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Feminist Alliance for
International Action

L'Alliance Féministe pour
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CANADA



**Chair in
Indigenous
Governance**

RYERSON UNIVERSITY

**Brief on Bill S-3
Canadian Feminist Alliance for International Action
Sharon McIvor, Shelagh Day, and Dr. Pamela Palmater
Senate Committee on Aboriginal Peoples
Review of the Government of Canada's Report to Parliament on Bill S-3
May 9, 2022**

Thank you for the opportunity to appear before the Committee on March 28, 2022. To ensure that the APPA Committee has a record of the information regarding Bill S-3 and *Indian Act* sex discrimination that was provided to the Committee before and during this testimony, we are pleased to provide this summary.

- **Sex discrimination is not eliminated from the *Indian Act de facto* (in fact) or *de jure* (in law).**

De facto

The Government of Canada estimates that 270,000 to 450,000 women and their descendants are newly entitled to status registration because of the Senate's amendment that came into force on August 15, 2019. However, as long as these women and their descendants **are not actually registered**, the discrimination continues. Between December 22, 2017 and April 4, 2022, only 27,338 were registered under any provision of Bill S-3.¹

FAFIA is a member and supporter of the Indian Act Sex Discrimination Working Group.² In meetings since 2019, [this Group has made it clear to Ministers Bennett and Miller](#) that a pro-active and large-scale public campaign is needed to inform women and their descendants that they are now eligible for status. In addition, the registration process needs to be dramatically reformed, simplified, and adequately resourced. Legal and paralegal counseling, navigators and supports for applicants with disabilities are needed

¹ This is the most current figure provided to FAFIA by Lori Doran, Director General of the Individual Affairs Branch/Directrice générale de la Direction des Affaires Individuelles, Indigenous Services Canada..

² The composition of this group is described in the FAFIA letter hyperlinked here.

to assist women and their descendants to make timely and successful applications. [We wrote to Ministers Hajdu and Freeland in February 2022](#) setting out goals and timetables for achieving the full registration of those newly entitled by December 2025, and requesting that adequate resources be allocated in Budget 2022 to make this possible. No new funds were allocated in Budget 2022, and we have received no reply from Minister Hajdu regarding the recommended goals and timetables.

We have been informed that, in response to recommendations made by the Indian Act Sex Discrimination Working Group, Indigenous Services Canada is assessing the possibility of using different communication modes and routes to inform First Nations women and their descendants of their eligibility. We applaud these new efforts. However, so far, the approach of the Government of Canada to the registration of the thousands of First Nations women and their descendants, who are the victims of Canada's long-standing, and repeatedly defended, program of sex discrimination, has been mainly passive and clearly ineffective. The discrimination continues in contradiction to the Government's repeated promises of reconciliation and respect for rights.

In addition, no efforts have been made to deal with the "residual discrimination" – that is, the effects of decades of discrimination that have resulted in loss of community, culture, Band membership, statutory benefits, treaty and inherent rights, and political voice. This is a massive issue that the Government of Canada has not addressed, despite the fact that *Indian Act* sex discrimination and its decades-long effects have been identified as a root cause of the murders and disappearances of Indigenous women and girls.

De Jure

There are still provisions in the *Indian Act* that discriminate on the basis of sex (see attached Outstanding Issues).

a) Involuntary Enfranchisement

One of these is the treatment of the wives and children of men who enfranchised. They were treated as the property of the husband or father and involuntarily enfranchised at the time he was enfranchised. While in 1985 the involuntarily enfranchised women were reinstated along with the women who lost status by marrying out, subsequent amendments that improved transmission of status for the women who married out were not applied to the women and their descendants who were involuntarily enfranchised. The treatment of involuntarily enfranchised women and children arises in *Hele v. Canada* and *Nicholas v. Canada*. Litigation in *Nicholas v. Canada* has been paused in order to allow the Government of Canada to introduce amending legislation.

b) 6(2)

A separate brief is provided on this issue.

c) Bar to compensation

Bill S-3 contains a bar to compensation for the harms that *Indian Act* sex discrimination has caused. This discriminates directly against First Nations women and their descendants.

- **Failure to respect the UN human rights system and the rights of First Nations women**

In January 2019, the United Nations Human Rights Committee handed down its decision on the petition of Sharon McIvor and her son Jacob Grismer, [McIvor v. Canada](#). The Committee ruled in Sharon McIvor's favour, and set out Canada's obligation to remedy the discrimination in this way:

9. In accordance with article 2(3)(a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, (a) to ensure that section 6(1)(a) of the 1985 Indian Act, or of that Act as amended, is interpreted to allow registration by all persons including the authors who previously were not entitled to be registered under section 6(1)(a) solely as a result of preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985 and to patrilineal descendants over matrilineal descendants, born prior to 17 April 1985; and (b) to take steps to address residual discrimination within First Nations communities arising from the legal discrimination based on sex in the Indian Act. Additionally, the State party is under the obligation to take steps to avoid similar violations in the future.

