



RYERSON UNIVERSITY



The Honourable Chrystia Freeland,  
Deputy Prime Minister and Minister of Finance,  
Government of Canada  
February 8, 2022

**By Email**

Dear Minister Freeland,

**Re: Federal Budget, Minister of Indigenous Services, Implementation of Bill S-3**

We write today to make an urgent request that Budget 2022 include adequate funds to ensure that by 2025 all First Nations women and their descendants who became eligible for status as of August 15, 2019 are fully registered under the Indian Act.

Since 2016, the undersigned First Nations women leaders, organizations, experts, and allies have worked together to defend the rights of First Nations women and their descendants who, for over 140 years, have been discriminated against by the status provisions of the *Indian Act*. We note that the sex discrimination in the *Indian Act* has been ruled by the United Nations Human Rights Committee to be a violation of the rights of First Nations women to equal protection of the law and equal enjoyment of culture, and the Committee has directed Canada to

provide an effective remedy by ensuring that the long-standing discrimination against women and their descendants, and all its effects, are eliminated.<sup>1</sup>

This group, which we call the Indian Act Sex Discrimination Working Group, first worked to secure an amendment to *Bill S-3, An Act to amend the Indian Act*. This purpose of this amendment, which was proposed and adopted by the Senate of Canada, was, at long last, to entitle First Nations women and their descendants to full 6(1)(a) status on the same footing as men and their descendants. The Working Group then worked to secure promulgation of that amendment on August 15, 2019, since it was not brought into force in 2017 when other provisions of Bill S-3 were. Until the women and their descendants who are newly entitled are actually registered, however, the change to the law has no meaning. For that reason, since 2019 we have been in regular discussion with successive Ministers of Indigenous Services to urge timely and efficient implementation of the *Bill S-3* changes and accompanying remedies.

After the passage of *Bill S-3, The Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People* affirmed that “The Government of Canada is committed to accelerating the full implementation” of *Bill S-3*. The implementation of *Bill S-3* is included as a component of the Federal Pathway because the sex discrimination in the *Indian Act*, which banished women from their communities and cultures, has been identified repeatedly as a root cause of the murders and disappearances of Indigenous women and girls. Remedying this discrimination is a key step in stopping the violence.

The Pathway states, “The Government of Canada will leverage recent investments to provide timely, efficient and client focused approaches to ensure those newly entitled are supported in their application process.” The Mandate Letter for the Honourable Patti Hajdu, current Minister of Indigenous Services, indicates that she is to support the Minister of Crown-Indigenous Relations to address violence by “accelerating the implementation of the Federal Pathway”.

The commitment to accelerated implementation of *Bill S-3* is essential, as we outline below, and it is crucially important that this speedy implementation be adequately supported by funds provided through the federal Budget. We ask that you assure that in the forthcoming federal Budget there will be sufficient funding

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<sup>1</sup> *Mcivor v. Canada*, CCPR/C/124/D/2020/2010, January 11, 2019, online: <[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CCPR\\_C\\_124\\_D\\_2020\\_2010\\_28073\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CCPR_C_124_D_2020_2010_28073_E.pdf)>

to correct what is, at the present time, an agonizingly slow implementation process.

The Government of Canada has estimated that between 270,000 and 450,000 First Nations women and their descendants are newly eligible for status because of the provisions of *Bill S-3* which came into force on August 15, 2019.<sup>2</sup> Since September 2021, Indigenous Services Canada reports that it is processing 1,600 applications each month under *Bill S-3*. At this rate, we calculate that it will take between 14 and 23 years for the newly eligible to be registered. Accelerating this rate is surely desirable, but we urge that the Government aspire not just to a rate of implementation that is faster than 1600 per month, but one that will ensure achievement of a more ambitious, and just, goal: full registration of those eligible under *S-3* by December 2025. To do this, it will be necessary to process at least 100,000 applications per year, in contrast to the present rate of approximately 19,200.

There are many reasons why this degree of acceleration is necessary. First of all, many of the women newly eligible for status are elderly. The benefit and promise of *S-3* will be betrayed if they die before being registered. Moreover, whether it is because of age or other cause, many newly eligible persons have disabilities which require the health and other benefits available to registered persons. This is particularly true during these days of Covid-19.

The drive to remove sex discrimination from the *Indian Act* took on speed in the late 1960s. From that time forward, advocates of equality under the *Act* have pointed out the necessity for women to be restored to their communities in order that those women be fully able to take part in the negotiations which will determine the future of those communities. They decried the process that excluded those women while the future of their people was being determined, an exclusion which could well be made permanent not just by the *Indian Act* but also by any newly arrived at nation-to-nation arrangements.

