



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

Proposed Legislative Amendments

March 23, 2017



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Bill S-3: Proposed Legislative Amendments

- Bill S-3 proposes to amend the *Indian Act* to eliminate known sex-based inequities in Indian registration, including remedies for the issues identified in *Descheneaux*:
 - **The Cousins Issue**: The differential treatment of first cousins whose grandmother lost status due to marriage with a non-Indian, when that marriage occurred prior to April 17, 1985.
 - **The Siblings Issue**: The differential treatment of women who were born out of wedlock of Indian fathers between September 4, 1951 and April 17, 1985.
- In its decision, the Court also advised (in *obiter*) that legislative amendments to address inequities in Indian registration not be limited to the specific facts in the *Descheneaux* case. With this in mind, the proposed amendments will also address:
 - **The Issue of Omitted Minors**: The differential treatment of minor children, who were born of Indian parents or of an Indian mother, but lost entitlement to Indian status because their mother married a non-Indian after their birth, and between September 4, 1951 and April 17, 1985.

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The Cousins Issue

- **The Issue**: The differential treatment in the acquisition and transmission of Indian status that arises among first cousins of the same family depending on the sex of their Indian grandparent.
- **The Effect**: Grandchildren of Indian women can acquire Indian status under subsection 6(2) of the *Indian Act*, but cannot transmit status to their children if they parent with a non-Indian.
- **Comparator Group**: Grandchildren of Indian men are registered under subsection 6(1), which enables them to transmit Indian status to their children, regardless of whether they parent with a non-Indian.
- **Proposed Amendments**: Would eliminate the differential treatment of grandchildren and great-grandchildren of women who had married non-Indian men. Entitlement to registration under subsection 6(1) of the *Indian Act* would be extended to the grandchildren and great-grandchildren of Indian women registered, or entitled to registration, under paragraph 6(1)(c) when they are born before April 17, 1985, or after April 16, 1985, of parents married before April 17, 1985.

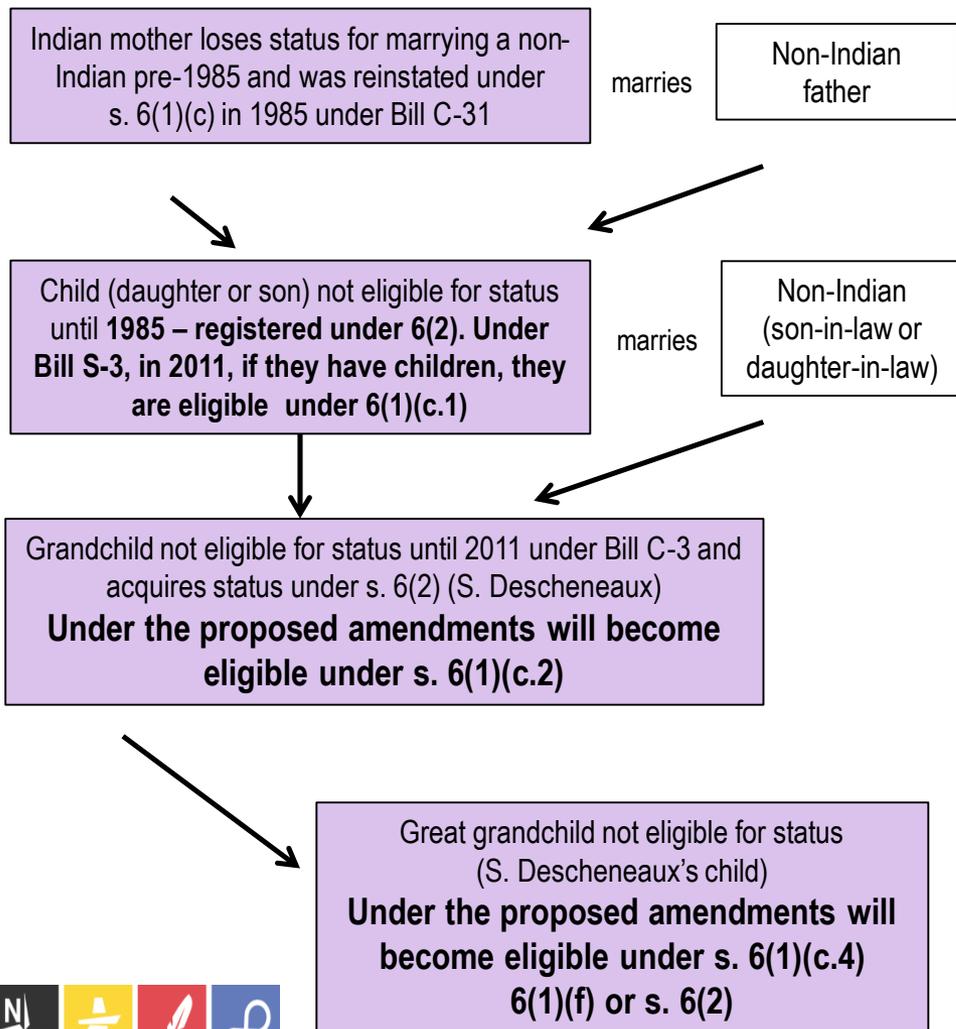
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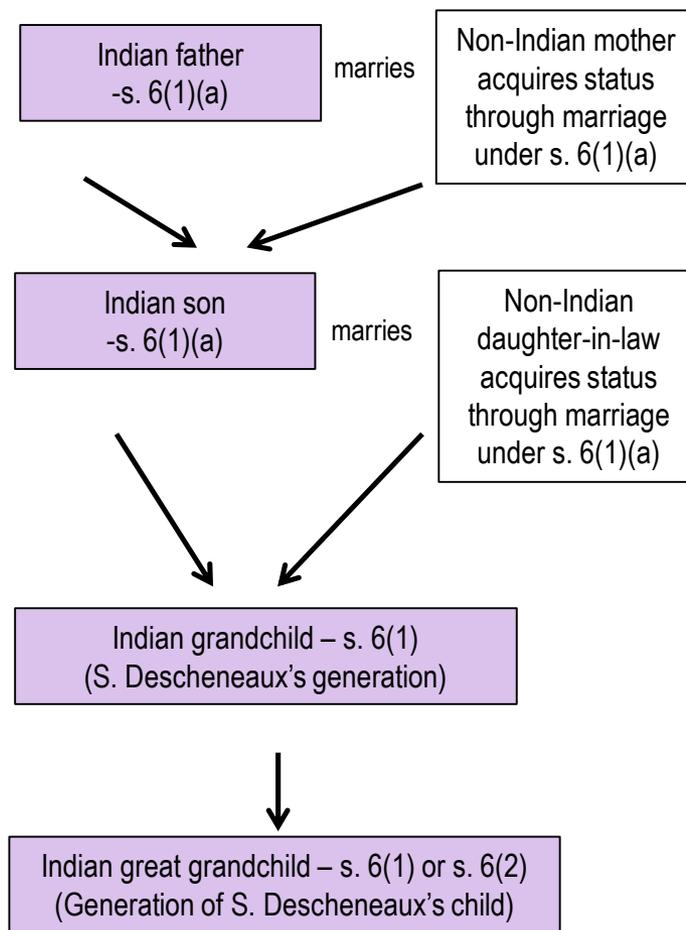


