

**SHARON MCIVOR AND JACOB GRISMER v. CANADA
COMMUNICATION NO. 2020/2010**

**AFFIDAVIT OF DAWN LAVELL HARVARD
JUNE 17, 2016**

Before:

**The United Nations Human Rights Committee Petitions Team
Office of the High Commissioner for Human Rights United Nations Office at
Geneva
1211 Geneva 10, Switzerland
Fax + 41 22 9179022**

Submitted by:

**Sharon McIvor and Jacob Grismer Merritt, British Columbia
Canada**

Represented by:

**Gwen Brodsky
Barrister and Solicitor
307 West 18th Avenue
Vancouver, British Columbia Canada V5Y 2A8**

brodsky@brodskylaw.ca

**Fax 604 874 6661
Tel 604 874 9211**

AFFIDAVIT OF DAWN LAVELL HARVARD

I, Dawn Lavell Harvard, President of the Native Women's Association of Canada of 155 International Rd, Unit 4 Akwesane Ontario K6H 5R7, SWEAR THAT:

1. I am the President of the Native Women's Association of Canada, and a member the Wikwemikong First Nation and as such, have personal knowledge of the facts and matters deposed to by me,

save and except where such are stated to be on information and belief and as to such facts and matters, I verily believe them to be true.

2. I swear this affidavit in support of Sharon McIvor's response to Canada's request for a suspension of consideration of her *Communication to the Human Rights Committee of Sharon McIvor and Jacob Grismer* (Communication No. 2020/2010), which alleges that the criteria for status registration under the post-1985 *Indian Act* regime violate the *International Covenant on Civil and Political Rights* (the "Covenant") and seeks a remedy to fully and finally eliminate sex discrimination from the legislative scheme.
3. The Native Women's Association of Canada (NWAC) was incorporated in 1974 and is one of the five officially recognized National Aboriginal Organizations (NAOs) whose purpose is to represent and speak, at the national level, on behalf of Aboriginal women in Canada.
4. I am the elected National President of NWAC. As such, I am the official spokesperson for NWAC and have the authority to act on behalf of the Board of Directors. The NWAC is governed by a Board of Directors that includes the President of NWAC, and the President or designate of each of the twelve Provincial/Territorial Member Associations (PTMAs) of NWAC, as well as four Elders and four youth representatives.
5. The Native Women's Association of Canada (NWAC) works to advance the well-being of Aboriginal women and girls through activism, policy analysis and advocacy. Aboriginal women

continue to experience discrimination on multiple grounds, in various complex forms and from various sources, including from individuals, businesses, and governments.

6. The Native Women's Association of Canada has long-standing knowledge of the sex discrimination in the Indian Act and its effects on Indigenous women and their descendants. This sex discrimination has divided families and communities, and caused spiritual, material and psychological harms to generations of Indigenous women and their descendants who have been viewed as less worthy, less Indian, and not full members of their cultures or communities.
7. The Native Women's Association of Canada was involved in the Parliamentary and Senate debates about Bill C-3 in 2010. NWAC supported the passage of Bill C-3, not because NWAC believed that Bill C-3 fully eliminated the sex discrimination in the Indian Act, but because NWAC believed that the Harper administration would not produce better legislation and because Bill C-3 would extend eligibility for status registration to an estimated 45,000 Indigenous women and their descendants who had previously been excluded.
8. In the circumstances, NWAC supported Bill C-3 with regrets because Bill C-3 was one more piecemeal effort that did not completely eliminate the sex discrimination. Many Indigenous women and their descendants are still excluded from eligibility for status registration because of sex discrimination. NWAC has

always advocated for the total elimination of the sex discrimination from the status registration provisions of the Indian Act, but has been unsuccessful in persuading any Canadian federal government to do so. NWAC's position is that the sex discrimination should have been eliminated completely in 1985 when Canada amended the Indian Act by passing Bill C-31, but it was not. Nor was the sex discrimination completely eliminated in 2010 with the introduction of Bill C-3.

9. As well as the knowledge of the legislative and social history of sex discrimination in the Indian Act that is a part of my purview as President of the Native Women's Association, I also have personal knowledge of the damage and effects of this discrimination, and the longevity of the struggle to remove it. I am the daughter of Jeanette Corbière Lavell, who with Yvonne Bedard, challenged the sex discrimination in the Indian Act under the Canadian Bill of Rights starting in the early 1970s. My mother was a registered Indian and a member of the Wikwemikong Band of Manitoulin Island. But when she married a non-Indian man in 1970, she was de-registered and lost her Indian status. She then fought for many years to regain it, something she would never have had to do if she had been a male Indian. Her legal challenge resulted in the 1974 Supreme Court of Canada ruling in *Canada (AG) v Lavell*, [1974] S.C.R. 1349, which found that her equality rights were not violated because she was treated the same as all other Indian women.

