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June 27, 2019

Ibrahim Salama, Chief
Human Rights Treaties Branch

Dear Mr. Salama,

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

I am counsel to Sharon McIvor and Jacob Grismer. In the Committee's decision CCPR/C/124/D/2020/2010 under article 5(4) of the Optional Protocol, the Committee found Canada to be in violation of the Petitioners' Covenant rights. The Committee delineated Canada's remedial obligations. Paragraph 10 of the decision states: the Committee wishes to receive within 180 days, that is by July 10, 2019, "information about the measures taken to give effect to the Committee's Views." The Committee also requested that Canada publish the decision and disseminate it broadly in Canada's official languages.

We wish to provide the following information to the Committee regarding both matters: 1) measures taken to give effect to the Committee's decision, and 2) publication and dissemination of the decision.

I regret to inform the Committee that, as of the date of this letter, no measures have been taken to give effect to the Committee's decision. Sharon McIvor and Jacob Grismer have not been granted s. 6(1)(a) status under the *Indian Act*; nor have other First Nations women and their descendants who are affected by the Committee's decision. I also regret to inform the Committee that the decision has not been published and disseminated broadly, nor, to my knowledge, has it been translated into French so that it could be disseminated in both official languages.

Chronology of Events

On January 18, 2019, having received the Committee's decision, I wrote to the Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations, asking her to implement the remedy set out by the Committee immediately, by enacting the curative provisions of Bill S-3 without delay, or by ensuring that, as the Committee directed, s. 6(1) be interpreted to entitle the petitioners, and those like them, to s. 6(1)(a) status. I requested an urgent meeting for Ms. McIvor and I to discuss the following:

- the date when Sharon McIvor and Jacob Grismer may expect to become registered under s. 6(1)(a) of the *Indian Act*;
- the date when other similarly affected Indigenous women and their descendants may expect to become registered under s. 6(1)(a) of the *Indian Act*;
- the date when the sections of Bill S-3 that are not in force, which will have the effect of eliminating the discriminatory distinctions, will be brought into force;
- confirmation of resources allocated to process additional and outstanding applications for registration;
- confirmation of resources allocated to extend statutory benefits and services to new registrants;
- confirmation of a communications strategy that will effectively inform individuals who may be newly entitled to registration or entitled to an improvement in their registrations status;
- other elements of the reparations required to ensure a full and effective remedy to the Petitioners and all individuals of Indigenous descent who have been deprived of full Indian status because of the operation of the discriminatory sex-based criteria for status registration;
- Canada's plan for measures to be taken within 180 days, to implement the Committee's decision.

To this date, I have received no reply to this letter, although its receipt was acknowledged.

On February 8, 2019, having received no reply from the Minister, I wrote to Nathalie Nepton, Registrar, Crown-Indigenous Relations, drawing to her attention that the Committee has directed that s. 6(1)(a) of the *Indian Act* be interpreted "to allow registration by all persons, including the Petitioners, who were previously not entitled to be registered under s. 6(1)(a) solely as a result of preferential treatment accorded to Indian men over Indian women born prior to April 17, 1985, and to patrilineal descendants over matrilineal descendants, born prior to April 17, 1985." The Registrar's role is to determine entitlement to status under the *Indian Act*, and to register those who are entitled.

Given the Committee's decision, which the Registrar is obligated to implement, I requested that s. 6(1)(a) status be granted to Sharon McIvor, Jacob Grismer, and to the other Indigenous women and their descendants who have been ineligible because of sex discrimination.

Ms Nepton replied to my letter on March 6, 2019. However, she did not directly answer my request. Instead, the Registrar reiterated that the Government of Canada was engaged in a consultation process. The Registrar has failed to give effect to the Committee's direction in paragraph 9(a) that the Petitioners and other similarly affected individuals be registered under s. 6(1)(a) of the *Indian Act*.

