The Indian Act Sex Discrimination Working Group

Briefing Note on Bill C-38

A New Amendment to the Indian Act

The Government of Canada tabled a new amendment to the *Indian Act* on December 14, 2022. The Indian Act Sex Discrimination Working Group (the "Working Group") was invited to consult on this legislation. This Briefing Note is the result of the discussions and deliberations of the Working Group as a whole, and does not represent the opinion of any individual or organization participating in the Working Group. Members of the Working Group may submit their own views separately. Any legal or political responsibility for this Briefing Note and its contents is solely that of the Working Group as a whole.

Introduction

The National Inquiry on Missing and Murdered Indigenous Women and Girls concluded in its Final Report in 2019 that:

> The violence the National Inquiry heard about amounts to a race-based genocide of

> Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQQIA people. This genocide has been empowered by colonial structures, evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations.[1]

In Call for Justice 1.2 v, the Inquiry called on Canada to eliminate gender discrimination in the *Indian Act*. The sex discrimination in the *Indian Act* is a key component of the genocide, as it has been an effective tool of forced assimilation. In 1920 Duncan Campbell Scott said about the *Indian Act*, "…Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, …that is the whole object of this Bill,"[2] Duncan Campbell Scott identified Indian women as targets for exclusion. He said: "When an Indian woman marries outside the band, whether a non-treaty Indian or a white man, it is in the interest of the Department, and in her interest as well, to sever her connection wholly with the reserve and the Indian mode of life".[3]

Since 1876, the *Indian Act* has contributed these goals by defining thousands of First Nations women and their descendants out of the pool of 'Indians', through the application of patriarchal, misogynistic and racist definitions of who is entitled to Indian status and who can transmit status. Through legal definition, Canada has forced First Nations women and their descendants out of their communities, and into the non-Indigenous population, robbing them of rights, recognition, political voice, culture, language, family and community ties, and safety and security.

Article 8 of *the United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)[4], mirrors the language of the *Convention on the Prevention and Punishment of the Crime of Genocide*,[5] and states that Indigenous peoples and individuals have "the right not to be subjected to forced assimilation or destruction of their culture" and the right to "redress for any form of forced assimilation."[6]

Canada is in the process of consulting on the matter of how to make its laws consistent with

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[1] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, Volume 1a, p. 50.
[2] Duncan Campbell Scott, Testimony before Special Parliamentary Committee, House of Commons, 1920, National Archives of Canada, Record Group 10, volume 6810, file 470-2-3, volume 7, pp. 55 (L-3) and 63 (N-3).
[3] Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples (Ottawa: Minister of Supply and Services, 1997), vol.4, Chapter 2, page 12, citing Letter from Deputy Superintendent General Scott to Arthur Meighen Superintendent General of Indian Affairs, (12 January 1920).
[4] *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), Resolution 61/295 adopted by the United Nations General Assembly, 13 September 2007, online: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf
[5] *Convention on the Prevention and Punishment of the Crime of Genocide*, General Assembly Resolution 260 A (III), 9 December 1948.
[6] UNDRIP, Article 8 (1) and (2).

the UNDRIP, as it is required to do by the *United Nations Declaration on the Rights of Indigenous Peoples Act* (*UNDRIP Act*) which mandates an action plan that includes:

> "(a) measures to (i) **address injustices**, combat prejudice and eliminate all forms of violence, racism and discrimination, including **systemic racism and discrimination, against Indigenous peoples and Indigenous …women**….and b) measures related to monitoring, oversight, **recourse or remedy** or other accountability measures with respect to the implementation of the Declaration."[7]

Amending the *Indian Act* in 2022 must be an exercise undertaken in light of the finding of genocide by the National Inquiry, Canada's commitments to make its laws consistent with UNDRIP, and all of Canada's international human rights obligations. This means eliminating all the discriminatory provisions in the *Indian Act*'s status registration provisions and providing recourse and remedy for the harms of forced assimilation which they have caused.

The Proposed Amendment

The Working Group supports what is in the proposed legislation, namely, provisions addressing sex discrimination and loss of status because of voluntary and involuntary enfranchisement, and a new legal mechanism to facilitate reconnection with their natal Bands for women who were involuntarily transferred to their husbands' Bands because of the patriarchal structure and operation of the *Indian Act.*

However, this legislative fix is incomplete. The Working Group strongly objects to the introduction of one more legislative amendment that does not address all the remaining discrimination in the *Indian Act*. The *Indian Act* was amended in 1985, 2011 and 2017, each time with the claim that the amendment eliminated sex discrimination from the Act. Each time, the claim was proven false.

