

A Brief Assessment of Canada's Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship

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ON JUNE 12, 2018, THE GOVERNMENT OF CANADA ANNOUNCED the launch of comprehensive consultations on Indian registration, band membership, and First Nation citizenship reform. It is expected that such reforms will make substantive changes to registration provisions of the *Indian Act*, permanently shifting the ways in which First Nations identity and belonging is imagined and practiced across Canada.

This policy brief offers a critical review of said consultation plans and points to three issues with the process that First Nations should be aware of moving forward.

The *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship* (*Collaborative Process*) is the second part of Canada's two-staged response to the 2015 *Descheneaux* case.¹ While the *Descheneaux* decision required Canada to amend the sections of the Indian Act that discriminate against women based on sex, the court also advised (obiter dicta*) that said amendments should go beyond the specifics of the case.² The first stage of Canada's response entailed establishing new and immediate legislation known as Bill S-3 - *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada*, which received royal assent in December 2017.³ The second stage will, in collaboration with First Nations, consider "broader issues relating to Indian registration and band membership," which Canada expected might include how adoption, same-sex parenting, and non-cisgender identities might affect band membership and Indian status in the future.⁴ Stage two runs from June 2018 to June 2019.

While the *Collaborative Process* (i.e. stage two) has only recently been announced, I see at least three areas of concern that First Nations knowledge holders and grassroots leaders should be watchful of as the consultation process unfolds over the next 12 months.

AREAS OF CONCERN

1. Moving beyond what we've been taught under the Indian Act; 2. Boundary maintenance in the DNA-testing Indian era; 3. The word "Decolonization" is missing.

**Obiter Dictum* is a Latin phrase meaning "by the way". It refers to a remark or opinion expressed by a judge that is not essential or binding to the final decision at hand.

1. MOVING BEYOND WHAT WE'VE BEEN TAUGHT UNDER THE *INDIAN ACT*

While the *Collaborative Process* sets out to engage a broad range of participants,⁵ it is important to remember that some Indian bands have historically used band membership provisions in ways that excluded those who otherwise rightfully belong with their communities. For example, many of the 220+ bands that took advantage of the Bill C-31 amendments to the *Indian Act* in 1985 actually instituted blood quantum thresholds in their band membership codes, or made membership contingent on Indian status.

The challenge within the *Collaborative Process*, then, will be to re-imagine band membership in ways that move away from strictly biologized Indianness and toward citizenship orders that are based on the political self-determination of respective Indigenous nations.

MY SUGGESTION: Consider what citizenship looks like when informed by protocols and values guiding family-making practices such as birthing, marriage and adoption.

2. BOUNDARY MAINTENANCE IN THE DNA-TESTING INDIAN ERA

Just about anyone can claim to be Indigenous in Canada today, all with the help of popular DNA testing services. While some have shown how this technology itself is problematic,⁶ the *Collaborative Process* is ambiguous at best as to how the federal government will assist First Nations in addressing a problem it created in the first place, namely, dealing with potentially thousands of descendants who today identify as Canadian as a result of living outside of First Nations context for generations. While such individuals or their ancestors should never have been removed from their nations, many may not be relationally accountable to Indigenous communities in the present.⁷ Some of these individuals will be seeking to reconnect with their nations for legitimate reasons, while others might seek band membership simply because they deem it cool to be Indian based on a DNA test.

The *Collaborative Process* identifies three “Consultation Content Streams,” which include ways to recognize Indian status beyond 1951 (i.e. back to 1869) and a devolution imperative whereby First Nations assume “exclusive responsibility for the determination of the identity of their members or citizens”.⁸

This is a mixed bag. On the one hand, Canada seems to be empowering First Nations to claim those who rightfully belong, while at the same time conveniently devolving responsibility for discerning the belonging of potentially thousands of people who otherwise do not see themselves as Indigenous beyond a test tube.

MY CAVEAT HERE IS THIS: First Nations may need substantial resourcing to discern belonging in ways that do not saddle them with being fiscally responsible for every person wanting to act out an Indian fantasy.

