



INDIGENOUS BAR ASSOCIATION MEDIA RELEASE

For Immediate Release
January 5, 2018

INDIGENOUS BAR ASSOCIATION COMMITTED TO EMPOWERING INDIGENOUS PEOPLES TO MEANINGFULLY EXERCISE THEIR RIGHT TO BELONG TO AN INDIGENOUS COMMUNITY OR NATION

Ottawa, ON – On December 12, 2017, Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* received Royal Assent. Bill S-3 established several new categories of individuals who are entitled to register as Indians under section 6 of the *Indian Act*. Some classes of individuals will be entitled to register as Indians effective immediately, whereas others will be entitled to register at a future date to be set by an Order in Council. Based on a report of the Parliamentary Budget Office, the new legislation could result in approximately 670,000 individuals becoming entitled to register as Indians.

The Indigenous Bar Association ("IBA") maintains that changes introduced by Bill S-3 are a response to instances of sex-discrimination which were the subject of the Quebec Superior Court's decision in *Descheneaux* and that these changes are intended to be interim in nature while Indigenous peoples strive to implement self-determination in the area of membership/citizenship. Importantly, Bill S-3 laid the groundwork to fundamentally revisit the concept of Indian status altogether. In the IBA's view, Indian status is a flawed and outdated concept which carries with it a harmful colonial legacy. Beginning in the mid-19th century, Indian status was designed to allow the federal government to identify individuals whom the crown undertook to assimilate as a means to eliminate the 'Indian problem'. Indian status in its current form continues to embody the harmful legacies of the crown's colonial practices and upholds historic assumptions about the crown and its relationship with Canada's Indigenous peoples. If Canada intends to implement reconciliation and the principles in the *United Nations Declaration on the Rights of Indigenous Peoples* then government-imposed Indian status has no place in today's legal or policy framework.

The notion that Indigenous peoples have the right to determine who belongs to their respective communities and Nations is well-established. As stated in the *Royal Commission on Aboriginal Peoples*, "[u]nder section 35 of the Constitution Act, 1982, an Aboriginal nation has the right to determine which individuals belong to the nation as members and citizens... Their identity lies in their collective life, their history, ancestry, culture, values, traditions and ties to the land, rather than in their race as such." Article 9 of the *United Nations Declaration on the Rights of Indigenous Peoples* states that "Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned..." It is due time the federal government fully recognize and implement Indigenous jurisdiction over their own membership/citizenship.

The IBA urges the federal government to undertake the important task of eliminating Indian status altogether and empowering Indigenous governments to lawfully exercise their inherent right to determine their own membership/citizenship. The politics of identity are complex; however, the notion of kinship is one which is well-known to Indigenous nations and how they govern their affairs. The



recent conversation surrounding Indian status and sex-discrimination spurred by Bill S-3 underscore the need to change Indigenous membership/citizenship and status. It is incumbent upon the federal government to capitalize on this opportunity to solidify Indigenous jurisdiction over membership/citizenship.

The IBA is a national association comprised of Indigenous lawyers (practicing and non-practicing), legal academics and scholars, articling clerks and law students, including graduate and post-graduate law students. We are mandated to promote the advancement of legal and social justice for Indigenous peoples in Canada and to reform of laws and policies affecting Indigenous peoples.

For further information contact Scott Robertson, President of the Indigenous Bar Association at srobertson@indigenousbar.ca and 705-325-0520 or visit our website at www.indigenousbar.ca