Addressing the Cousins Issue

Maternal Line (Situation of Stéphane Descheneaux)



Paternal Line (Comparator Group)



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The Siblings Issue (Women Born Out of Wedlock to an Indian Father)

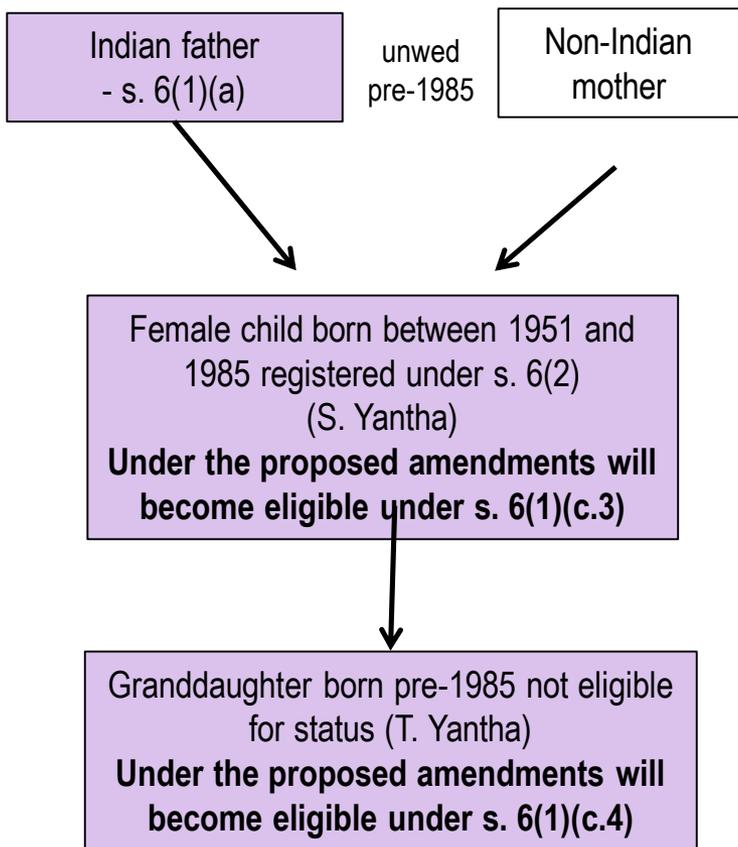
- **The Issue:** The differential treatment in the ability to transmit Indian status between male and female children born out of wedlock of an Indian father between the September 4, 1951 and the April 17, 1985 amendments to the *Indian Act*.
- **The Effect:** Indian women born out of wedlock between the 1951 and 1985 amendments to an Indian father, and who obtained Indian status under subsection 6(2), are more limited in regards to the transmission of Indian status to their children and cannot transmit status to their descendants (unless their child's father is a status Indian).
- **Comparator Group:** Indian men born out of wedlock to an Indian father who are registered under subsection 6(1) can transmit status to their children regardless of whether they parent with a non-Indian woman.
- **Proposed Amendments:** The siblings issue would be addressed by eliminating the differential treatment of male and female children of Indian men, who were born out of wedlock between the *Indian Act* amendments of September 4, 1951 and April 17, 1985.