As Justice Masse in her ruling in *Descheneaux c. Canada*,[8] the United Nations Human Rights Committee in *McIvor v. Canada*,[9] the United Nations CEDAW Committee in *Matson v. Canada*,[10] and the Senate Committee on Aboriginal Peoples in *Making It Stop!: Ending the*

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[7] *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14, at para 6 (2), online: https://laws-lois.justice.gc.ca/eng/acts/U-2.2/FullText.html

[8] *Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555 (CanLII), at paras 234 – 244, online: https://www.canlii.org/en/qc/qccs/doc/2015/2015qccs3555/2015qccs3555.html

[9] United Nations Human Rights Committee, *McIvor v. Canada*, CCPR/C/124/D/2020/2010, 11 January 2019, at para 9, online: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CCPR_C_124_D_2020_2010_28073_E.pdf

[10] United Nations Committee on the Elimination of Discrimination against Women, *Matson v. Canada*, CEDAW/C/81/D/68/2014, 2 March 2022,at para 20, online:

Remaining Discrimination in Indian registration[11] have all made clear, the pattern of reluctant, piecemeal changes, in response to litigation, is unjust and does not satisfy Canada's obligations to First Nations women and their descendants, under domestic or international human rights law.

In its June 2022 report, the Senate Committee on Aboriginal Peoples wrote: "We find that narrow, piecemeal changes to the *Indian Act* in 1985, 2010 and 2017 have exacerbated the problems by establishing incomprehensible and unnecessarily complex categories of registration. During our 2022 study of the implementation of Bill S-3, former senator, the Honourable Lillian Eva Dyck explained, 'the government knew there were outstanding registration issues that should have been addressed but they did not do that.' We agree and find this unacceptable. It is time to end inequities in the *Indian Act* once and for all."[12]

Further, the UN Human Rights Committee (the "UN HRC") in its August 2022 Report on *Follow up progress on individual communications*[13] has assessed Canada's response to the Committee's decision in *McIvor v. Canada* as only partially satisfactory. Canada has failed to show that it has satisfied three standards: a) inclusive interpretation of section 6 (1)(a) of the *Indian Act* of 1985; b) taking steps to address residual discrimination within First Nations; and c) non-repetition. The UN HRC has asked Canada to report back by February 2023 on additional measures it has taken to satisfy these standards and provide a full and effective remedy for the discrimination.

Amendments to cure the additional discriminatory provisions identified in this Briefing Note by the Working Group are required immediately in order to meet the requirements of the Senate Committee, the UN CEDAW Committee, the UN Human Rights Committee, and the *UNDRIP Act.*

What is in the new proposed amendment to the Indian Act

1. Enfranchisement

The proposed amendment removes the provisions that discriminate against women and children who were involuntarily enfranchised (lost their status) because their

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https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_81_D_68_2014_33581_E.pdf

[11] Senate Committee on Aboriginal Peoples, *Make It Stop!: Ending the Remaining Discrimination in Indian Registration*, June 2022, at 30, online: https://sencanada.ca/en/info-page/parl-44-1/appa-make-it-stop-ending-the-remaining-discrimination-in-indian-registration/

[12] *Making it Stop!* at 8.

[13] United Nations Human Rights Committee, *Follow-up progress report on individual communications*, CCPR/C/134/4, 25 August 2022, at 6.

husbands/fathers were enfranchised. This addresses the discrimination identified in the *Nicholas* case.[14] Prior to 1985, the *Indian Act* treated these women and their descendants in the same way as women who 'married out'. But the repairs provided in 1985, 2010, and 2017 for women who 'married out' were not applied to women and children who were involuntarily enfranchised because their husbands/fathers were enfranchised. In addition to curing the discrimination challenged in the *Nicholas* litigation, the proposed amendments would also reinstate those who:

- lost status for being out of the country for five years without permission of the Minister;
- joined certain professions or were ordained ministers;
- were enfranchised through band enfranchisement.

The Working Group fully supports this amendment. However, the Working is also clear that there were women who were pressed into enfranchising "voluntarily" before marriage. It must be clear in the legislative language of the amendment that women who were enfranchised "voluntarily" before or after marriage will be re-entitled to status, and to band membership in their current or home First Nation – at their option.