On April 12, 2019 the National Inquiry on Missing and Murdered Indigenous Women and Girls issued a statement, prior to issuing its Final Report, taking note of the Human Rights Committee's decision. The Commissioners called on the Government of Canada to end the sex discrimination and bring the outstanding provisions of *Bill S-3* into force before the upcoming federal election, which will be held in October 2019. The Commissioners of the Inquiry stated: "Indigenous women are independent human rights holders and Canada should uphold their rights."¹

In its Final Report issued June 3, 2019, the National Inquiry on Missing and Murdered Indigenous Women, found that *Indian Act* sex discrimination is the cause of disconnection from communities and culture, and is a root cause of the violence against Indigenous women and girls.² In the Calls for Justice at 1.2, the National Inquiry calls on all governments in Canada to comply with the ICCPR and the UNDRIP, among other human rights instruments, and remove all gender discrimination from the *Indian Act*.³

On June 12, 2019, the Government of Canada made its report to Parliament on the results of the Collaborative Process on Indian registration, Band membership and First Nations citizenship. The Government of Canada appointed Claudette Dumont-Smith as a Special Representative to the Minister of Crown-Indigenous Relations to lead a collaborative consultative process and report to the Government with recommendations. Ms. Dumont-Smith's top recommendations were that the provisions in the *Indian Act* that discriminate on the basis of sex be removed by June 2019.⁴

On June 14, 2019 in an informal meeting with Indigenous women leaders and allies, Minister of Crown-Indigenous Relations, Carolyn Bennett, announced that the Government of Canada will bring the outstanding provisions of *Bill S-3* into force before the election. We understand that the outstanding provisions are intended to eliminate the sex-based hierarchy between ss. 6(1)(a) and 6(1)(c), to put the patrilineal and matrilineal lines on the same legal footing, and to eliminate the 1951 cut-off. A few days later,

¹ This statement can be found on the website of the National Inquiry on Missing and Murdered Indigenous Women and Girls, at: <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/04/End-to-Indian-Act-Sex-Discrimination-Statement-ENG.pdf>.

² See the Final Report of the National Inquiry on Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, at: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a.pdf; See also the Executive Summary, including the 231 Calls for Justice, at: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf

³ Executive Summary, Calls for Justice, 1.2, at pages 62-63.

⁴ Government of Canada, *Collaborative Process on Indian registration, Band membership and First Nations citizenship: Report to Parliament, June 2019*, at p. 10 of the Report of the Minister's Special Representative.

Minister Bennett made the same announcement to the press.⁵ She has provided no fixed date for bringing into force the provisions that are intended to eliminate the sex discrimination.

In conclusion, a promise has been made, which is a hopeful sign. But the decision of the Committee has not been implemented. Sharon McIvor, Jacob Grismer and all other First Nations women and their descendants who have been discriminated against because of the preferential treatment accorded to Indian men and patrilineal descendants are still being discriminated against. Canada is required to provide the Petitioners with an effective remedy, for which they are still waiting. Thus, Canada continues to violate the *International Covenant on Civil and Political Rights* and to deny the Petitioners, and other First Nations women and their descendants, equal protection of the law, and equal enjoyment of Indigenous culture.

As a final note, I wish to point out that no Minister or official representing the Government of Canada has even acknowledged publicly that the United Nations Human Rights Committee has issued a decision regarding sex discrimination in the *Indian Act* in January 2019, or that Canada has been found to be in violation of rights guaranteed in the ICCPR.

Far from publishing the decision and disseminating it widely, the Government of Canada has maintained a strict and highly noticeable silence. In light of Canada's repeated assurances that it respects the United Nations human rights system, and that it expects, as a nation, to live up to international human rights norms, this is surprising and concerning.⁶

The Petitioners request that the Committee:

(i) ask Canada to specify the date by which Canada will give effect to the remedial measures identified in paragraphs 9 and 10 of the Committee decision, *including inter alia*, the date by which the Petitioners may expect to be registered under s. 6(1)(a) of the *Indian Act*;

(ii) ask Canada to clarify how and when it intends to make full reparation to individuals whose Covenant rights have been violated by the sex discrimination identified in the Committee's decision; and

⁵ CBC News, June 18, 2019, "Delayed Bill S-3 amendments will be in force before the election, says Minister's office" online at: <https://www.cbc.ca/news/indigenous/bill-s3-indian-act-sex-discrimination-1.5176499>

⁶ See, for example, Prime Minister Trudeau's address to the United Nations General Assembly in September 2017 in which he said: "We know that the world expects Canada to strictly adhere to international human rights standards – including the United Nations Declaration on the Rights of Indigenous Peoples – and that is what we expect of ourselves, too." Text of speech is online at: <https://pm.gc.ca/eng/news/2017/09/21/prime-minister-justin-trudeaus-address-72th-session-united-nations-general-assembly>

(iii) ask Canada when it plans to publish the Committee's decision and disseminate it broadly in Canada's official languages.

Please do not hesitate to contact me if we can provide further information.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Gwen Brodsky', with several overlapping loops and a long horizontal stroke extending to the right.

Gwen Brodsky