The Senate of Canada
111 Wellington St, Ottawa, ON K1A 0A9

Via Email

May 26, 2017

Re: APPA 6(1)(a) amendment to Bill S-3

Dear Senators,

I, Sharon McIvor, am writing to request that you support the amendment introduced by Senator Marilou McPhedran and adopted by the Senate Committee on Aboriginal Peoples at its May 2017 meeting ("the APPA 6(1)(a) amendment"). Your support for this amendment is fundamentally important to creating a new day for Indigenous women - a day when I, and other Indigenous women, can say that, at last, we are equal persons in dignity and rights in Canada.

Background

You will know that since 1989, I have been trying to get equal registration status under the *Indian Act* for myself and my son Jacob Grismer. Despite more than twenty years of litigation and advocacy, I have been unsuccessful. I have managed to improve my status and that of my son, but I have not yet obtained equal registration status with my brother, who has the same parents, and who has full 6(1)(a) status. The only reason for this difference is my female sex. Of course I am not the only Indian woman who experiences this discrimination and I have kept fighting because the dignity and equality of so many Indian women and their descendants are at stake.

Since its inception the *Indian Act* has accorded privilege to male Indians and their descendants, and treated female Indians and their descendants as non-persons, or second-class Indians. In 1906 the *Indian Act* defined an Indian as a male Indian, the wife of a male Indian or the child of a male Indian. Under successive versions of the *Indian Act*, for the most part, Indian women had no independent status or ability to transmit status to their descendants. There was a one-parent rule for transmitting status and the parent was male. Indian women lost status when they married a non-Indian, while Indian men endowed status on their non-Indian wives.

In 1985, when the Charter equality guarantees were about to come into force, the Government of Canada introduced Bill C-31 to make some amendments. But Bill C-31 did not remove the male-female hierarchy; in fact, it entrenched it by creating the category of 6(1)(a) for male Indians and their descendants who already had full status prior to April 17, 1985 and the lesser 6(1)(c) category for women who had never had status because of the sex discrimination, or who had lost status because of marriage to a non-Indian. They were considered "re-instatees." A new two-parent rule for transmitting status was imposed on the female line. This rule applied to the reinstated women immediately, but was delayed for the 6(1)(a) male line.

Since 1985, the deeply rooted sex discrimination, and the perpetuation of it by Bill C-31, has spawned a generation of litigation, including *McIvor v. Canada*, *Matson v. Canada, Deschenaux v. AG Canada, and Gehl v. Canada.* None of these cases would have been necessary if Indian women and their descendants had been put on an equal footing with Indian men and their descendants in Bill C-31.

Bill C-3, the post-*McIvor* amendment of 2010, and Bill S-3, as proposed by INAC, address some manifestations of the sex discrimination by piecemeal improvements to the status of particular sub-groups, but they leave the heart of the sex discrimination that is inherent in the 6(1)(a) - 6(1)(c) hierarchy in place. Until this fundamental sex discrimination is removed, costly and time-consuming litigation will be necessary, as more sub-groups identify how the sex discrimination affects them, and challenge it.

I believe that there are still thousands of living women and their descendants who are entitled to Indian status, but who are currently denied it because the female sex of their Indian ancestor precludes them from being accorded full s. 6(1)(a) status. As I said earlier, groups of Indian women and their descendants, who are not covered by the ever-expanding sub-categories of s. 6(1)(c) status, will continue to emerge, until such time as the 6(1)(a) - 6(1)(c) hierarchy is completely dismantled. The exclusionary effects of this continuing sex discrimination will be felt by Indian women and their descendants for generations to come.

That is why I am asking you now to support the APPA 6(1)(a) amendment. It will entitle Indian women and their descendants born prior to April 17, 1985 to 6(1)(a) status on the same footing as Indian men and their descendants.

It is important to support the APPA amendment because if the core of the sex discrimination is not removed now, I do not believe it will be. INAC officials made it clear during consultations this spring that INAC did not consider, and has no intention to consider in future - i.e. under Phase II - any amendment that will place 6(1)(c) female Indians and their descendants on the same footing with respect to status registration as 6(1)(a) male Indians and their descendants. Minister Bennett has made no commitment to making this change; and Phase II, as it has been described to date, is focused on broader issues of membership and citizenship, including how to eliminate the Indian Act registration system. This means that the leadership role with respect to the equality of Indigenous women and their descendants falls now to Senators and Members of Parliament.

INAC has offered two arguments to support the unamended Bill S-3. INAC agrees that there are more women and their descendants who could be entitled to Indian status if Indian women born before April 17, 1985 were granted full 6(1)(a) status like their male counterparts. But INAC officials defend not putting the women on a footing of equality on the grounds that they are "balancing individual and collective

rights" and are concerned about the reaction of communities to the potential need to include more Indians.

As I have explained in the past, I take fundamental exception to this argument. Indian bands and communities have no legitimate say in whether the Government of Canada continues to discriminate against me and other Indian women because of our sex. The Government of Canada has an obligation under constitutional and international law and a fiduciary duty not to discriminate on the basis of sex, whether Indigenous bands and communities agree or not. By now most Indigenous bands and communities do not wish to see discrimination on the basis of sex continue.

Further, status and band membership were separated in the Indian Act in 1985, and status is a relationship between individual Indigenous persons and the federal government. Membership involves different issues and entitlements and is determine by the communities by themselves, if they so choose. The Government can remove the sex discrimination from the status provisions; it can then legitimately consult about resources and services needed to ensure that communities can include new members, and about how they wish to deal with their own membership issues, but not about *whether* it will eliminate sex discrimination from the status provisions of the Act.