2. Loss of Natal Band Membership

Women who lost membership in their natal bands and were transferred automatically to membership in their husbands' bands lost familial and community connections, and access to their traditional territories, culture and language.

The proposed amendment provides a new legal mechanism that would allow those women who lost the right to be members of their natal band prior to 1985, because they were transferred to their husband's band, to apply to have their membership in their natal band restored. The new mechanism and associated policies must ensure that it is easy to trigger this return.

The Working Group fully supports this amendment.

However, there are two outstanding issues. First, the Working Group notes that ISC maintains (see ISC engagement kit) that section 10 bands, that have adopted their own membership codes, can, on the face of the law, refuse to accept a requested transfer of a woman back to her natal band. This hands-off approach by the Government of Canada could permit section 10 bands to perpetuate the same sex discrimination that women have experienced through the *Indian Act*, even though both the Government and the bands are

[14] *Nicholas v. Canada (Attorney General).* See Government of Canada**,** *First Nations families and Canada agree to put litigation on hold while working to end the legacy of "enfranchisement" under the Indian Act*, March 3, 2022.

constrained from discriminating based on sex by the *Canadian Human Rights Act*, s. 15 of the *Charter* and Articles 9, 44 and 22 of the *United Nations Declaration on the Rights of Indigenous Peoples*, which guarantee the right of Indigenous women to belong to an Indigenous community or nation without discrimination. Consequently, the amendment should clarify that women who were transferred automatically to their husband's bands have an unrestricted right to return to their natal band when and if they choose, whether it is a s. 10 or a s. 11 band.

Secondly, the Working Group notes that restoration of band membership is an issue not just for women who wish to transfer back to their natal bands. It is a significant issue for all First Nations women and their descendants who, but for the sex discrimination in the *Indian Act*, would have been band members in their home bands. Canada has a legal obligation to remedy ongoing sex discrimination in band membership which is directly tied to the historic and/or ongoing sex discrimination in Indian registration. Band membership is an issue for women whose eligibility for status has been reinstated, corrected and/or improved) because of post-1985 amendments to the *Indian Act*.

As statutory human rights, the *Charter*, and international human rights law all apply to band membership codes, and restoration of band membership is an essential element of unwinding *Indian Act* sex discrimination, the *Indian Act* should contain a new provision that states that a band cannot exclude a woman whose status has been restored, corrected, or improved under the *Indian Act,* whether it is a s. 10 or a s. 11 band.

What Is Missing From the Proposed Amendment to the Indian Act

1. Removal of the bar to compensation for discrimination

The proposed amendment does not remove the legal bars to compensation for First Nations women and their descendants for the harms caused by the sex discrimination in the *Indian Act*.

The Senate Committee on Aboriginal Peoples in its June 2022 report, *Make It Stop!: Ending the Remaining Discrimination in the Indian Act*, recommended that "the Government of Canada…repeal section 22 of *An Act to Amend the Indian Act* (1985); section 9 of the *Gender Equity in Indian Registration Act* (2010); and sections 10 and 10.1 of *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* (2017) to enable First Nations women and their descendants to access compensation."[15]

[15] *Making It Stop!* at 35.

The Senate Committee explained: "The committee agrees with witnesses that reparations, including compensation and a formal apology, are essential to recognize the harms experienced by First Nations women and their descendants as a result of discrimination in the registration provisions under the *Indian Act*. Reparations are a fundamental part of reconciliation, providing the opportunity for Indigenous women and their children to heal, and for all Canadians to learn about this ongoing injustice in our shared history. …[T]he committee believes that non-liability clauses must be repealed to enable First Nations women and their descendants to access compensation."[16]

The bar to compensation, first introduced in 1985, constitutes blatant sex discrimination, contrary to s. 15 of the *Charter*. It is particularly egregious in light of compensation that has been offered to Indigenous peoples for other harms caused by colonial laws, policies and practices. These include:

Inuit compensation for forced relocations - $50M;
Inuit compensation for dog slaughter - $20M;
Indian residential school settlement - $3.23B;
Indian day school settlement - $1.27B;
60's scoop settlement - $750M;
First Nations child welfare settlement - $40B;
First Nations drinking water settlement - $8B;
First Nations flooding settlements (nationwide) - $45M - $90M.

The bars to compensation also contravene the right of Indian women and their descendants to redress for forced assimilation, which they are guaranteed in Article 8(2)(d) of UNDRIP.

