Native Women's Association of Canada

Address of Mme Jeannette Corbiere Lavell
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to
The Standing Committee on Aboriginal Affairs
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Traditional Greetings, Acknowledge Algonquin Nation

Good afternoon, and thank you for inviting the Native Women's Association of Canada to speak to this Committee on these matters, which are crucial to Aboriginal women, their children, their families and their communities.

The Native Women's Association of Canada (NWAC) is a nationally representative political organization comprised of ten Provincial and Territorial Member Associations (PTMAs) from across this country and is dedicated to improving the social, economic, health, and political well being of First Nations, Métis and Inuit women of Canada.

Thank you for providing us with the opportunity to speak with you here today regarding our perspective on *Bill C-3: Gender Equity in Indian Registration Act*, which was tabled in the House of Commons on March 11, 2010.

The *Indian Act* has been used as a tool by the federal government to limit who is and who is not an Indian. This has had particularly devastating impacts on Indian women who were targeted for exclusion based on European values of the roles of women as well as the key roles that Indian women played in their communities.

Aboriginal women commanded the highest respect in their communities as the givers of life and were the keepers of the traditions, practices and customs of the nation. It was well understood by all, that women held a sacred status as they brought new life into the world.

I am going to spend a few minutes of my time here to discuss some of the key historical provisions of the *Indian Act* as they tell a story and offer insight as to what needs to be done, or perhaps, more aptly, what needs to be undone so that we can have the discussion and a better understanding of citizenship.

Status and membership, words that now denote the language of the *Indian Act*, are divisive and undermine our ability to discuss this issue in a language that would allow us to be more inclusive and broad based. Interestingly, in 1850, the definition of Indian was inclusive and included any person of Indian birth or blood, any person reputed to belong to a particular group of Indian and any person married to an Indian or adopted into an Indian family.

But it was only a few years later in 1869 that legislation came into effect that introduced the concept of an Indian woman losing her status and that of her children upon marriage to a non-Indian man. This limitation and loss of status, however, did not apply to Indian men.

The 1876 legislation maintained this provision and went even further and confirmed Indian male lineage and included in its definition of Indian, *any woman, whether Indian or not, who was married to any male person of Indian blood reputed to belong to a particular band.* Thus, a non-Indian woman was defined as an Indian through the male lineage.

In 1951 the legislation (in addition to creating an Indian registrar) maintained the male privileged provisions. In addition, the legislation introduced what is now referred to as 'the double mother rule'. This rule provided that if a child's mother and paternal grandmother did not have a right to Indian status, other than by virtue of having married an Indian man after September 1951, the child only had Indian status up to the age of 21.

In the 70's, I myself brought a case challenging the discriminatory legislative provisions of the *Indian Act* under the Canadian Bill of Rights. The Supreme Court of Canada in 1973 were divided and ruled that the provision did not result in any inequality under the law with the reasoning that Indian women who married out were treated equally. It was as a result of situations like my own, and many other women like me, that the Native Women's Association of coalesced. Thirty five years later we are still dealing with the same issue.

In the early 80s Sandra Lovelace, an Indian woman who married out, was successful before the United Nations Human Rights Committee in securing a finding that Canada was in violation of Article 27 of the International Covenant on Civil and Political Rights which protects the right to practice one's culture and language, in community with other members of a person's group.

Following the Charter in 1982, Bill C-31 was enacted in 1985, which did deal with some of the gender issues to the extent that it reinstated women who had lost status by marrying out and those who had lost status at 21 due to the double mother rule. But this legislation continued to discriminate against Indian women who married out as their children were registered as 6(2)s and it did not correct the previous discriminatory practices contained in the Act over time. In fact, it created a whole new scope of discrimination based on status and membership that continues to be felt today.

Although Bill C-31 was supposed to remove gender discrimination from the status provisions, after Bill C-31 there were some real differences between Bill C-31 Indian and other status Indians (s. 6(1) v. s. 6(2) distinctions). The children of the women who lost status could NOT pass on status to their own children if they intermarried with non-Indians. On the other hand, the children of status men who had married non-Indian women before 1985 could pass on status to their children.

