name, email address and signature straight from your smartphone using the SCIS Photo App:

- Visit Google Play or the App Store to download the app free of charge
- Follow on-screen instructions
- No personal information is stored in the SCIS Photo App
- Collection, use and disclosure of personal information are in accordance with the *Privacy Act*

Information updates will be posted on the Federal Government's Indian Status website: www.canada.ca/indian-status.

CHECKLISTS

INDIAN REGISTRATION – CHECKLIST APPLICATION FOR AN ADULT (16 AND OLDER)

REQUIRED DOCUMENTS:

- **Application for Registration on the Indian Register and for the Secure Certificate of Indian Status for Adults 16 Years of Age or Older – Form 83-168E**
- **Original Birth Certificate**
  - > Long form version listing parents' names.
- **Identification** *(Federal, Provincial/Territorial/State or equivalent issued abroad)*
  - > One acceptable valid supporting identity document that shows the applicant's name, signature, date of birth and photo. **Examples include:** Driver's license, health card or passport.

IF APPLICABLE:

- **Legal name change document(s) or marriage certificate(s)**
  - > Required if the name on the application or identification provided is not the same as the name on the birth certificate.
- **Guarantor Declaration**
  - > Required for mail-in applications, third party applications, or to complement incomplete identification.
- **Two Canadian Passport-style Photos (of the adult applicant)**
  - > The back of one photo must include the photographer's stamp or written information including:
    - the date the photo was taken
    - name and complete address of the photo studio.
  - > If the applicant does not provide photos with their application, their name will be added to the Indian Register but they will not be issued a Secure Certificate of Indian Status.
- **Information to Demonstrate Family Affiliation (if available)**
  - > Names of any relatives who are/were registered under the Indian Act;
  - > Information regarding ancestors that may help link the ancestors to the applicant and find the ancestors in ISC's records;
  - > Information regarding the applicant's parents and/or grandparents, with any other information that may help to identify ancestors in ISC's records.

CHECKLISTS

INDIAN REGISTRATION – CHECKLIST
APPLICATION FOR A MINOR CHILD (15 AND YOUNGER)

REQUIRED DOCUMENTS:

- **Application for Registration on the Indian Register and for the Secure Certificate of Indian Status (SCIS) for Children 15 Years of Age or Younger, or Dependent Adults – Form #83-171E**
- **Original Birth Certificate (of the minor child)**
  - > Long form version listing parents' names.
- **Identification (of the applicant)** *(Federal, Provincial/Territorial/State or equivalent issued abroad)*
  - > One acceptable valid supporting identity document that shows the applicant's name, signature, date of birth and photo. **Examples include:** Driver's license, health card or Canadian passport.

IF APPLICABLE:

- **Custody Court Order**
  - > Legal documents pertaining to custody or guardianship must be provided.
  - > Both parents or guardians must sign the application form if both of their names appear on the child's birth certificate or legal documentation.
  - > If only one parent or guardian signs the application form, a court order granting sole custody or guardianship of the child must be provided with the application.
- **Legal Name Change Document(s) or Marriage Certificate(s)**
  - > Required if the name of the child on the application is not the same as the name on the birth certificate or legal documentation.
  - > Required if the name on the identification provided by the parent/guardian is not the same as the name listed on the child's birth certificate or legal documentation.
- **Guarantor Declaration**
  - > Required for mail-in applications, third party applications, or to complement incomplete identification.
- **Two Canadian Passport-style Photos (of the minor child)**
  - > The back of one photo must include the photographer's stamp or written information including:
    - the date the photo was taken
    - name and complete address of the photo studio.
  - > If the applicant does not provide photos of the minor child with the application, the child's name will be added to the Indian Register but they will not be issued a Secure Certificate of Indian Status.

NOTE: The applicant is the parent or legal guardian who is applying on behalf of the child.

CHECKLISTS

INDIAN REGISTRATION – CHECKLIST
APPLICATION FOR A DEPENDENT ADULT

REQUIRED DOCUMENTS:

- **Application for Registration on the Indian Register and for the Secure Certificate of Indian Status (SCIS) for Children 15 Years of Age or Younger, or Dependent Adults – Form #83-171E.**
- **Original Birth Certificate (of the dependent adult)**
  - > Long form version listing parents' names.
- **Identification (of the applicant)** *(Federal, Provincial/Territorial/State or equivalent issued abroad)*
  - > One acceptable valid supporting identity document that shows the applicant's name, signature, date of birth and photo. **Examples include:** Driver's license, health card or Canadian passport.
- **Order of Guardianship**
  - > If there is more than one listed guardian on the Order of Guardianship, they must both sign the application form and provide identification.