Although Canada took the first step by bringing the '6(10(a) all the way' amendment into force on August 15, 2019, as noted above, Canada has not yet accorded full status to all those who faced the same, or similar, discrimination as Sharon McIvor and her son. Nor has Canada taken any steps to address the residual discrimination that affects band membership, treaty rights, statutory benefits, and other entitlements lost because of the discrimination, or to provide reparations. Canada's only commitment in response to the *McIvor* decision is to "make efforts to address" the Committee's recommendations, despite the fact that Canada's remedial obligation is to provide an effective remedy for the discrimination. So far, Canada does not acknowledge the scope or harms of the sex discrimination, has not apologized, and has not repaired the discrimination. [Sharon McIvor's most recent submissions to the United Nations Human Rights Committee](#) document Canada's failed response, [as well as the positions of First Nations organizations and allies](#).

It is particularly disappointing to witness, and to read, Canada's narrow and defensive response to a decision from the United Nations Human Rights Committee,³ an expert

³ Referred to in McIvor recent submissions to the United Nations Human Rights Committee, June 2021 in hyperlink above.

body that Canada has agreed can hear and decide complaints against Canada regarding violations of rights set out in the *International Covenant on Civil and Political Rights*.⁴ *McIvor v. Canada* addresses the core of the historic sex discrimination against First Nations women that has been challenged repeatedly by First Nations women and their descendants. Canada's response does not demonstrate respect for First Nations women, for their human rights, or for the United Nations human rights system – of which Canada claims to be an unwavering supporter. Nor does Canada's response demonstrate a genuine commitment to reconciliation, or to implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

- **Sex Discrimination in the Indian Act is a tool of forced assimilation**

In 2022, when Canada is working to come to terms with its colonial history, it is essential to acknowledge that the sex discrimination in the *Indian Act* has been, and still is, a tool of forced assimilation. The sex discrimination furthers a genocidal goal of reducing the First Nations population by legally defining First Nations women and their descendants out of the pool of Indians, and out of the pool of those who are recognized by Canada as entitled to Aboriginal and inherent rights, treaty rights, band membership, programs and services that flow through bands, and statutory benefits. First Nations women and their descendants are also defined by sex discrimination out of the pool of those who can hold positions of political leadership in their communities and have voice with respect to decision-making that affects Indigenous peoples. This sex discrimination contravenes Article 8 of UNDRIP which provides that “Indigenous peoples and individuals have the right not to be subjected to forced assimilation...” and “States shall provide effective mechanisms for prevention of, and redress for... any form of forced assimilation...”

In our [submission to the United Nations Committee on the Elimination of Discrimination against Women](#) for the Day of General Discussion on the Rights of Indigenous Women, FAFIA and Dr. Palmater said this:

We are concerned about the future. Canada now says that it wishes to “get out of the business of Indian registration.” In practice, however, for the purposes of resource allocation and self-government agreements, Canada only recognizes, and counts, persons with status as members of a Nation. Consequently, if Canada exits from Indian registration before it restores First Nations women and their descendants to their rightful place, it will be establishing self-government for Nations that have been stripped of thousands of women and their descendants, whose return will then not be affordable, for the Nation. The project of forced assimilation will be further advanced. Canada cannot get out of the business of Indian registration until it restores the women to their status and membership in their Nations, and undoes the enormous damage of its discriminatory regime.

⁴ Canada ratified the Optional Protocol to the *International Covenant on Civil and Political Rights* in 1976. See <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political>

References

1. FAFIA Letter to United Nations Human Rights Committee, June 15, 2021, documenting interactions of the Indian Act Sex Discrimination Working Group with Ministers Bennett and Miller, online: <https://povertyandhumanrights.org/wp-content/uploads/2022/05/FAFIALetterFollowUpProcedureswithAppendices.pdf>
2. Indian Act Sex Discrimination Working Group Letter to the Honourable Chrystia Freeland, February 8, 2022, online: <https://fafia-afai.org/en/letter-to-federal-minister-freeland-on-the-implementation-of-bill-s-3/>
3. Decision of the United Nations Human Rights Committee on the petition of Sharon McIvor and Jacob Grismer, *McIvor v. Canada*, January 11, 2019, online: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CPR_C_124_D_2020_2010_28073_E.pdf
4. *McIvor v. Canada*, Petitioners' Submission in the Follow-Up Procedure with the United Nations Human Rights Committee, June 2021, online: <https://povertyandhumanrights.org/wp-content/uploads/2022/05/Petitioners-Submission-Follow-up-Process-June-15-2021.pdf>
5. Submissions in support of McIvor/Grismer Petitioners in the Follow-Up Procedure with the United Nations Human Rights Committee, June 2021, online: <https://povertyandhumanrights.org/2022/05/mcivor-v-canada-2021/>
6. Submission of the Canadian Feminist Alliance for International Action and Dr. Pamela Palmater to the United Nations Committee on the Elimination of Discrimination against Women for the Day of General Discussion on the Rights of Indigenous Women, June 18, 2021, online: <https://fafia-afai.org/wp-content/uploads/2021/09/CEDAWSubmissionDayofGeneralDiscussionFINAL.pdf>