

OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

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June 1, 2021

ATTN: Ibrahim Salama
Chief, Human Rights Treaties Branch
and Members of the CCPR Follow-up Team
C/O Gwen Brodsky, Via email only: brodsky@brodskylaw.ca

Re: Implementation by Canada of the 11 January 2019 Decision of the Committee concerning the Petition of Sharon McIvor and Jacob Grismer, CCPR/C/124/D/2020/2010

Dear Mr. Salama and Members of the CCPR Follow-up Team,

The Union of BC Indian Chiefs (UBCIC) writes to support the Petitioners' requests for immediate and effective implementation of the UN Human Rights Committee decision and remedy in *McIvor v Canada*, CCPR/C/124/D/2020/2010, in which the Committee found Canada to be in violation of the Petitioners rights under Articles 3 and 26, read in conjunction with Article 27, of the International Covenant on Civil and Political Rights (“the Covenant”) and outlined Canada’s legal obligations to ensure an effective remedy, including: full reparations through amendments to s 6(1)(a) of the *Indian Act*, to take steps to address issues of residual discrimination, and to take steps to avoid similar violations in the future.

The Union of BC Indian Chiefs is a representative body of approximately 140 First Nations within British Columbia and has a mandate from the member Nations of British Columbia to work towards the implementation, exercise and recognition of our inherent Title and Rights as Indigenous peoples. We have been specifically mandated via resolution to advocate for the full removal of all sex-based discrimination in the *Indian Act*.¹

As the UBCIC, we recognize Indigenous women as central to our communities, our cultures, and our governments, and as essential to the continued survival of our peoples. Systemic and legal discrimination has been perpetuated against Indigenous women and their descendants as a tool of forced assimilation. These colonial policies were, and continue to be, used to destabilize our communities through the inevitable reduction of our membership rolls and violent family separation, undermining our ability to

¹ UBCIC Resolution 2010-08 “Bill C-3”; 2012-18 “Endorsement of UBCIC Citizenship Paper”; UBCIC Resolution 2019-11 “Immediate Implementation of Bill S3 and the Removal of Sex-Based Discrimination from the *Indian Act*”; UBCIC Resolution 2021-19 “Support for Removal of Ongoing Discrimination in the *Indian Act*”.

maintain and protect the legal status and existence of our present and future citizens, and threatening our connection to our land base, our Title and Rights, our cultures, languages, knowledge and our resources.

UBCIC has long been involved in advocacy efforts to eliminate sex-based discrimination in the *Indian Act*, and to provide redress and reparations to Indigenous women and their descendants who have been impacted by the historical, ongoing and residual impacts created by this discrimination. As a member of the First Nations Leadership Council coalition² UBCIC intervened in the constitutional case of *McIvor v Canada*,³ before the British Columbia Court of Appeal. The purpose of our intervention was to support the decision of the British Columbia Supreme Court mandating the elimination of sex discrimination from the *Indian Act*.⁴ The position of the UBCIC was, and continues to be, that Indian women and their (matrilineal) descendants must be placed on the same legal footing as Indian men and their (patrilineal) descendants. We have also intervened before this Committee to support the Petition of Sharon McIvor and Jacob Grismer, including in 2011: <https://povertyandhumanrights.org/wp-content/uploads/2011/08/Grand-Chief-Stewart-Philip-Affidavit.pdf> and in 2016: <https://povertyandhumanrights.org/wp-content/uploads/2016/06/McIvorUBCIC-affidavit-2-in-support-of-S-McIvor.doc0001.pdf>.

In the Committee's decision CCPR/C/124/D/2020/2010, and in accordance with Article 2(3)(a) of the Covenant on Civil and Political Rights, the Committee outlined Canada's obligations to provide the Petitioners with an effective remedy, including full reparations to those whose Covenant rights have been violated and to take steps to address the residual discrimination within First Nations communities arising from sex-based discrimination within the *Indian Act*.⁵ We are aware of Canada's February 2021 submission to the Committee⁶ in which Canada states that all remaining sex-based inequities in the *Indian Act* registration provisions have been eliminated by Bill S-3.⁷ Canada also expresses a commitment to a Nation-to-Nation relationship with Indigenous peoples which is "*based on a recognition of rights, respect and cooperation, and guided by the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples*".⁸

However, Bill S-3 is meaningless until the women and their descendants who are now entitled to status registration actually become registered. The fact is that very few have been registered by Canada following the Bill S-3 coming into force, which is a direct result of Canada's failure to take the steps necessary to make registration available, as further explained below. Therefore, it is the position of the UBCIC that, notwithstanding the coming into force of Bill S-3, Canada has failed to take steps necessary to meaningfully fulfill its obligations under the Covenant. By failing to make registration available to

² The First Nations Leadership Council comes together to advocate on topics of joint issue and concern, and is a political collaborative relationship comprised of the political executives of the BC Assembly of First Nations, the First Nations Summit, and the Union of BC Indian Chiefs.

³ *McIvor v Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153.

⁴ *McIvor v The Registrar, Indian and Northern Affairs Canada*, 2007 BCSC 827.

⁵ CCPR/C/124/D/2020/2010, at para 10.

⁶ Follow-up Submission of the Government of Canada to its response to the views of the Human Rights Committee Concerning the Communication of Sharon McIvor and Jacob Grismer: Communication no: 2020/2010, February 3, 2021, at p 2 para 4.