IF APPLICABLE:

- **Legal Name Change Document(s) or Marriage Certificate(s)**
  - > Required if the name of the dependent adult on the application is not the same as the name on the birth certificate and/or the Order of Guardianship.
  - > Required if the name on the identification provided by the guardian is not the same as the name listed on the Order of Guardianship.
- **Guarantor Declaration**
  - > Required for mail-in applications, third party applications, or to complement incomplete identification.
- **Two Canadian Passport-style Photos (of the dependent adult)**
  - > The back of one photo must include the photographer's stamp or written information including:
    - the date the photo was taken
    - name and complete address of the photo studio.
  - > If the applicant does not provide photos of the dependent adult with the application, the dependent adult's name will be added to the Indian Register but they will not be issued a Secure Certificate of Indian Status.

NOTE: The applicant is the legal guardian who is applying on behalf of the dependent adult.

CHECKLISTS

SECURE CERTIFICATE OF INDIAN STATUS (SCIS CARD) – CHECKLIST ADULT APPLICATION

REQUIRED DOCUMENTS:

- **SCIS Application for Already Registered Persons – Adults, Children and Dependent Adults Form #83-172**
- **Two Canadian Passport-style Photos (of the adult applicant)**
  - > The back of one photo must include the photographer's stamp or written information including:
    - the date the photo was taken
    - name and complete address of the photo studio.
- **Identification** *(Federal, Provincial/Territorial/State or equivalent issued abroad)*
  - > One acceptable valid supporting identity document that shows the applicant's name, signature, date of birth and photo. **Examples include:** Driver's license, health card or Canadian passport.

ALTERNATIVES:

- Two or more valid pieces of identification can be combined to meet the identification requirements.
- If an applicant cannot meet the identification requirements, they can provide a guarantor declaration or a statutory declaration with two references.

IF APPLICABLE:

- **Legal Name Change Document(s) or Marriage Certificate(s)**
  - > Required if the name on the identification provided is not the same as the name under which the applicant is registered.
- **Guarantor Declaration**
  - > Required for mail-in applications, third party applications, or to complement incomplete identification.

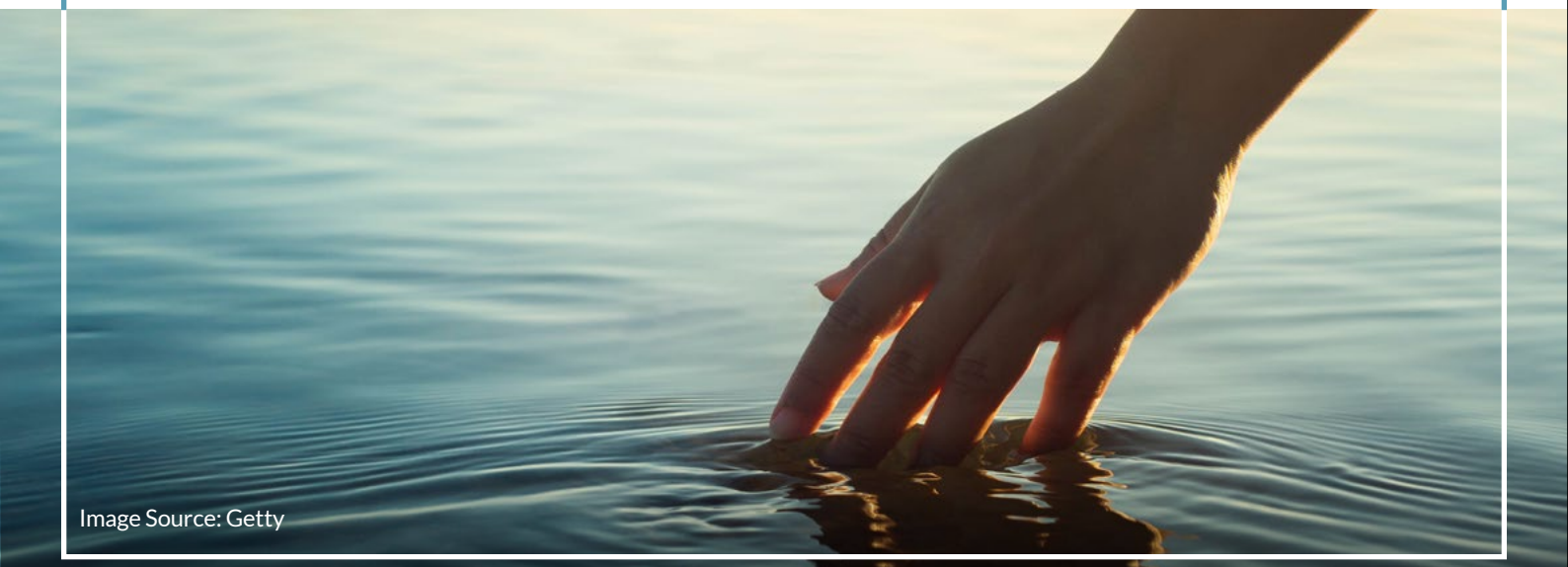

Image Source: Getty

CHECKLISTS

SECURE CERTIFICATE OF INDIAN STATUS (SCIS CARD) – CHECKLIST MINOR CHILD (15 AND YOUNGER) APPLICATION

REQUIRED DOCUMENTS:

