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Feminist Alliance for International Action

l'Alliance Féministe pour l'Action Internationale

One More Time: The Government of Canada fails to remove all sex discrimination from the Indian Act

The Canadian Feminist Alliance for International Action (FAFIA) is dismayed that the Government of Canada has introduced legislation (Bill S-3) to amend the *Indian Act*, which, one more time, will not remove all the sex discrimination in the status registration provisions.

Since at least 1906, Indian status has been defined on the basis of patrilineal descent, and male Indians and their descendants have been privileged. The almost fifty years of struggle by Mary Two-Axe Early, Jeanette Corbière Lavell, Yvonne Bedard, Sandra Lovelace and Sharon McIvor to see the sex discrimination removed has been only partially successful. Canada has repeatedly made piecemeal amendments, which remove some aspects of the discrimination but re-enact the bulk of it.

We find it hard to understand why the Liberal Government, which has espoused a new commitment to Indigenous peoples and to women, would, in 2016, make only those amendments which are required to cure the discrimination identified by the Quebec Superior Court in its August 2016 decision in *Deschenaux v. AG Canada*, and leave the rest of the sex discrimination in place.

We find this especially difficult to understand in light of the explicit assurances that Canada and Minister Bennett made last summer, that the Government of Canada intended, not just to cure *Deschenaux*, but to remove "all known sex discrimination" from the *Indian Act*, as part of the first stage of reforms. These assurances were made by Canada to the United Nations Human Rights Committee on June 28, 2016 [1] and by Minister Bennett in a public statement issued on July 28, 2016.[2]

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[1] Second Supplemental Request 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, Revised Submission, 28 June 2016, paras 4 and 17, online: http://povertyandhumanrights.org/2016/06/mcivor-v-canada-2016/

[2] "The Government of Canada takes action to eliminate known Sex-Based Discrimination in the Indian Act," July 28, 2016, online: http://news.gc.ca/web/article-en.do?crtr.sj1D=&crtr.mnthndVl=8&mthd=advSrch&crtr.dpt1D=6680&nid=1105479&crtr.lc1D=&crt

Despite these promises, Bill S-3 does not remove all known sex discrimination. It only cures the discrimination identified in *Deschenaux.* Consequently, it does not address, for example, the sex-based exclusion of descendants born prior to September 4, 1951. Descendants of status males born prior to September 4, 1951 are granted Indian status. Descendants of status females born prior to September 4, 1951 are not.

Nor does Bill S-3 address the perpetuation of different categories of status based on sex. The current scheme continues to relegate Indigenous women and their descendants to inferior categories of status, because it keeps in place the two-tier status hierarchy between 6(1)(c) and 6(1)(a), which was first introduced in 1985. Women like Sharon McIvor can never have s. 6(1)(a) status, even though a brother, with the same parents, can. Consigning women to 6(1)(c) status devalues them, and denies them the legitimacy and social standing associated with full s. 6(1)(a) status. They are often referred to pejoratively as "6(1)(c) women."

Consigning women to 6(1)(c) status also reduces the category of status women are able to transmit to their descendants. Bill S-3 proposes to add new sub-categories of s. 6(1)(c), (c.2, c. 3, c.4) thereby extending forms of inferior status to more people. This does not eliminate the sex discrimination. It perpetuates it.

There are other groups that will continue to be affected as long as the discriminatory structure stays in place, and more women and their descendants will be forced to litigate.

We also find Bill S-3 dismaying in light of recent recommendations of United Nations treaty bodies that Canada remove all the sex discrimination in the *Indian Act*.[3] Canada is ignoring a key United Nations recommendation that has been made repeatedly, by different UN expert committees. It is also ignoring urgent calls to eliminate this discrimination that have emerged from the inquiries conducted by the CEDAW Committee and the Inter-American Commission on Human Rights into murders and disappearances of Indigenous women and girls.[4] Both inquiries found that *Indian Act* sex discrimination is a root cause of the violence.

Unfortunately, what we anticipate now is a process that will mirror the events of 2010 when Bill C-3, the Harper Government's response to *McIvor v. Canada*, was being considered. Parliamentarians will be pressed to move quickly and pass an unsatisfactory and incomplete amendment, ostensibly because of the Quebec Superior Court's deadline of February 3, 2017, just as Parliamentarians were

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[3] Human Rights Committee, CCPR/C/CAN/CO/6, 13 August 2015, para 17; Committee on the Elimination of Discrimination against Women, CEDAW/C/CAN/CO/8-9, 18 November 2016, para 13.

[4] Committee on the Elimination of Discrimination against Women, *Report of the Inquiry concerning Canada*, CEDAW/C/OP.8?CAN/1, 30 March 2015; Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women and Girls in British Columbia, Canada,* 21 December 2014.

pressed by the Harper Government to move quickly and pass an unsatisfactory amendment in 2010, ostensibly because of the B.C. Court of Appeal's deadline.

In reality, the only fixed deadlines are of the Government's own making. Courts regularly accede to government requests for extensions of deadlines. We understand that the plaintiffs in *Deschenaux* have already indicated to the Government that they would agree to an extension. This unnecessary pressure to pass inadequate legislation is precisely the government conduct that the Liberals deplored when the Harper administration did it. In 2010, the Liberals protested that the Harper administration was creating a false sense of pressure to avoid doing the right thing.

But an extension is not needed. Eliminating all known sex-based discrimination is not difficult. It does not require creating ever-more categories of status for groups that were left out because of sex discrimination. The solution is to end the differential treatment of Indian men and Indian women born prior to April 17, 1985, whether married or not, and of matrilineal and patrilineal descendants born prior to April 17, 1985, so that all are entitled to full s. 6(1)(a) status. The Liberals made a proposal in the House of Commons in 2010 to exactly this effect.

In order to start the National Inquiry on Missing and Murdered Indigenous Women and Girls on a footing of genuine respect for Indigenous women's equality, and in order to include Indigenous women and their descendants fully in a new nation-to-nation relationship with Canada, eliminating the two-tier sex-based status categories from the *Indian Act* is essential. Only then can Canada genuinely make a new start.

We ask the Government of Canada to withdraw Bill S-3, and replace it with legislation that will, finally, eliminate all sex-based discrimination in the *Indian Act*.

November 28, 2016