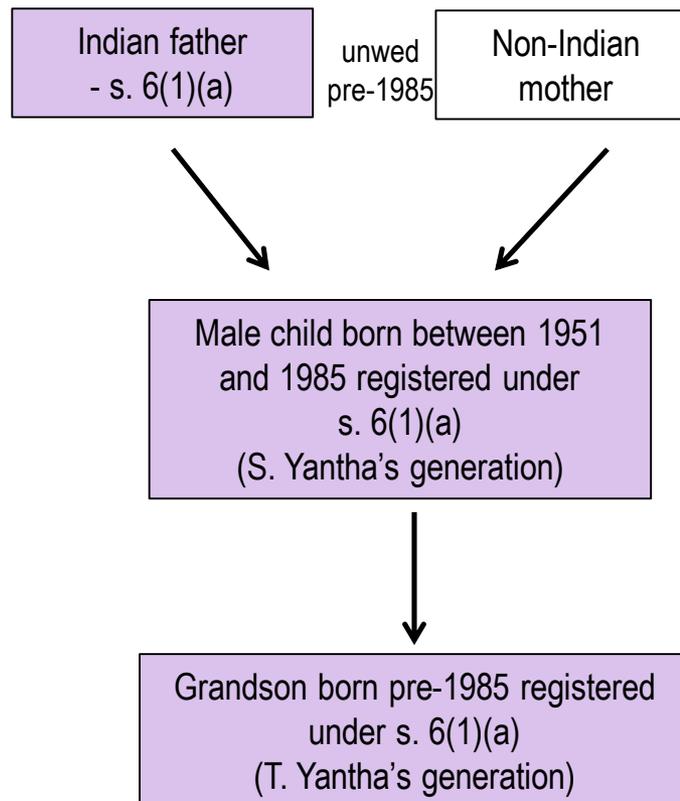


Addressing the Siblings Issue

Female child born out of wedlock to Indian male between 1951 and 1985 (Situation of Susan and Tammy Yantha)



Male child born out of wedlock to Indian male between 1951 and 1985 (Comparator Group)



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The Issue of Omitted Minors

- **The Issue:** Minor Indian children born to Indian parents or to an Indian mother could be removed from the Indian Register if their mother married a non-Indian between September 4, 1951 and April 17, 1985 if they were still unmarried minors at the time of their mother's marriage.
- **The Effect:** At present, these individuals would be entitled to Indian status under paragraph 6(1)(c) of the April 17, 1985 *Indian Act*, which would allow them to transmit status to the next generation under subsection 6(2). If the children of these individuals parent with a non-Indian their off-spring would not be entitled to registration because of the operation of the second-generation cut-off. In addition, the grandchildren of individuals entitled under 6(1)(c) who lost status as a result of their mother's marriage to a non-Indian are not eligible for registration pursuant to the 2010 *Gender Equity in Indian Registration Act* (Bill C-3).
- **Comparator Group:** If an Indian man has children who are registered, and he subsequently married a non-Indian prior to April 17, 1985, there is no impact on the entitlement to registration of his children, or in turn, their ability to transmit eligibility to Indian status to their children.
- **Proposed Amendments:** Would ensure that an individual's ability to transmit status is not affected by their mother's marriage to a non-Indian, when that marriage occurred after that individual's birth.