- **SCIS Application for Already Registered Persons – Adults, Children and Dependent Adults Form #83-172**
- **Two Canadian Passport-style Photos (of the minor child)**
  - > The back of one photo must include the photographer's stamp or written information including:
    - the date the photo was taken
    - name and complete address of the photo studio.
- **Identification (of the applicant)** *(Federal, Provincial/Territorial/State or equivalent issued abroad)*
  - > One acceptable valid supporting identity document that shows the applicant's name, signature, date of birth and photo. **Examples include:** Driver's license, health card or Canadian passport.

ALTERNATIVE:

- Two or more valid pieces of identification can be combined to meet the identification requirements.
- If an applicant cannot meet the identification requirements, they can provide a guarantor declaration or a statutory declaration with two references.

IF APPLICABLE:

- **Legal Name Change Document(s) or Marriage Certificate(s)**
  - > Required if the name of the child on the birth certificate/legal documentation is not the same as the name under which they are registered.
  - > Required if the name on the identification provided by the parent/guardian is not the same as the name listed on the child's birth certificate or legal documentation.
- **Guarantor Declaration**
  - > Required for mail-in applications, third party applications, or to complement incomplete identification.
- **Custody Court Order**
  - > Legal documents pertaining to custody or guardianship must be provided, if applicable.

NOTE: The applicant is the parent or legal guardian who is applying on behalf of the child.

