

June 14, 2021

Ibrahim Salama, Chief  
Human Rights Treaty Branch  
CCPR Follow-up Team

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

**Re: CCPR Follow-up Process for Ascertaining the Measures Taken by Canada to Implement 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 writing to support the Petitioner's request for immediate and effective implementation of the UN Human Rights Committee decision and remedy in *McIvor v Canada*, CCPR/C/124/D/2020/2010. I am gravely concerned about the health, safety and well-being of First Nations women and their descendants by Canada's failures to fully implement the above-noted decision and its failures to address multiple, overlapping forms of residual sex discrimination related to Indian registration.

By way of background, I am an Indigenous woman from the Mi'kmaw Nation and registered Indian under the *Indian Act, 1985* and registered member of Ugpi-ganjig (Eel River Bar First Nation). I have 4 university degrees, including a doctorate in law which focused exclusively on sex and race discrimination in the *Indian Act's* registration provisions and the corresponding impacts of band membership (membership in a First Nation). I also published a book on this subject-matter entitled: *Beyond Blood: Rethinking Indigenous Identity* (Purich Publishing [now UBC Press], 2011).

I have been a lawyer in good standing with the Law Society of New Brunswick for 23 years and worked with the Government of Canada for 10 years as legal counsel at Justice Canada providing legal advisory services to Indian Affairs on issues related to the *Indian Act*, including Indian registration. I was also a senior Director at Indian Affairs who oversaw Indian registration in the Atlantic region. Following my work at Justice Canada, I was a human rights investigator at the Nova Scotia Human Rights Commission before I came to be Full Professor and the Chair in Indigenous Governance at Ryerson University. At Ryerson, my research and community-based work has focused on ongoing sex and race-based discrimination in Indian registration and band membership in First Nations.

This work has included providing expert testimony and submissions to Parliamentary and Senate committees studying legislation impacting Indian registration (*Bills C-3* and *S-3*) as well as submissions to various United Nations human rights treaty bodies and the Inter-American Commission on Human Rights in relation to sex and race-based discrimination and Indian registration under the *Indian Act*, and its connection to forced assimilation, legislative extinction, impoverishment of First Nations women and children and its direct links to the higher

rates of violence and murdered and missing Indigenous women and girls. I am considered a subject-matter expert on the issues raised in the above Petition.

The following represents clear examples of how Canada has not fully implemented to decision of the Committee concerning the Petition of Sharon McIvor and Jacob Grismer and has in fact, created new problems.

#### Indian Registration (status):

While Canada has amended the *Indian Act*'s registration provisions to address certain elements of sex discrimination in Indian registration, it has failed to take proactive steps to ensure that all First Nation women and their descendants have been registered. The federal government estimates that between 270,000 and 450,000 First Nations women and their descendants may be entitled to Indian registration under the *Bill S-3* amendments to the *Indian Act*. However, the Parliamentary Budget Officer found that the number could be as high as 670,000, and predicted that about 268,00 of these would actually apply. However, as of March 2021, only 17,500 people have been registered in the 3.5 years since the amendments were made.

At the current average rate of 5,833/year, it would take over 100 years for Canada to register all those entitled. Yet, Canada processes over 5 million passports every year. There is no other program or service offered in Canada that has such an exceptionally long wait-time, which is another example of discriminatory treatment of First Nations women. Similarly, the approvals of Indian registration for First Nations women under *Bills C-3* and *S-3* amendments are subject to a 10-year expiry date on their registration cards. There is no expiry date for First Nations men and their descendants who had previously been registered.

#### Federal Benefits:

Without Indian registration, First Nations women and their descendants are excluded from accessing First Nations-specific social programs and services like uninsured health benefits to pay for critical health services like prescriptions, long term healthcare supports, dental care, eye care, and mental health services. It also means that they cannot access funding for post-secondary education in universities, colleges and training institutions in order to ensure employment opportunities. Nor will they have access to the legislative income and property tax exemptions to help pay for food, clothing, transportation and housing supplies. Every day that Canada fails to register these women and children, contributes to their high rates of poverty, ill health and pre-mature deaths rates.

#### Band (First Nation) Membership:

A lack of Indian status also means that for the majority of the 634 First Nations whose membership lists are controlled by Canada, First Nations women and children cannot be registered as band members (members of their First Nation communities). As a result, they cannot access any community-based programs and services like social housing, health clinics, healing centres, on-reserve day-cares and schools, or the cultural supports located on-reserve

including Indigenous language instruction. Non-band members are also frequently screened out of employment opportunities in their First Nations which are reserved for band members only. In the federal, provincial and public context, unregistered First Nations women also lack the ability to apply for jobs that are set aside for First Nations, especially in education, healthcare and government.