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<sup>2</sup> This is the estimated number of First Nations women and their descendants who are newly entitled to status by the *Bill S-3* amendment which came into force on August 15, 2019. This figure, which the Government of Canada accepts, is based on the work of independent demographers and was endorsed by the Parliamentary Budget Officer in his report on *Bill S-3*. See: Office of the Parliamentary Budget Officer, *Bill S-3: Report on Sex-Based Inequities in Indian Registration*, 5 December 2017, online at: [https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3\\_EN.pdf](https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2017/Bill%20S-3/Bill%20S-3_EN.pdf)

These concerns have not receded with time. Indeed, they have become more acute, as Canada has begun to honour the responsibility to advance the self-determination of Aboriginal peoples. If women exiled from their communities are not restored to them, then that exile of the women and their families will become permanent. They will be, for all practical and legal, purposes, permanently assimilated.

Such a result is contrary to the guarantee in Article 8 of the *U.N. Declaration on the Rights of Indigenous Peoples* that “Indigenous Peoples and individuals have the right not to be subjected to enforced assimilation or destruction of their culture.” Subsection 2(d) of Article 8 provides that States Parties shall provide effective mechanisms for prevention of and redress for “any form of forced assimilation or integration.” Instead of doing that, Canada’s woefully slow process of implementing *Bill S-3*, is ensuring that the forced assimilation of Indian women and their families is being cemented into place.

In order to create an implementation process with the appropriate capacity and speed, it will be necessary to increase the number of qualified persons employed in the Indian Registry to process the applications. Indigenous Services Canada, responsible for the Registry, should be able to calculate how many persons will be necessary in order to accomplish the goal of implementation by December 2025. We are not aware whether Indigenous Services Canada has submitted a budget request to cover implementation of *Bill S-3*; we hope that if it has, it will be sufficient to cover the necessary features.

Along with additional personnel for processing applications, it will be necessary to revamp the application process to remove from it the accumulation of delays and obstacles which have long characterized the Registry process. Applicants will need navigation assistance, and legal and paralegal supports to prepare correct and timely applications and to see their way through the process. It will also be essential for there to be an effective communications plan to increase public awareness of *Bill S-3* and actively encourage women and their descendants to apply for the status to which they are entitled. Finally, it will be necessary to allot funding for the implementation of recommendations 1.4 – 1.6 of the May 2019 *Final Report of the Special Representative to the Minister of Crown-Indigenous Relations on Indian registration, band membership and First Nation citizenship*. These recommendations describe the funding that will be necessary to support reconnecting women and their descendants to their communities.

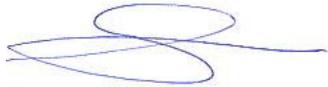
Annexed to this letter is a memorandum which we have provided to the Minister of Indigenous Services outlining the necessary features of effective implementation.

In short, to remedy the sex discrimination, and finally put women and men on an equal footing with respect to Indian status and transmission of Indian status, it will be necessary to allot adequate funds for 1) staff for processing up to 450,000 applications for status over 4 years; 2) a broad and effective information campaign about new eligibility for status; 3) navigation supports and assistance, taking the needs of disabled applicants fully into account; and 4) supports for First Nations communities who are reintegrating women and their descendants.

We would be happy to speak with you and your staff about the measures we have outlined here, which we believe to be essential not only for the enforcement of *Bill S-3*, but also for the just realization of the self-government initiatives of the Government of Canada. We have taken the liberty of forwarding a copy of this letter to the Prime Minister, to Minister Hadju and to the other members of the Cabinet Committee on Reconciliation, so as to encourage a broad commitment to the urgent implementation of *Bill S-3*.

Thank you for your attention. We look forward to your response.

All best regards,



Sharon McIvor

Jeannette Corbiere Lavell, C.M.

Cora McGuire-Cyrette, Executive Director, Ontario Native Women's Association

Marjolaine Étienne, President, Quebec Native Women's Association/Femmes

Autochtones du Québec

Chief Judy Wilson, Secretary-Treasurer, Union of B.C. Indian Chiefs

Dr. Lynn Gehl

Dr. Pamela Palmater, Chair in Indigenous Governance, Ryerson University

Dr. Gwen Brodsky

Mary Eberts, O.C.

Shelagh Day, C.M., Chair, Human Rights Committee, Canadian Feminist Alliance for International Action

cc.: Prime Minister of Canada, the Right Honourable Justin Trudeau  
Members of the Cabinet Committee on Reconciliation



## **Bill S3: Goals and Timetables**

Prepared for Minister of Indigenous Services Canada, the Honourable Patty Hajdu, for meeting January 21, 2022

### **Status Report (statistics from ISC November 2021)**

#### **Bill S-3**

- The Descheneaux provisions came into force on **December 22, 2017**.
- The McIvor provisions, entitling First Nations women and their descendants to full 6(1)(a) status on the same footing as First Nations men and their descendants, came into force on **August 15, 2019**.