The *General Recommendation No. 39 (2022) on the rights of Indigenous Women and Girls,* adopted by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) on October 26, 2022,[17]states: "The Committee acknowledges that indigenous women and girls have suffered and continue to suffer from forced assimilation policies and other large-scale human rights violations, which may in certain instances amount to genocide. It is critical for States parties to address the consequences of historic injustices and to provide support and reparations to the affected communities as part of reconciliation and the process of building societies free from discrimination

[16] *Making it Stop!* a 34.
[17] United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 39 (2022) on the rights of Indigenous Women and Girls*, CEDAW/C/GC/39 ,26 October 2022, at para 14. online: https://mail.google.com/mail/u/0/#search/CEDAW+recommendation+on+rights+of+Indigenous+women+adopted/WhctKKXgsRmvrmzlDfRnvclFLJxFNfXvqMkgtsSznpvZHvKGGLXHGnvXBBldLHMMKFQrTKQ?projector=1&messagePartId=0.1

against indigenous women and girls."

The Working Group has repeatedly recommended that this bar to compensation be removed, and that First Nations women and their descendants be compensated for the harms of sex discrimination, including the harm that not treating them as equal parents, able to transmit status on an equal footing with their male counterparts, has done to women in their role as principal conveyors of culture and language.

2. Removal of 6(1)(f), 6(2), the second generation cut-off, and the two parent rule

The proposed amendment does not remove s. 6(2), the second generation cut-off and the two-parent rule that were introduced to the *Indian Act* in 1985. Instead of removing the discrimination against women by permitting women to transmit status as one parent as men had been able to do since 1876, Bill C-31 introduced a two-parent rule for the transmission of status for both women and men.

Section 6(2) provides that someone who has only one status parent will get status for their lifetime. However, the 6(2) person has to have children with another status person in order to ensure that the children have status. If a 6(2) person has a child with a non-status person that child will have no status. This is called the 'second generation cut-off.'

As Claudette Dumont-Smith reported to the Minister for Crown-Indigenous Relations in 2017, "the inequity of greatest concern that was raised throughout the collaborative process was the second generation cut-off. The effect of this inequity is felt in the community and amongst families where some family members are registered and others ineligible in spite of recent legislative changes through Bill S-3."

The second generation cut-off and the two parent rule perpetuate discrimination against women in three ways:

i. They Penalize Women if the Father of their Child is Unknown or Unnamed

Until 1985, an Indian woman had the independent right to transmit status to her child in just one situation – where the state could not prove that the father was non-status. Under that old provision, the onus was on the government and its agents to show that the father was not an Indian. However, in 1985, the onus was reversed. Since then the mother has – by way of ISC policy - the onus of establishing that the father of the child **is** a status person in order for the child to have status.

This is sexist and problematic. Who is a child's mother is usually readily apparent. Who is the father is not always apparent. Whether the father acknowledges his paternity and thus can be "counted" as the second status parent for purposes of

eligibility for status is essentially his decision. The provision thus perpetuates the patriarchal and privileged role of the father in conferring status which was a feature of the *Indian Act* before 1985, albeit in a new way.

Moreover, there are some cases where it is not desirable or possible to name the father. A child may be born of incest, and putting that on the birth certificate or status application will have negative effects on both the child and the mother. The father of the child may be unknown, as in cases of rape or gang rape.

Where the father of the child is unnamed or unknown, the 'Gehl provision' introduced in 2017 in *Bill S-3* allows the mother to bring forward such evidence as she can to establish the father's Indian status, and the Registrar must give that evidence a reasonable interpretation. The father need not be named. However, if she does not have that evidence, and if she has 6(2) status herself, the child will not receive Indian status.

While it may be possible for the non-status child and 6(2) mother to stay on reserve during the child's early years, preventing an immediate severance from family and community, the child's life on reserve will not be the same as the life of children with status. That child will not be eligible for statutory benefits under the *Indian Act* and thus will not have access to the same medical care and education as the child's status family and peers, nor will that child be eligible for on-reserve housing and other on-reserve programs. In the long run, the child will be required to leave the reserve, as only status people can live there, unless they have special permission from the Chief. If the mother and child live off the reserve, the child will not be eligible for *Indian Act* benefits, making their lives even more difficult than the lives of other young single status women with children. They are likely to be living as the poorest of the poor.

ii. They Carry Forward the Original Sex Discrimination

The 1985 amendment to the *Indian Act*, Bill C-31, preserved the old advantages of Indian men by providing that the non-status - often non-Indigenous - women whom they married and endowed with status before 1985 would henceforth be able to pass status on to a child, something they could not do before 1985.