⁷ Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, 1st Session, 42nd Parliament, 64-65-66 Elizabeth II, 2015-2016-2017; online: <https://www.parl.ca/DocumentViewer/en/42-1/bill/S-3/royal-assent> (Bill S-3).

⁸ *Supra* note 6, paras 16-18.

those who are now entitled to it, Canada has failed to implement Bill S-3.⁹ Furthermore, Canada has not worked with the UBCIC or First Nations in BC as full partners to address these issues, as is required by the UN Declaration, and as called for by the UBCIC via numerous resolutions.¹⁰

The *United Nations Declaration on the Rights of Indigenous Peoples*, which the Government of Canada has adopted without qualification and have committed to implement, affirms:

Article 8(1): Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture;

Article 8(2): States shall provide effective mechanisms for prevention of and redress for:

- a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- b) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- d) Any form of forced assimilation or integration;

Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

By Resolution 2019-11,¹¹ the UBCIC called upon the Government of Canada to take immediate action to bring all provisions of Bill S-3 into force and to work with Indigenous peoples, as full partners, to develop necessary mechanisms, reparations and processes by which the rights of Indigenous women and their descendants can be fully realized and recognized. This was followed by Resolution 2021-19,¹² which recognized that while some Indigenous women and their descendants have now become eligible for *Indian Act* status through the passage of Bill S-3, they continue to face unreasonable and unconscionable delays in becoming registered, constituting ongoing discrimination and a denial of their rights. Despite these ongoing calls, Canada has refused to implement the decision of this Committee and blatantly ignored the direct calls of First Nations to bring an end to this discrimination and provide the necessary reparations to Indigenous women and their descendants.

As indicated in the Committee's decision in *McIvor*, Canada has an obligation to provide effective remedies, reparations, and to address the residual discrimination faced by Indigenous women and their descendants. It is the position of the UBCIC that Canada has not taken action necessary to meet its obligations under domestic law, nor international human rights law.

⁹ UBCIC notes with concern that there are also other remaining instances of sex-based discrimination remaining in the *Indian Act* including provisions that discriminate against Indigenous women who lost their status through involuntary enfranchisement, which Canada has yet to address, and which the UBCIC has specified in UBCIC Resolution 2021-19.

¹⁰ *Supra* note 1.

¹¹ *Ibid*

¹² *Ibid*

According to the Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations, as of March 25, 2021, Canada has registered 17,500 new Indians since 2017.¹³ Since the Government of Canada's own estimates of the number of First Nations people newly entitled to status by Bill S-3 is between 270,000 and 450,000, the numbers registered so far do not represent full and effective remedial action.¹⁴ In addition, those who have applied face delays of two years and more to have their applications processed. Canada has also failed to effectively provide information to those who are potentially impacted, to provide the necessary resources to assist in the application process, and to adequately publicize and distribute the decision of the Committee. In addition, there has been no willingness on the part of Canada to discuss reparations for those impacted, nor to take any form of meaningful action on its own.

The COVID-19 Pandemic has exacerbated the pre-existing socioeconomic and health disparities that exist for Indigenous peoples in Canada, increasing risks to the health and well-being of Indigenous peoples, who have reported greater impacts upon their financial and mental well-being than other Canadians because of the pandemic. This is further intensified for Indigenous women, increasing the risks and challenges faced by Indigenous children who are more likely to be growing up in sole-parent households headed by Indigenous women. Indigenous Elders have also been disproportionately impacted in every area of the country. Despite these very public and known realities, Canada chose to pause processing applications for Indian status registration, which they acknowledge – albeit passively – in their own submission to the Committee. Rather than take meaningful and proactive steps to ensure Indigenous women and their descendants have access to the rights and benefits allotted via Indian status amid a public health crisis, Canada intentionally skirted their legal obligations by instead using the pandemic as an excuse to create further delays.

The UBCIC was made aware of these concerns by Indigenous women early in the pandemic and, in addition to the past decade of advocacy on sex-based discrimination in the *Indian Act*, has made several calls upon Canada in the past year to declare Indian registration an essential service, to no avail. Prior to the COVID-19 pandemic the wait times for Indian registration averaged 12-18 months. This has now been extended to two years or more. Until Canada takes significant steps to address these unreasonable delays, the issues of sex-based discrimination will not be addressed. Reiterating the calls by the Petitioners, the UBCIC requests the Committee to call upon Canada to declare *Indian Act* registration an essential service.

In conclusion, the UBCIC fully supports the Petitioners' requests for immediate and effective implementation of the UN Human Rights Committee decision and remedy in *McIvor v Canada*, CCPR/C/124/D/2020/2010 and the additional request of the Petitioners, as supported by UBCIC Resolution 2021-19, to declare *Indian Act* registration an essential service.

¹³ This information was provided to Chief Judy Wilson, Secretary-Treasurer of UBCIC, by Minister Bennett in a meeting on March 29, 2021, and confirmed by email.

¹⁴ Crown-Indigenous Relations and Northern Affairs Canada, "Removal of all sex-based inequities in the *Indian Act*", 15 April 2019, online at: <https://www.newswire.ca/news-releases/removal-of-all-sex-based-inequities-in-the-indian-act-890690227.html>; see also Office of the Parliamentary Budget Officer, *Addressing 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

On behalf of the UNION OF BC INDIAN CHIEFS



Grand Chief Stewart Phillip
President



Chief Don Tom
Vice-President



Kukpi7 Judy Wilson
Secretary-Treasurer

CC: Sharon McIvor