10. Indigenous women, like my mother and Sandra Lovelace and Sharon McIvor, have been trying to bring the sex discrimination in the Indian Act to an end for more than fifty years. There is no reason for any further delay, and no reason for further consultation about the implementation of Canada's legal obligation to treat Indigenous women and their descendants as fully equal to Indigenous men and their descendants.
11. Recently, the Native Women's Association of Canada has taken the lead, in partnership with the Canadian Feminist Alliance for International Action (FAFIA), in bringing the human rights crisis of murders and disappearances of Indigenous women and girls in Canada to the attention of United Nations treaty bodies and experts and to the attention of the Inter-American Commission on Human Rights.
12. In September 2011, NWAC requested that the United Nations Committee on the Elimination of Discrimination against Women initiate an inquiry into the murders and disappearances under Article 8 of the Optional Protocol to the CEDAW Convention. In March 2012 and March 2013, the Native Women's Association of Canada was granted thematic briefings by the Inter-American Commission on Human Rights on murders and disappearances of Indigenous women and girls in British Columbia and in Canada as a whole. These thematic briefings resulted in representatives of the IACHR coming to Canada to conduct an investigation.

13. The CEDAW Committee and the IACHR issued reports on their investigations in January and March 2015, finding that Canada is in violation of its international human rights obligations to Indigenous women and girls. Both bodies found that the ongoing sex discrimination in the Indian Act is a root cause of the extreme violence against Indigenous women and girls because this long-standing discrimination perpetuates the treatment and perception of Indigenous women and girls as less human and less worthy of care and respect.
14. In their reports, both the CEDAW Committee and the Inter-American Commission on Human Rights supported the appointment by Canada of a national inquiry into the murders and disappearances. They found that there are many incidents, practices and issues related to police response and government policy that need further examination if Canada is to bring the violence to an end. However, they also found that some practices and issues have already been identified as being key contributors to the violence and these should be addressed on an immediate basis to begin to remediate the environment of discrimination and impunity in which Indigenous women and girls live. The ongoing sex discrimination in the Indian Act is at the top of the list of issues that UN and IACHR experts identify that as ones that must be addressed immediately.
15. At the *Symposium on Murders and Disappearances of Indigenous Women and Girls, Planning for Change: Towards a National Inquiry and an Effective National Action Plan*, which was

convened in Ottawa by the Native Women's Association of Canada and the Canadian Feminist Alliance for International Action on January 16 and 17, 2016, CEDAW Committee experts and the UN Special Rapporteur on violence against women, Dubravka Simonovic, clarified that Canada has an obligation to implement the recommendations of the CEDAW Committee from its Article 8 inquiry on an immediate basis.

16. On April 7, 2016, sex discrimination in the Indian Act was raised as an issue of immediate concern in the context of the national inquiry by Special Rapporteur Simonovic and by IACHR Vice-President Margarette Macaulay at the Inter-American Commission's hearing: *Follow-up on the Report: Missing and Murdered Indigenous Women and Girls in British Columbia, Canada* in Washington, D.C.¹ This hearing was examining what steps Canada has taken to address the violence. Once more sex discrimination in the Indian Act was named by the present UN and IACHR experts as an example of continuing legislated sex discrimination that is contrary to international human rights norms and should be addressed immediately. Canada was asked by IACHR Vice President Macaulay when it intends to eliminate this discrimination, once and for all.

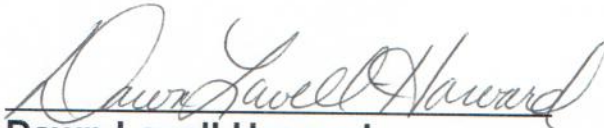
17. Indigenous women and girls in Canada live in a social, political, legal and economic environment of entrenched and harmful

¹ This hearing can be heard in full at:
<https://www.youtube.com/watch?v=mOPyAG3kXd4>

discrimination. Given Canada's record of failed legislative processes, the repeated recommendations from United Nations treaty bodies, including from the Human Rights Committee itself, the views of UN experts and the IACHR that this discrimination should be addressed immediately, and the urgency of not using the national inquiry or consultations on a new nation-to-nation relationship as a justification for further delay, the Native Women's Association of Canada requests that the Human Rights Committee proceed with its consideration of Sharon McIvor's petition and direct Canada to immediately and finally eliminate all sex discrimination from Canada's Indian Act.

SWORN BEFORE ME
in the City of Kingston
in the Province of Ontario,
this 17 day of June, 2016.


A Commissioner for taking affidavits
for Ontario.


Dawn Lavell Harvard

Name of Commissioner:

Derek Ochej, a Commissioner for taking
Oaths, Acting City Clerk, The Corporation
of the City of Kingston, Section 1(2)(1),
R.S.O. 1990 c.C17.