In this way, a whole population of eligible two-parent status families came into being in 1985. By contrast, the non-status men who had married status women and cost them their status were **not** given status, so the women restored to status were left out of the privileged circle of families with two status parents. It was thus much more likely that the children of families led by status women would become 6(2)s before the children of families led by status men. The new rules simply perpetuate the old discrimination against the female line under a new guise.

iii. They Construct a Program of Extinction and Genocide

The restrictive two-parent rule continues Canada's program of forced assimilation by legally defining out of the pool of 'Indians' those with only one 'Indian' parent. Demographer Stewart Clatworthy predicts that in three or four generations over half of Indigenous individuals will not be entitled to status.[18] Before 1985, a father with status could confer it on his child but a woman with status could not. The two parent rule and section 6(2) create a new population of persons without status, because they cannot get it from their mothers. These provisions thus substantially undercut the purported benefit of the 1985 legislative reforms.

Claudette Dumont-Smith stated in her report: "This inequity will see the gradual elimination of persons eligible to be registered as an Indian with some communities feeling this impact in the next generation while most First Nation communities, regardless of location, will feel this impact within the next 4 generations. The end result, in the not so distant future, is that some communities will no longer have any registered Indians, or the number of registered Indians will have declined significantly."[19]

Continuation of the two-parent rule will fulfill the genocidal intention of the *Indian Act* – getting rid of the "Indian problem" – through forced assimilation.

The Senate Committee on Aboriginal Peoples recommended in its report *Make It Stop!* "[t]hat the Government of Canada introduce legislation repealing section 6(2) of the *Indian Act* and develop an accompanying transition plan for those registered under section 6(2) as soon as possible, but no later than June 2023."[20]

As noted earlier, the removal of the two-parent rule is mandated by Article 8 of UNDRIP, which sets out the right of Indigenous peoples not to be forcibly assimilated, and to redress for forced assimilation. Article 44 guarantees this right equally to Indigenous women and men.

To correct the discrimination caused by the 1985 6(1)(a) – 6(1)(c) hierarchy in combination with imposition for the first time of a two parent rule for transmission of status, which treated the women as though they were already on the same footing as men when they were not, the Working Group recommends amending the *Indian Act* to instate a one parent rule for both male and female parents from 1985 onwards. This is what should have been done to correct inequality in 1985 and was not.

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[18] Spolnik, M. (2021). The Second-Generation Cut-Off: Effect on Indigenous People in Canada, at p. 18, (Unpublished master's project). University of Calgary, online: http://hdl.handle.net/1880/114210.

[19] Claudette Dumont-Snith**,** *Annex A: Minister's Special Representative final report on the collaborative process on Indian registration, band membership and First Nation citizenship* May 2019, online: https://www.rcaanc-cirnac.gc.ca/eng/1561561140999/1568902073183.

[20] *Make It Stop!* at 26.

Making this change will have various implications: 1) the 6(1)(f) category will need to be eliminated along with the 6(2) category; 2) the unstated and unknown paternity provision, and the 'Gehl provision' will become unnecessary; 3) applications that were made under the unknown and unstated paternity provision and denied should be reviewed, and status should be awarded where the mother should have been able to transmit status in her own right. Similarly, refusals of status to illegitimate children of status mothers under earlier provisions, where objections were made, should also be reviewed, where possible; 4) implementing changes in status categories will need to be planned for, widely publicized, and adequately resourced by ISC.

The Working Group urges the Government of Canada to establish a one parent rule now.

3. Pre and Post 1985 Birth and Marriage Dates

In some families, siblings with the same birth parents, have full section 6(1)(a) status or no status depending on whether they were born before or after April 17, 1985. Similar anomalies arise because of the date of marriage of the parents, whether before or after April 17, 1985. This '1985 cut-off' was found to be discriminatory by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its ruling in *Matson v. Canada*.[21] A CEDAW Committee member, Ms. Corinne Dettmeijer-Vermeulen, in testimony before the Senate Committee on Aboriginal Peoples in May 2022 regarding the CEDAW Committee's decision, stated that "even if not currently based on the gender of the descendants themselves, it perpetuates in practice the differential treatment of descendants of previously disenfranchised Indigenous women."[22] The CEDAW Committee directed Canada to "[a]mend its legislation… to address fully the adverse effects of the historical gender inequality in the *Indian Act* ….including by eliminating cut-off dates in the registration provisions and taking all other measures necessary to provide registration to all matrilineal descendants on an equal basis to patrilineal descendants."[23] The 1985 cut-off date also causes discrimination on the basis of age, family and marital status.