There are a number of issues before the courts arising from the status provisions of the *Indian Act*. The McIvor case was but one of them. The McIvor case was decided by the Court of Appeal on very narrow grounds and the legislation that we are here to talk about today is to rectify that narrow aspect. Bill C-3 does that to a certain extent.

However, it does not rectify the broader outstanding gender issues encapsulated within the *Indian Act*. This is not to say, Bill C-3 is not needed. In fact, any relief from gender discrimination is much needed and welcomed. It is, however, also important to say that there is still much work needed to be done in

remedying the male dominated, gender biased foundations steeped within the Act and its definitions. For instance, Bill C-3 cannot and does not address the Act's discriminatory provisions that prefer a male lineage.

For many people registration under the *Indian Act* also results in acceptance within the First Nations community. Since 1985, First Nations have had the opportunity to define their band membership within the parameters set *Indian Act*. Many First Nations are moving from the *Indian Act* terminology of band membership to the use of "citizenship" rather than "membership" at the individual level. In addition, First Nations moving out of the *Indian Act* regime through comprehensive self-government agreements often assume jurisdiction over their citizenship.

Bill C-3 consists of 10-clauses that seek to remedy a smaller aspect of the discriminatory circumstances of Ms. McIvor and her children and grandchildren. It re-enacts s. 6 (1)(a) and provides a new subsection s. 6(1)(c) to ensure eligible grandchildren of women who lost status as a result of marrying a non-status will become eligible for registration.

Although the Grandchildren born prior to 1985 of Indian men are or entitled to Indian status under 6(1)(c) of the Indian Act under Bill C-3, the grandchildren of an Indian woman born prior to 1985 will be registered as a 6(2).

Despite all of the legislative changes and with the new Bill C-3, the federal government has retained control under sections 6 and 7 of th*e Indian Act* over the determination of Indian *status* for all First Nation peoples**.**

The Court of Appeal in McIvor missed its opportunity to provide a meaningful remedy to addressing the preference of following the male line. The main complaint of the McIvor case is that the *Indian Act* since 1876 said that only the Male could pass along Indian status; even if a woman did not marry out, and was full status herself, she could not pass status along to her children. Only if her child was "illegitimate" and nobody came along to demonstrate that the dad was non-Indian could she give her child her status.

The proposed amendments narrowly address the main issue in McIvor by introducing s. 6(1)(a) and a new subsection s. 6(1)(c).1 – INAC claims this will ensure eligible grandchildren of women who lost status will become eligible for registration.

Since 1869[1], the Federal government has unilaterally changed the definition of who is and who is not an Indian – all without the consent of the First Nations people. The *Indian Act* has created the discriminatory

[1] *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, chapter 42*, S.C. 1869, c. 6, 32-33 Vic., s. 6. Section 6 further provided that an Indian woman marrying an Indian man from another Tribe or band would cease belonging to her own band and become a member of her husband's. The controversial concept of enfranchisement, referring to the voluntary or involuntary loss of status and developed as an assimilative tool, dates from 1857 legislation and was in place in various forms until its repeal in 1985.

provisions and various classifications of who is or is not an Indian – these people who will be re-instated already belong to our communities – they are our aunties, daughters and mothers and grandmothers.

Where Do We Go From Here:

Let's just say that due to the complexities of the status provisions in the past, that, it is difficult to ascertain all of the impacts, particularly since it is almost impossible to deconstruct the impacts from an historical perspective.

We do know the *Indian Act* is an archaic piece of legislation and that the current solution provided is very narrow – we are always reacting to the legislation and piece meal band aid solutions that have historically and are currently defining who we are as Peoples. At the end of the day we will have to say that once again it is clear that the *Indian Act* is ill equipped and a poor instrument to use to resolve these broader issues of citizenship.

We require a long term vision of proceeding in Crown/First Nation relationships that allows us to define who we are as First Nation citizens. Minister Strahl talked about an exploratory process to have these more complex discussions about status and membership and most of all how we can define who our own citizens are. We are Peoples who have the right to determine who we are – Canada has been defining this for us for way too long and we look forward to moving forward together to ensure the inclusion of women and our children as citizens of our First Nations.