#### Political Voice:

The lack of Indian status and band membership also precludes First Nations women and their descendants from participating in the governance of their home communities. They cannot vote in government elections, nor can they let their names stand to be elected as Chief or Councillor in their communities. This effectively prevents these women from having any say in local governance or matters pertaining to their inherent, Aboriginal, treaty and land rights. Lack of membership at the local band (First Nation) level also means that they cannot participate in larger regional, provincial or national political organizations and thus cannot advocate for their interests at a higher political level.

#### Land Rights:

A lack of Indian status and band membership means these women are further prevented from voting in referenda in their local First Nation on important issues like land claim settlements, resource agreements or local laws. They would be excluded from any per capita payments, compensation or land distribution. They would also be prevented from living on reserve or acquiring possession of lands on reserve. Thus, their ability to participate in economic development on their reserve lands or traditional lands is also effectively prohibited. It should be noted that Canada is engaged in negotiations with hundreds of First Nations on a wide range of agreements which do not include the participation or input of all these non-registered First Nations women and their descendants.

#### Aboriginal and Treaty Rights:

Both federal and provincial governments often rely on Indian registration and band membership in specific First Nation communities to determine who may access constitutionally-protected Aboriginal and treaty rights; like the rights to hunt, fish or gather within traditional or ancestral territories. Non-registered (non-status) First Nations women and their descendants are frequently harassed, charged or effectively prevented from providing traditional foods for their families. Further, they are often confronted with confiscation of their vehicles and equipment and/or burdened with expensive legal fees associated with defending their rights in court, which can take many years to resolve. They are also excluded from annual treaty payments from historic treaties or other benefits and payments associated with modern treaties.

#### Pandemic Supports:

A lack of Indian status prevents First Nations women and their descendants from accessing critical pandemic related supports like PPE, priority vaccinations and other supports set aside by

federal and provincial governments. It also means that their voices are excluded from tri-partite emergency planning related to the pandemic. At the local level, the lack of Indian status and band membership means that they cannot access pandemic supports at the band or First Nation level; which include PPE, vaccination clinics, food baskets and other related supports. It also means that they are not included in critical data collection related to the pandemic, like infection, hospitalization, disability and death rates – statistical information for Indigenous pandemic planning now and into the future.

#### Reparations:

There is currently no plan to make reparations to First Nations women and their descendants who were victims of sex-based discrimination under Canadian and international laws. The *Bill C-3* and *S-3* amendments to Indian registration served to eliminate some of the sex discrimination against First Nations women and their descendants, but specifically prevents them from being compensated for generations of sex discrimination, exclusion and lost benefits. This is despite the fact that under Canadian law, anyone who suffers a breach of their equality rights is entitled to compensation. This is itself a new form of sex discrimination which is a direct result of legislative amendments that were intended to alleviate sex discrimination in Indian registration but in trying to limit the scope of the remedy, created new forms. This certainly does not comply with the Committee's requirement for Canada to make full reparation and to take steps to prevent similar violations in the future.

#### Diminishing Equality Rights for First Nations Women:

Though Canada has consistently lost court challenges to its discriminatory Indian registration rules, it has not fully remedied the discriminatory treatment experienced by First Nations women and their descendants. It has also failed to compensate them for both historic or ongoing discrimination due to the delayed registration process and the associated or residual impacts of lack of registration. When it does make legislative amendments, Canada has done so in the most restrictive manner possible – in a form of diminishing equality. For example, in the *Bill C-31* amendments to the *Indian Act's* registration provisions, not only were First Nations women restored to Indian status, but their band membership was also protected. This is because pre-1985, Indian status and band membership went hand in hand.

Yet, when Canada amended the Indian registration provisions with *Bill C-3* and *Bill S-3*, not only did they specifically prohibit compensation for these women; but they did not protect their band membership. Therefore, thousands of First Nations women and descendants who may be registered in the future, can be excluded from band membership – even if they were born pre-1985. This occurs when a First Nation has assumed control of its own membership code under section 10 of the *Indian Act* – a power bestowed on First Nations in 1985 in response to having to reinstate First Nations women under *Bill C-31*. If Canada does not protect band membership for all those newly entitled due to sex discrimination, then they have only remedied half the discrimination. Canada cannot in good faith transition to First Nation-controlled membership without first restoring the band membership of First Nations women and their descendants that they would have had, but for the sex discrimination in Indian registration.

Thank you for taking this letter into account in your deliberations. I would be pleased to help answer any questions you may have or provide additional information and clarifications.

Sincerely;

A handwritten signature in blue ink, appearing to be 'P. Palmater', with a long horizontal flourish extending to the right.

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