

Ref: Communication No. 2020/2010 –
Mclvor & Grismer

The UN Human Rights Committee

Petitions Unit

Office of the High Commissioner for Human
Rights-UNOG

1211 Geneva 10, Switzerland

**AMNESTY
INTERNATIONAL**



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Dear Mr Salvioli,

I am writing to you regarding the petition of Sharon Mclvor and Jacob Grismer.

Sharon Mclvor and her descendants are among tens of thousands of people in Canada who continue to be discriminated against because of the ongoing failure of the federal government to fully address the sex discrimination in the Indian Act. Amnesty International believes that the consideration of this discrimination by the United Nations Human Rights Committee (the Committee) is an important step towards promoting the substantive, rights-based resolution that is both much needed and long overdue. Amnesty International submits the following letter to respectfully urge the Committee to refrain from suspending consideration of the petitioners' claims or deeming them inadmissible.¹

We note that in 2015, in a post-Mclvor ruling, the Quebec Superior Court found the Indian Act's status provisions unjustifiably violate the right to equality. The decision currently has effect only in the Province of Quebec, and Parliament has until 3 February 2017 to make amendments to comply with the ruling.²

Canada has a long track record of opposing court challenges to the Indian Act and adopting a piecemeal approach to its legislative reform. While the federal government has promised to engage with Indigenous groups prior to enacting any reforms in light of *Deschenaux*, to date Canada has not made any clear commitments to ending all discrimination based on sex under

¹ Amnesty International has provided its analysis of the Indian Act in a 5 June 2015 submission to this Committee: <https://www.amnesty.org/download/Documents/AMR2018062015ENGLISH.pdf> ; as well as to the UN Committee on the Elimination of Discrimination against Women in a 12 December 2014 communication about the case of Jeremy Matson, see CEDAW/OP/CAN(6), CE/IP/ak 68/2014 .

² *Deschenaux c. Canada (Procureur Général)*, 2015 QCCS 3555, <http://canlii.ca/t/glzhm>

the Indian Act.³ Sharon McIvor and Jacob Grismer initiated national litigation in 1989. A suspension of the review of the case on its merits by the Committee, pending the approvals of the new Indian Act amendments, would implicate further delays in their quest for justice.

In the meantime, until the planned legislative reforms are finally enacted into law, a discriminatory regime remains in force, thereby allowing this discrimination to continue unabated.⁴ As a consequence, McIvor and Grismer – as well as numerous others in similar circumstances - have yet to obtain official recognition of full status and have no immediate prospect of such remedy. This is of concern in respect to both the immediate circumstances of these individuals and the potential that continued denial of status can compound other harms and vulnerabilities. For example, the Committee on the Elimination of Discrimination against Women has listed the discriminatory provisions of the Indian Act as one of multiple factors that “cannot be separated from the current violence against aboriginal women and the continued and increased vulnerability of aboriginal women to such violence.”⁵

Consequently, Amnesty International is of the view that deeming the communication inadmissible or suspending its consideration based on Canada’s general commitment to reforms would fail to provide adequate remedy for the current and ongoing discrimination and would not assist in ensuring that any ensuing policies fully conform to Canada’s obligations under the ICCPR. Moreover, such a finding would frustrate considering a crucial claim of the petitioners: the role of lengthy delays in violating their right to a remedy.

Please do not hesitate to be in contact should you have any questions about the information contained in this letter.

Yours sincerely,



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³ A clear commitment in this respect is conspicuously absent from the *Second Supplemental Submission 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.

⁴ In this regard, Amnesty International respectfully reminds the Committee of its view that “. . .the right to an effective remedy may in certain circumstances require States Parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations.” UN Human Rights Committee, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (29 March 2004), UN Doc CCPR/C/21/Rev.1/Add. 13, para 19.

⁵ CEDAW, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (30 March 2015) UN Doc CEDAW/C/OP.8/CAN/1 at para 129. The Committee consequently urged Canada to make amendments to eliminate discrimination under the Indian Act. See *Ibid*, para 219(e).