

## **B.C. Supreme Court Overturns 1985 Indian Act Amendments Regarding Indian Status**

We would like to advise our clients of an important decision which could have significant implications for First Nations peoples and communities in Canada. The case was decided by the British Columbia Supreme Court in June, 2007 and is known as *McIvor v. The Registrar, Indian and Northern Affairs Canada*, 2007 BCSC 827.

The Court ruled that the 1985 amendments to the *Indian Act* known as Bill C-31 violate the equality rights guaranteed by section 15 of the *Canadian Charter of Rights and Freedoms*.

Bill C-31 was meant to end what many believed to be the discriminatory treatment of Aboriginal women and their children in the *Indian Act*. Until these 1985 *Indian Act* amendments an Indian woman lost her status when she married a non-Indian man, and her children were not entitled to be registered as status Indians. However, when an Indian man married a non-Indian woman, both his wife and his children were entitled to be registered.

While Bill C-31 meant that many of these formerly “married out” women and their children were entitled to be registered as status Indians, it also created different classes of Indian status, known as 6(1) and 6(2) depending on the section of the *Indian Act* that applied to a person’s particular situation.

6(1) states that a person with status is recognized as having either two status Indian parents or two parents entitled to be registered. 6(2) means that a person is recognized as having only one status Indian parent or one parent entitled to be registered.

While 6(1) and 6(2) status persons both enjoy the same rights and entitlements, there is a difference in their children’s right to be registered as status Indians. The children of a 6(2) parent and non-Indian parent are **not** entitled to be registered as a status Indian. By contrast, the children of a 6(1) parent and non-Indian parent are entitled to registration. This is what is known as the “second generation cut-off”. The chart below demonstrates how this works.

Sharon McIvor, and her son, Charles Grismer, challenged these provisions saying that they were discriminatory on the basis of sex and marital status. The B.C. Supreme Court agreed and struck down these sections of the *Indian Act*.

The Federal Government has appealed the case to the BC Court of Appeal and at this point it is assumed that the case will not finally be resolved until an ultimate decision by the Supreme Court of Canada. DIAND has not yet changed its status registration guidelines given the pending appeal.

Estimates are that as a result of this decision an additional 100,000 to 200,000 people could eventually qualify for Indian status. This would in turn put increased financial obligations on Canada to provide the benefits associated with Indian status, and undoubtedly affect First Nations Governments in many ways.

The actual text of the decision is lengthy, but it includes an excellent overview of the history of the *Indian Act* and Bill C-31, as well as a discussion of the concept of status and how its provisions are discriminatory as against women. The internet version of the decision is available at <http://www.canlii.org/en/bc/bcsc/doc/2007/2007bcsc827/2007bcsc827.html>

We will continue to provide updates on this important court case.

**The “Second Generation Cut-Off”**

<b>Indian man marries non-Indian woman</b>		<b>Indian woman marries non-Indian man</b>	
Man	Woman [gains status]	Man [no status]	Woman [loses status]
Child #1 born status		Child #1 born [no status] (Jacob's position)	
----- <b>1985 Act</b> comes into force -----			
Man [6(1)(a)]	Woman [6(1)(a)]	Man [no status]	Woman [regains status, 6(1)(c)]
Child #1 [6(1)(a)]		Child #1 [6(2)]	
Child #2 born after <b>1985 Act</b> came into force [6(1)(f)]		Child #2 born after <b>1985 Act</b> came into force [6(2)]	
-----Assume all children marry non-Indians-----			
Grandchild under Child #1 [6(2)] Grandchild under Child #2 [6(2)]		Grandchild under Child #1 [no status] Grandchild under Child #2 [no status]	
-----Assume all grandchildren marry non-Indians-----			
Great grandchild under Child #1 [no status] Great grandchild under Child #2 [no status]		Great grandchild under Child #1 [no status] Great grandchild under Child #2 [no status]	

[Chart reproduced from *Mclvor v. The Registrar, Indian and Northern Affairs Canada.*]