The Canadian Human Rights Commission has encouraged Canada to take the CEDAW ruling into account in its new amendment to the *Indian Act*.[24] The Senate Committee found that "as with the second generation cut-off, this matter must be urgently addressed

[21] *Matson v. Canada*, *supra* note 3.
[22] *Make It Stop!* at 27.
[23] *Matson v. Canada*, *supra* note 3 at para. 20(b)(i).
[24] Canadian Human Rights Commission, *More must be done to dismantle the lasting effects of colonialism*, May 15, 2022, online: https://www.chrc-ccdp.gc.ca/en/resources/more-must-be-done-dismantle-the-lasting-effects-colonialism

by the Government of Canada to ensure equality in the registration provisions."[25]

As with the issue of unknown and unstated paternity, this discrimination would be cured by establishing a one parent rule.

4. Scrip

The proposed amendment does not address the issue of Indian status being denied to those who were considered 'half-breed' (now referred to as Mètis) and took scrip.

The *Indian Act, 1880*[26] states:

> "No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and no half-breed head of a family (except the 1884, C. 2/,widow of an Indian or a half-breed who has already been admitted into a treaty) shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty; and any half- breed who may have been admitted into a treaty shall be allowed to withdraw therefrom on refunding all annuity money received by him or her under the said treaty, or suffering a corresponding reduction in the quantity of any land, or scrip, which such half-breed, as such, may be entitled to receive from the Government."

There are likely to be women who were 'half-breeds' who took scrip, or who married 'half- breeds' who took scrip, who would have been entitled to Indian status, had First Nations women been entitled to status in their own right as First Nations men were from 1876. It should be clarified that women who would otherwise be entitled to Indian status under *Bill S-3* should not be denied status because a head of household accepted scrip.

Amendment to the *Indian Act* regarding 'scrip' must respect a woman's choice about her identity and that of her descendants. She must be able to choose Indian status if she wants it and is otherwise eligible.

The Working Group notes that the 2017 amendment to the *Indian Act* [27] mandates a liberal interpretation of this amendment that should allow the Registrar to grant status to otherwise eligible women and descendants who are disentitled because a head of household took scrip.

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[25] *Make It Stop!* at 28.
[26] *Indian Act*, 1880, S.C. 1880, c. 28, at s. 14.

> Section 9 states: "The provisions of the *Indian Act* that are amended by this Act are to be liberally construed and interpreted so as to remedy any disadvantage to a woman, or her descendants, born before April 17, 1985, with respect to registration under the *Indian Act* as it read on April 17, 1985, and to enhance the equal treatment of women and men and their descendants under the *Indian Act*."

Conclusion

The Working Group supports:

1. The proposed amendment to cure the discrimination against women and their descendants caused by enfranchisement provisions, including those who enfranchised before marriage; and

2. The proposed amendment to facilitate reconnection of women with their natal bands.

The Working Group urgently recommends:

1. The inclusion of a new provision that states that women and their descendants whose status has been restored, corrected, or improved by changes to the *Indian Act* that dismantle previously discriminatory exclusions are entitled to band membership, including in s. 10 bands;

2. Removal of bars to compensation for all forms of discrimination against First Nations women and their descendants caused by the status provisions of the *Indian Act*;

3. The removal of the status categories of 6(1)(f) and 6(2), the second generation cut-off and the two parent rule and the establishment of a one-parent rule for both male and female parents;

4. The provision of sufficient funding allocated to First Nations to support any new members, and to correct historic underfunding of capacity, infrastructure and social programs;

5. Clarification that instatement of a one-parent rule will remedy discrimination caused by pre and post 1985 marriage and birth cut-off dates and by the unknown and unstated paternity provisions; and

6. Clarification that women are not barred from eligibility for Indian status because they took scrip or married a person who took scrip.

Information about changes to the *Indian Act* that affect eligibility for status and different classes of status must be made available to Indigenous peoples, and particularly to Indigenous communities, so that they can know and access their rights. Changes to the law must be accompanied by effective and pro-active plans for making information public and making registration accessible and practical.

The Indian Act Sex Discrimination Working Group

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