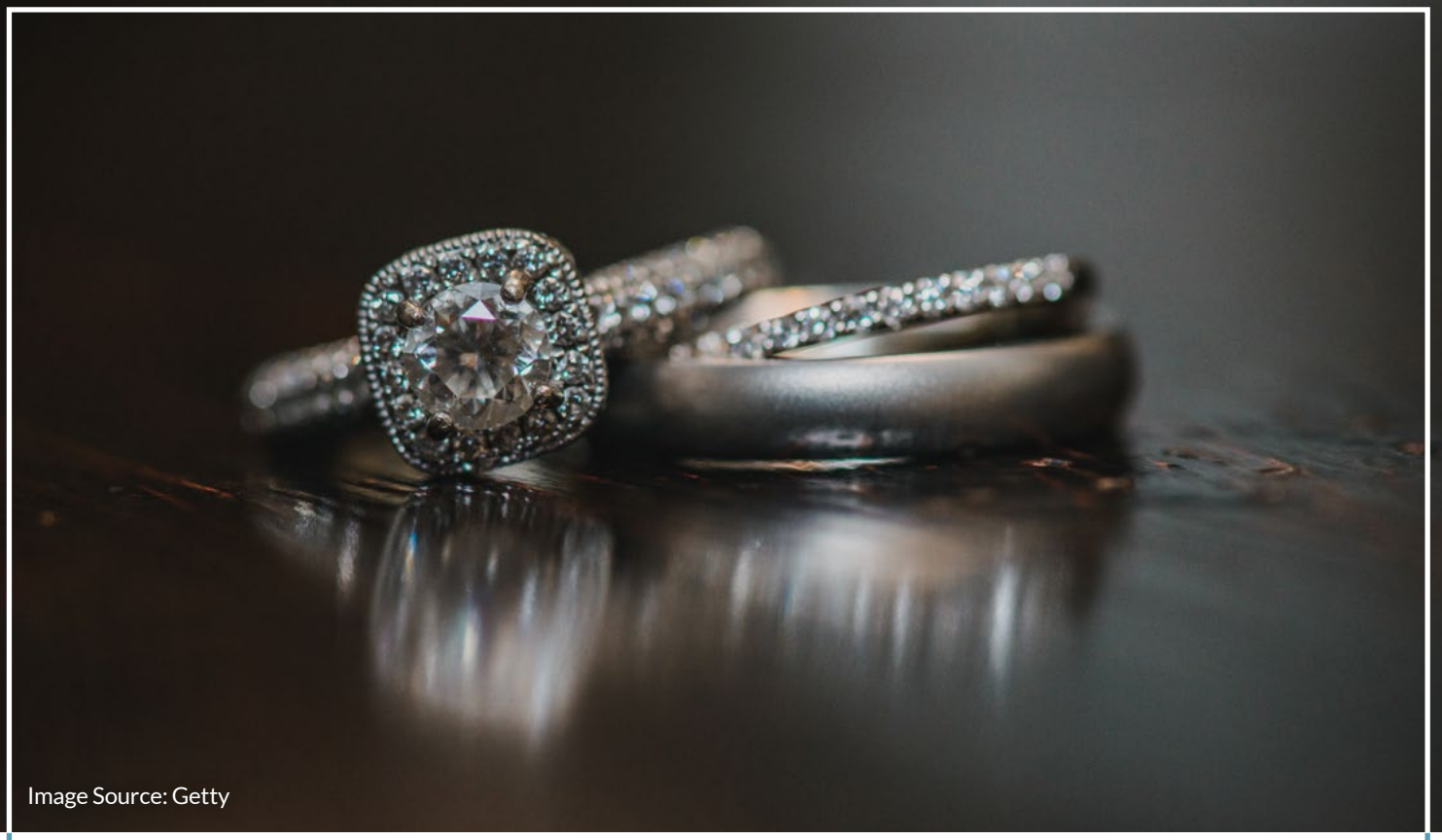

Image Source: Getty

A MARRIAGE BY WHOSE STANDARDS?

BY SARAH NIMAN

WHEN LEGISLATORS FIRST PENNED THE *INDIAN ACT*, WOMEN WERE NOT LEGAL PERSONS AT ALL, AND INDIGENOUS WOMEN WERE NOT 'INDIAN' UNLESS THEY WERE MARRIED TO AN 'INDIAN' MAN.

Social and legal views on gender roles and family structures have evolved; women have the right to vote and are socially valued regardless of whether they marry a man or not. Today's family laws reflect the evolving and expansive definitions of who acts as a parent to a child beyond a heteronormative male-female parental unit to include grandparents, aunts, uncles and other close relatives.

Over a century after the *Indian Act* was drafted, it still relies on a marriage between a man and a woman to determine whether one's children or grandchildren are entitled to register for Indian status.

The Indian Registrar will apply *Indian Act* section 6 when reviewing an application to register for status. The Registrar will look at the applicant's family information and ask: Was an Indigenous woman married at all (in the Western legal tradition), and if so, was she married to a status Indian man or a non-Indian man? These differences determine whether she can pass Indian status on to her children and future generations.

These questions about marital status refer only to marriage between a man and a woman because historic *Indian Act* versions do not reflect the legal reality of same-sex nor Indigenous customary marriages. Today's *Indian Act* membership provisions are interested in limiting status benefits to those related by blood or through adoption to a status-entitled person.

In 2017, Canada updated the *Indian Act's* status registration rules through Bill S-3 to eliminate sex-based discrimination that prevented Indigenous women from passing status to their descendants in the same ways as Indigenous men.

An Indigenous woman's marital status is a key element in the updated status eligibility rules. Under the new rules:

- A person can register for status if they are born before April 17, 1985 (regardless of whether their parents were married). But if the person was born after April 16, 1985, their parents must have been married to each other before April 17, 1985.
- A female status applicant born out of wedlock between September 4, 1951, and April 16, 1985, can register for status if her father had status or was eligible for status at the time of her birth. Also, the female applicant's mother must not have been entitled to status at the time of the applicant's birth.

These changes under Bill S-3 still require status applicants to know and prove dates, such as their parents' and grandparents' birth dates and marriage dates. The burden remains on the applicant to find and provide documents to validate their claim.

In some cases, the new registration rules rely on a person's parents being legally married. This requirement assumes Indigenous men and women got married in legally recognized ceremonies. The rules do not reflect the ways Indigenous relationships, including parenting and marriages, might differ from non-Indigenous cultures and societies. It is unclear whether Indigenous traditional marriages meet the *Indian Act* registration threshold.

The *Indian Act* has more catching up to do to align with modern Indigenous perspectives on what constitutes a family and the role of marriage. An Indigenous person applying to register for status may have been raised by people beyond their biological parents, such as aunties, grandparents or other adults not related to them by blood at all. Or their parents may never have been married in the Western legal sense.

IN 2019, CANADA PASSED *AN ACT RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES.* THIS LEGISLATION REFLECTS A WIDER RANGE OF FAMILY STRUCTURES AMONG INDIGENOUS FAMILIES AND COMMUNITIES. FOR EXAMPLE, WHEN THE ACT REFERS TO A 'FAMILY,' IT MEANS ANY PERSON WHOM "A CHILD CONSIDERS TO BE A CLOSE RELATIVE OR WHOM THE INDIGENOUS GROUP, COMMUNITY OR PEOPLE TO WHICH THE CHILD BELONGS CONSIDERS, IN ACCORDANCE WITH THE CUSTOMS, TRADITIONS OR CUSTOMARY ADOPTION PRACTICES OF THAT INDIGENOUS GROUP, COMMUNITY OR PEOPLE, TO BE A CLOSE RELATIVE OF THE CHILD."

This definition reflects that among Indigenous communities, a two-parent nuclear family structure with married opposite-sex parents is not a social norm. The *Indian Act* registration rules do not.

Native Women's Association of Canada

L'Association des femmes autochtones du Canada