Further, the women and their descendants who are excluded from Indian status because of sex discrimination have both the individual right to equality and the collective right to be recognized equally as members of their communities, and to participate in promised nation-to-nation talks. If the women and their descendants are not recognized because of continuing sex discrimination, they are robbed of their rights to culture and to participate in decision-making regarding lands and resources. Continuing the sex discrimination means that the pool of Indigenous people with whom the Government of Canada will negotiate a new nation-to-nation relationship will be diminished and distorted by sex discrimination.

In addition, INAC defends the unamended Bill S-3 on the grounds that it is Charter-compliant and the 6(1)(a) - 6(1)(c) hierarchy is not sex discrimination. This is the position that Canada has taken in response to my petition to the United Nations Human Rights Committee, where Canada contends that it is justified in maintaining the sex-based privilege of male Indians and their descendants because it is entitled to preserve "previously acquired rights."[1] In other words, if male Indians and their descendants were privileged in the past because of their male sex, they are entitled to the continuation of that privilege. Conversely, if I and my descendants were discriminated against in the past because of my female sex, we are consigned to the continuation of that discrimination. Canada maintains this position even though

[1] Submission of the Government of Canada on the Admissibility and Merits of the Communication to the Human Rights Committee of Sharon McIvor and Jacob Grismer, Communication No. 2020/2010, at paras. 23, 40, 41, 109 - 112, August 22, 2011.

extending equal rights to Indian women and their descendants would take nothing away from Indian men or their descendants. Moreover, Canada is not only preserving "previously acquired rights", Canada is preserving a legislated, sex-based hierarchy of rights, which is indefensible. As long as there is no change in this position, as Senator Sandra Lovelace said in 2010, "Aboriginal women will always be at the bottom of the totem pole."

You will understand that, for me, as a woman who first had no Indian status because my Indian ancestor was female, and then has been categorized as a "6(1)(c) woman" or a "Bill C-31 woman", this is a deeply personal issue. I and my descendants are no less deserving of Indian status than my brother and his descendants. My brother has the same parents. However, he and his descendants are all 6(1)(a) Indians. If my mother's, and her mother's, status as Indians had been recognized as equal to their male counterparts, I would never have had to go to court to fight for status. I would have been recognized as entitled to status from birth. Further, had I been male, I could have married out, retained my 6(1)(a) status and transmitted that status to my husband, just as my brother who married out is entitled to retain his 6(1)(a) status and transmit it to his wife. For Canada to say that my being denied 6(1)(a) status is not sex discrimination lacks all credibility.

The benefits of status are both tangible and intangible. Section 6(1)(c) status is inferior to 6(1)(a) with regard to the tangible ability to transmit status, and will continue to be so under the unamended Bill S-3. The further harm of maintaining the 6(1)(a) - 6(1)(c) hierarchy that is intangible, but nonetheless very real, is that it perpetuates the deeply stigmatizing stereotype that Indian women like me are not "real Indians" and are not truly equal. The damage done by the exclusion of "Bill C-31 women" or "6(1)(c)" women from their communities, and their treatment by their own communities, and by society at large, as though we are outsiders, not entitled, second class Indians, and less than equal human beings, has been, and continues to be, profoundly damaging to Indian women and their descendants for decades, and has been identified as one of the root causes of the crisis of murders and disappearances of Indigenous women and girls.

I have been told by Canada that I receive the same tangible benefits of status as my brother, and that my desire to be granted 6(1)(a) status is merely based on my "personal perception" that s. 6(1)(a) endows greater legitimacy.[2] Canada also claims that if I, and presumably, other similarly situated Indian women, have been treated as having less legitimacy as Indians, that is probably due to the actions of family or community. "It cannot be attributed to government." This is a wholly incredible and dishonourable claim, since the Government of Canada constructed and maintained a legislative scheme that for more than 100 years has assigned Indian women like me to second class status, and still does.

[2] Submission of the Government of Canada on the Admissibility and Merits of the Communication to the Human Rights Committee of Sharon McIvor and Jacob Grismer, Communication No. 2020/2010, at para 110, August 22, 2011.

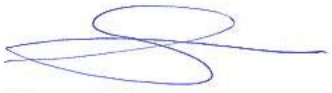
I want Senators to understand the profound insult to Indian women and their descendants that is embedded in the s. 6(1)(a) - s. 6(1)(c) status hierarchy. The Government of Canada designed the original patriarchal status scheme in early colonial days and has maintained it ever since by creating the 6(1)(a) "full status" category, and relegating Indian women and their descendants to the separate, and not equal, s. 6(1)(c) category. The refusal to recognize the harms that this status hierarchy has created, and that it perpetuates, despite piecemeal - and only partially successful - efforts to make the tangible benefits of the categories the same, is a wound that cannot by healed by covering it over with bandaid patch-up jobs. It needs to be acknowledged and rectified.

Canada has a feminist Prime Minister, a commitment to a new nation-to-nation relationship, a 150th birthday, and has launched a National Inquiry into the hundreds, perhaps thousands, of murders and disappearances of Indigenous women and girls. There will not be another moment like this one.

Passing the APPA amendment would provide a truly promising start to a new nation-to-nation relationship, and a new relationship of equality and respect with Indigenous women and their descendants. It will show that Canada respects Indigenous women as equal members of Canadian society and as equal members of their Indigenous communities and bands, expecting them to fully and equally participate in their nations and in Canadian society. That will be a new day.

Please support the APPA amendment and support Indigenous women.

Sincerely,



Sharon McIvor

cc: The Right Honourable Justin Trudeau
Prime Minister of Canada
justin.trudeau@parl.gc.ca

The Honourable Carolyn Bennett
Minister of Indigenous and Northern Affairs
carolyn.bennett@parl.gc.ca

The Honourable Jody Wilson-Raybould
Minister of Justice, Attorney General of Canada
Jody.Wilson-Raybould@parl.gc.ca