

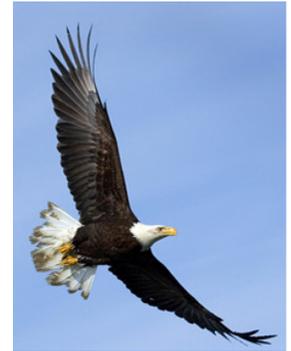
## BILL C-3: ANOTHER ATTEMPT TO MAKE THE *INDIAN ACT* NON-DISCRIMINATORY

Bill C-3: *Gender Equity and the Indian Registration Act*, amends provisions of the *Indian Act* that the British Columbia Court of Appeal found to be unconstitutional in the case of *McIvor et al. v. The Registrar INAC et al.* Bill C-3 attempts to ensure that eligible grandchildren of women who lost status as a result of marrying non-Indian men will become entitled to registration (Indian status).

Though Bill C-3 received Royal Assent on December 15, 2010, it will not come into force until a date to be set by the Governor General in Council. This date must be before January 31, 2011 as a result of the stay issued by the British Columbia Court of Appeal in *McIvor et al. v. The Registrar INAC et al.* The view of Indian and Northern Affairs Canada (“INAC”) regarding these amendments is that the person applying must have been born after September 4, 1951 (making them 59 years old) OR if born before September 4, 1951, (older than 59) that they had a sibling who was born after September 4, 1951. No person who qualified for registration prior to this amendment will lose registration because of it.

Bill C-3 only applies to Nations who continue to operate under the *Indian Act* as opposed to Nations that have established their own membership rules. This may be an artificial barrier however, since many cases have held various provisions to be unconstitutional because of section 15 of the *Charter*. *Corbiere* and cases applying it such as the lengthy *Sawridge* case, are an example of the way that this type of provision may end up applying to all Nations.

Estimates of the number of individuals who will be eligible to be registered as Indians under sections 6(1)(c) or 6(2) are difficult to make. INAC originally estimated between 20,000 and 40,000 individuals and then raised this



Davis LLP's **Aboriginal Law Group** has provided legal advice to First Nations people, and those wishing to conduct business with them, for over 35 years. We represent First Nations, Tribal Councils and Aboriginal non-profit organizations, businesses and individuals in British Columbia, the Yukon, the Northwest Territories, Nunavut and Alberta.

We provide service to Aboriginal people from our offices in Vancouver, Edmonton, Whitehorse and Yellowknife. Our Whitehorse and Yellowknife lawyers live in the cities where they work, and travel to outlying communities across the North.

### Contributors in this issue:

**Priscilla Kennedy**  
Associate Counsel  
Edmonton  
780.429.6830  
pkennedy@davis.ca

**Brock Roe**  
Associate  
Edmonton  
780.429.6825  
broe@davis.ca

number to 45,000 in the spring of 2010. INAC used an estimate of the number of Indians registered under section 6(2) as a person whose mother was, or was entitled to be, registered under section 6 (1). Based on a review in 2004, there were 51,750 individuals who could qualify to be registered under section 6(1) who were registered under section 6(2). About 15% of these individuals were resident on Reserve.

INAC also utilized assumptions based on declining fertility rates, moderately increasing life expectancy, and moderately declining rates of individuals acquiring registration through Bill C-31. They anticipate processing applications in 4 to 6 months. This may be an unrealistic amount of time depending on whether their projections of numbers are realistic or not.

There is no certainty in the numbers, and the assumptions by INAC may not be accurate since many Nations are experiencing increased birth rates. As well, assumptions about families in the period around 1951 do not appear to be accurate. Based on Nations in Alberta and Saskatchewan, females often had children commencing in their teenage years and

extending until they were in their 40's, potentially a 30 year span with the possibility of having persons who would now be up to 87 years of age being able to qualify for registration under section 6(1) because of a sibling who was born after September, 1951.

Uncertainties in numbers may be reflected in the situation of Nations when they receive funding from INAC. It is doubtful that funding will reflect increased numbers and in some situations, it will be difficult to assess how numbers will be affected in the future. Health care programs, dental care programs, schooling, post-secondary funding and housing on reserve may all be heavily affected by these changes.

Bill C-3 contains a provision which states that no claim can be made for benefits prior to registration. This provision may be subject to challenge and therefore it is difficult to determine at this point whether or not there will be consequences for land claim settlements and settlement of specific claims by members being added as a consequence of Bill C-3.

## Aboriginal Law Practice

The Davis LLP Aboriginal Law Practice Group has provided legal advice to First Nations people, and those wishing to conduct business with them, for over 35 years. We represent First Nations, Tribal Councils and Aboriginal non-profit organizations, businesses and individuals in British Columbia, the Yukon, the Northwest Territories, Nunavut and Alberta. We provide service to Aboriginal people from our offices in Vancouver, Edmonton, Whitehorse and Yellowknife.

Our Group has extensive experience advising and representing First Nations in the following key areas:

### 1. Economic Development

We have extensive experience advising First Nations on all aspects of economic development. We regularly assist with land development, the structuring of business organizations, establishment of trusts, taxation issues, employment matters,

issues relating to financing and numerous other aspects of economic development projects.

Litigation - Our Group has represented First Nations at all Court levels on a variety of issues of national importance.

Land Claims - We provide land claims counsel to a number of First Nations in B.C. and the North.

### 2. Emerging Issues

The following matters are continuing to increase in importance:

- Aboriginal governance, including the governance of bands, organizations and companies;
- Aboriginal fishing rights; and
- Sophisticated structuring of business organizations.

## For more information, please contact:

### Vancouver

**Robert Banno**  
604.643.2903  
rbanno@davis.ca

**Angeline Nyce**  
604.643.6420  
anyce@davis.ca

### Edmonton

**Priscilla Kennedy**  
780.429.6830  
pkennedy@davis.ca

**Brock Roe**  
780.429.6825  
broe@davis.ca

### Whitehorse

**Rod Snow**  
867.393.5105  
rsnow@davis.ca

**Jocelyn Barrett**  
867.393.5101  
jbarrett@davis.ca

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