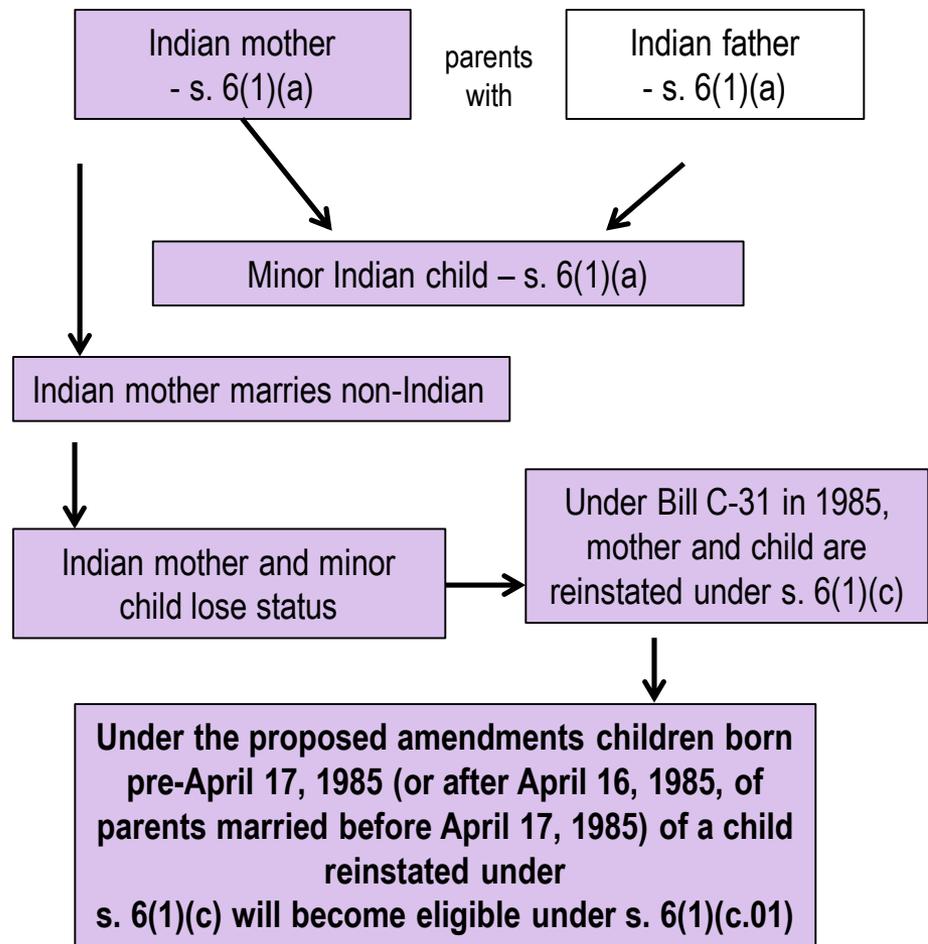
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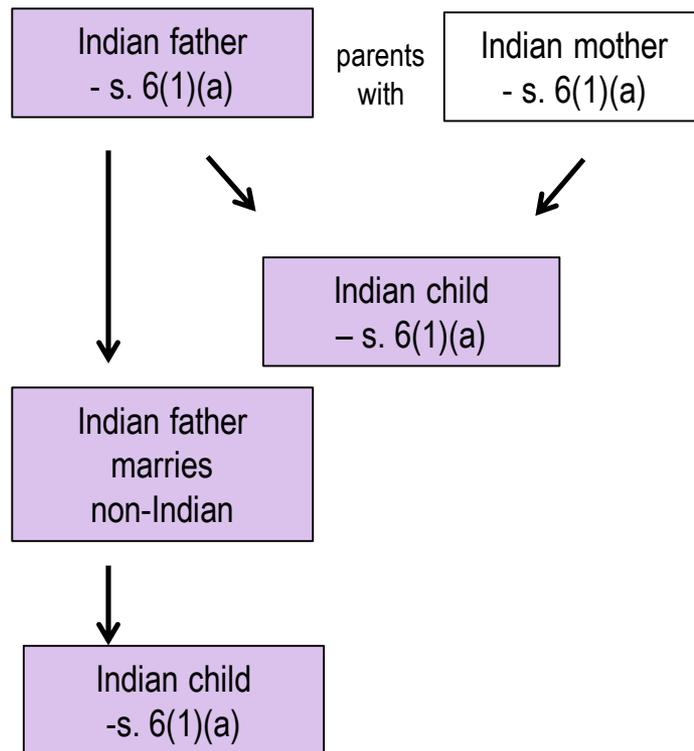


Addressing the Issue Omitted Minors

Minor child born of Indian parents; mother marries a non-Indian man, between 1951 and 1985, after the birth of the minor child; minor child loses status



Child born of Indian parents; father marries a non-Indian woman, between 1951 and 1985, after the birth of the child; child retains status



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