3. THE WORD “DECOLONIZATION” IS MISSING

The word “decolonization” does not appear in currently available *Collaborative Process* documentation. While the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, the *Canadian Charter of Rights and Freedoms* and, where applicable, the *Canadian Human Rights Act* will guide the *Collaborative Process* consultation, such texts in fact uphold the existence of the Canadian state above Indigenous peoples’ self-determination per se.

Moreover, while consultation will be approached with terms like “reconciliation” and “nation-to-nation” in mind, these terms fall short of promoting decolonization in how they get defined by Canada. They tend to domesticate Indigenous nationhoods where First Nations are imagined as “aboriginal groups”—or more simply, “Canadians”—under a timeless nation-state.

Decolonization is not about better incorporating Indigenous peoples into Canada, but rather about Canada moving aside so the resurgence of Indigenous political orders can flourish.

First Nations knowledge holders and grassroots leaders participating in the *Collaborative Process* might therefore be mindful of the ways, if any, that the process circumvents true decolonization.

CONCLUSION AND SUGGESTED READINGS

Here, I have pointed to three basic areas of caution that I believe First Nations knowledge-holders and grassroots leaders might want to keep in mind if they choose to participate in the recently announced *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship*. This is not an exhaustive list, and of course the issues related to band membership, Indian registration, and identity-formation are far deeper than can be discussed in this short brief. That said, literature exists that might assist communities in re-seating membership/citizenship within their own inherent political systems. On this point I suggest the following readings:

- Jill Doerfler, *Those Who Belong: Identity, Family, Blood, and Citizenship among the White Earth Anishinaabeg* (Winnipeg: University of Manitoba Press, 2015)
- Robert Innes, *Elder Brother and the Law of the People: Contemporary Kinship and Cowessess First Nation* (Winnipeg: University of Manitoba Press, 2013).
- Damien Lee, “Because our law is our law”: *Considering Anishinaabe Citizenship Orders through Adoption Narratives at Fort William First Nation* [unpublished dissertation], University of Manitoba, 2017, <https://mspace.lib.umanitoba.ca/handle/1993/32277>
- Pamela Palmater, *Beyond Blood: Rethinking Indigenous Identity* (Saskatoon: Purich Publishing, 2011)

ENDNOTES

¹Canada, “Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Consultation Plan” [Updated May 10, 2018], <https://www.aadnc-aandc.gc.ca/eng/1522949271019/1522949383224>

²Canada, “The Government of Canada’s Response to the Descheneaux Decision” [Updated January 31, 2018], <http://www.aadnc-aandc.gc.ca/eng/1467227680166/1467227697623>

³Canada, “Eliminating known sex-based inequities in Indian registration” [Updated June 12, 2018], <https://www.aadnc-aandc.gc.ca/eng/1467214955663/1467214979755>. Bill S-3 sets out to eliminate sex-based discrimination in the Indian Act by restoring Indian status to women and their descendants who were wrongfully removed from their bands due to sex-based discrimination back to 1869.

⁴Canada, “The Government of Canada’s Response to the Descheneaux Decision” [Updated October 24, 2016], <https://yellowheadinstitute.org/wp-content/uploads/2018/07/the-government-of-canadas-response-to-the-descheneaux-decision-modified-october-24-2016.pdf>

⁵Canada, “Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Consultation Plan” [Updated May 10, 2018], <https://www.aadnc-aandc.gc.ca/eng/1522949271019/1522949383224>

⁶Kim TallBear, *Native American DNA: Tribal Belonging and the False Promise of Genetic Science*. University of Minnesota Press, 2013.

⁷For example, see: Darryl Leroux and Adam Gaudry, “Becoming Indigenous: The rise of Eastern Métis in Canada,” *The Conversation*, October 25, 2017, <https://theconversation.com/becoming-indigenous-the-rise-of-eastern-metis-in-canada-80794>

⁸Canada, “Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship: Consultation Plan” [Updated May 10, 2018], <https://www.aadnc-aandc.gc.ca/eng/1522949271019/1522949383224>