



Aboriginal Women And Unstated Paternity

An Issue Paper

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Background:

Due to legislative changes made by Bill C-31 to the *Indian Act* two categories of Indian registration were created, subsection 6 (1) and subsection 6(2). Pursuant to subsection 6 (1), a child is registered as a Status Indian where both parents of the child are or were entitled to registration. Under subsection 6(2) a child is registered as a Status Indian where one of the child's parents is or was entitled to registration under Section 6 (1). The following table shows the different outcomes that may result, depending on the parent's registration.

Parent 1	Parent 2	Child
Registered under 6 (1)	Registered under 6 (1)	Registered under 6 (1)
Registered under 6 (1)	Registered under 6 (2)	Registered under 6 (1)
Registered under 6 (2)	Registered under 6 (2)	Registered under 6 (1)
Registered under 6 (1)	Not entitled to register	Registered under 6 (1)
Registered under 6 (2)	Not entitled to register	Not entitled to register

In order for a child to be registered as a Status Indian, the birth certificate must be signed by the mother and the father; that is, the eligibility of both parents to Indian Status must be demonstrated by providing their names. If the mother does not provide the name of the father for the birth certificate, then the assumption made by the government is that the father is not entitled to be registered. This obviously has a great impact on the potential eligibility for registration of the child, because the child will not have Indian Status if the child's mother is registered under 6 (2). Non-reporting of paternity or non-acknowledgement of paternity by Indian and Northern Affairs Canada (INAC) of a registered Indian father will result in the loss of benefits and entitlements to either the child or the child's subsequent children.

There are a number of reasons why a woman would register a birth without stating the name of the father. Issues related to personal safety, violence, or abuse may provide a reason for a woman deciding to disassociate herself with a former partner or spouse. Issues associated with a lack of privacy in small communities may provide another reason for a woman to prefer not to state the paternity of the child. Other mothers may wish to avoid custody or access claims on the part of the father: leaving the paternity unstated forms a partial protection against such actions by a biological father who may be unstable, abusive or engaged in unhealthy behaviours. Finally, many Aboriginal people argue that decisions related to the registration of the child for Indian Status properly belong to the mother and should not be influenced or driven by external legislative processes.

Approximately 37,500 children born to women registered under 6 (1) between April 17, 1985 and December 1999 were recorded as having unstated fathers.

Estimates indicate that as many as 13,000 children of 6 (2) registered mothers in the same time period may have unstated fathers and are therefore ineligible for registration.¹

A study by Clatworthy prepared for the Manitoba Southern Chiefs Organization (SCO) highlighted the impacts of the operation of 6 (1) and 6 (2) as they interact with high rates of unstated paternity included a finding that with an ever increasing number of descendants not entitled to registration, sometime during the 5th generation no further descendants will be so entitled.² Clatworthy also estimated that approximately one-half of the unstated paternity cases that exist are likely unintentional, while the other half were intentional on the part of the mother.

Current Issues

The ability of women to not register the name of the father on a birth certificate has been challenged in the courts. A father in British Columbia, who was acknowledged to be the biological parent and who paid child support to the mother, was not listed by the mother on the birth certificate. The father went to court to challenge this process, and to have his name placed on the birth certificate of the children in question. The Supreme Court of Canada (2003) ruled that the British Columbia Vital Statistics Act discriminated against biological fathers on the basis of sex, by providing biological mothers with the sole discretion to include or exclude information about the biological father when registering a birth.³ This recent ruling will have implications for mothers in all jurisdictions who wish to register births with unstated paternity.

Aboriginal women also face a series of administrative issues in relation to registering births that may result in unintentional unstated paternity. If the biological parents are unmarried, then the signatures of both parents are required on the registration form, usually within 60 days of the birth. If the father is unable to sign the form in that time period, his name is removed from the birth certificate. This poses a considerable difficulty for parents living in remote or northern communities. If the mother must travel outside the community to give birth, while the father remains behind, then he is not physically present at the birth location to sign the registration form. This means that his name may be stricken from the form 60 days after the birth because of the lack of signature.

In other situations, the mother may state the child's paternity, but be unwilling or unable to obtain the father's signature on the registration form. Again, the result may be that the father's name is stricken from the form and the child's eligibility for Indian Status may be affected. While it is possible for parents to have birth

¹ Clatworthy, 2003

² Clatworthy, 2001

³ Canadian Children's Rights Council at http://www.canadiancrc.com/Trociuk_v_BC.htm

certificates amended after the registration is completed, this involves having a document witnessed and/or notarized, as well as the payment of fees. This process presents another barrier to correctly stating paternity on birth certificates, especially for individuals living in remote areas where notaries public are scarce, or for individuals with low incomes who cannot afford the fees involved in this process.⁴

Recommendations

1. Change the provisions of the *Indian Act* related to registration and unstated paternity. Women must be empowered to identify the eligibility of children for Indian Status, and the children of future generations should not be disadvantaged in their eligibility for Indian Status due to unstated paternity.
2. Provide legal and social protections for women so that they do not incur negative impacts as a result of listing the name of the father on the child's birth certificate.
3. Provide education to both Aboriginal mothers and fathers so that they understand the implications for their grandchildren and great-grandchildren of unstated paternity, and assist them to be able to complete accurate and thorough birth registration forms.
4. Remove administrative barriers that prevent Aboriginal individuals from completely and correctly registering births. Ensure that all individuals, including those living in northern and remote communities, are able to complete birth registrations without being disadvantaged by their geographic location, ability to pay fees, access to notaries or other officials, or any other process barriers.

⁴ Status of Women Canada, 2005

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