#### **Numbers Eligible, Numbers Registered**

- Government of Canada estimates that **270,000 – 450,000 First Nations women and their descendants are newly eligible** for status because of the McIvor provisions
- Applications Received since December 22, 2017 **37,124**
- Number registered since December 22, 2017 by S-3 units **21,781**
- Automatic category amendments completed: **Over 125,000**
- Individuals newly able to pass on entitlement due to Registration Category Amendments: **Over 57,000**

**ISC reports that these 57,000+ have not been informed of the automatic category amendment that makes them newly able to pass on entitlement. But if those who are newly entitled to pass on status do not know that they are, they cannot inform their descendants that they should now apply for registration.**

- Since September 2021, ISC reports that it is processing **1600 S-3 applications per month**. At this rate, **it will take between 14 and 23 years** for the newly eligible to be registered.

**Goal: 1) To have all of those newly eligible fully registered by December 2025.**

**Timetable: This would require processing 100,000+ applications per year**

**In order to reach that goal:**

**A. Communications Plan: Increase applications for status**

- Develop an effective campaign to advise women and their descendants of possible eligibility. This communication plan needs to reach First Nations women and their descendants living off reserve and in all parts of Canada. Information needs to be provided in formats that are accessible for women and their descendants with disabilities.
- Notify the 57,000 persons whose status upgrade affects eligibility of relations or descendants
- Re-open and reconsider the files of persons who were denied status because of unstated or unknown paternity before the 2019 S-3 amendments flowing from *Gehl v. Canada* were in force
- Mobilize First Nations organizations and agencies that can reach off reserve First Nations population
- Provide notices to all Canadians with OAS cheques, CPP, Income Tax notices, and other universal communications re: possibility of eligibility
- Mobilize MPs to communicate with constituents
- Issue public statements by Ministers and PM regarding eligibility for status
- Develop video, twitter, and other social media tools

## **B. Revamp Registration Process: Increase the pace at which applications for status are processed**

- Increase number of Registration Clerks employed in the processing of S-3 applications to enable ISC to meet December 2025 goal and timetable.
- Review Registration process to find and eliminate bottlenecks and delays.
- Facilitate access for applicants to documents kept by the Registry to lessen the time to make each application and increase its likely accuracy. If access cannot be direct, access could be provided through authorized representatives sworn to secrecy with respect to all but the person's own data
- Make public the steps in the registration process, along with estimates of the time each step takes
- Produce quarterly statistics to the public to show the number of applications received, and the numbers processed, waiting, rejected, and registered, as well as average wait times and average completion times

## **C. Provide navigation assistance to applicants to prepare their status applications**

- Train and deploy navigation staff to assist applicants to identify and find correct documents and prepare applications
- Train and deploy navigation staff for information lines and to provide access to Registry information
- Provide funding for community clinics to hire and train navigation staff and to provide services to applicants

- Ensure that navigation assistance works for applicants with disabilities, and for elderly applicants, and takes into account their needs

## **Goal 2) Remedy Sex Discrimination and Eliminate Remaining Discrimination**

**Timetable: 2022 - 2025**

### **D. Remedies for Consequential Discrimination**

- Commence discussions with Indian Act Sex Discrimination Working Group, and others, about consequential discrimination, including loss of Band membership, transfer of membership to husband's band, loss of treaty entitlements in order to develop a plan for remedying this discrimination
- Ensure that those newly registered under S-3 indicate whether they wish to have Band membership restored and identify which Band they would be members of, but for discrimination

### **E. Support Community Reconnection**

- Implement recommendations 1.4 – 1.6 of the May 2019 Final Report of the Special Representative to the Minister of Crown-Indigenous Relations on Indian registration, band membership and First Nation citizenship, namely:
  - That the government provide the necessary funds to increase the administrative financial and human resources capacity to effectively manage the removal of the '1951 cut-off' at the community and national levels.
  - That the government change current funding formulas for federally-funding programs, as noted above, available to First

Nations to meet the increased need for services to Indian women and her descendants in a timely manner.

- That the government make immediate adjustments to the Additions to Reserve requests and respond in a more efficient and timely manner upon implementation of the removal of the 1951 cut-off.

## **F. Compensation and Reparations**

- Remove the bar to compensation for sex discrimination in s. 10 of Bill S-3, or waive it, in order that First Nations women and their descendants can receive compensation for the harms done to them on the same footing as other Indigenous persons harmed by Canada's discriminatory acts
- Provide an apology for harms done and create ways of honouring First Nations women for their struggle to end the discrimination

## **G. Address Remaining Sex Discrimination in the Indian Act**

- Develop a plan for addressing outstanding discriminatory issues in the Indian Act, including:
  - Continuing discrimination caused by the unstated and unknown paternity rule
  - Discriminatory impact of the two-parent rule
  - Involuntary enfranchisement of wives and children when men were enfranchised

