

Quebec Native Women Inc./Femmes Autochtones du Québec
Speaking notes: Bill C-3, Gender Equity in Indian Registration Act
April 20, 2010
House of Commons Standing Committee on Aboriginal Affairs and
Northern Development

Introduction:

Greetings Chair and honourable members of the House of Commons Standing Committee. QNW appreciates this opportunity to address you all to present our perspective on the historical discrimination faced by Aboriginal women and their descendants under the *Indian Act*, an injustice which was not corrected with the passing of Bill C-31 in 1985.

QNW rejects the restrictive vision proposed by the Federal Government as it will not put an end to gender discrimination entirely. I would like to note to you the shortcomings of this process which failed to adequately provide Aboriginal peoples with any effective and meaningful consultation on this serious matter affecting their rights.

Issues of concern within Bill C-3:

The 5 minutes accorded will not provide a sufficient amount of time to address all our issues of concern with Bill C-3, so I will highlight a few:

1. lack of real and effective consultation with Indigenous peoples consistent with the constitutional obligations of the Federal Government.
2. The exclusion of the historical and the institutionalized nature of the discrimination against Aboriginal women that was permitted under the *Indian Act* since its imposition in 1876.
3. The lack of a financial plan to remedy the existing housing shortage on reserve, insufficient land base and resources on reserves especially since the amendment will result in an increase of 6% in the status population.
4. The non inclusion of a provision to provide immediate band membership to a new registrant.

In more details we choose to present two of our main concerns:

Bill C-3 will not end discrimination:

Bill C-3 is dependent upon the BC Court of Appeal whose decision is limited and flawed, being premised on the continuance of discrimination.

Indeed, the proposed cut-off based on a post-September 4, 1951 birth date for new registrants, assumes that this is strictly an issue of sexual discrimination and should be addressed within the registration regime. It is retroactive only to 1951 in which the introduction of the double mother rule was recognized and implemented, and so Bill C-3 is not only erroneous but will continue to promote inequalities based on a date of birth:

- **Sexual discrimination faced by Aboriginal women effectively goes back to the 1876 *Indian Act* (and not 1951)** whereby an “Indian” woman’s status, was dependent upon the status of her husband.
- Grandchildren who trace their Aboriginal ancestry through the maternal line will continue to be denied status if they were born prior to September 4, 1951 unless they have at least one sibling born after that date, but this is not the case for descendants of Aboriginal men.

Moreover, other governmental administrative policies such as unstated paternity and on-reserve matrimonial real property continues to discriminate against Aboriginal women as progenitors.

Thus we recommend:

1. That the element of categorization of Indian Status i.e. 6(1), 6(2) and the cut-off date based upon a post-September 4, 1951 birth date be removed in Bill C-3.
2. That the administrative policy regarding unstated paternity of a child born to an unmarried woman be immediately changed to a requirement that the mother of the child sign an affidavit or statutory declaration as to the status of the father of the child.

Bill C-3 does not recognize the rights of Aboriginal peoples to self-determination:

Bill C-3 does not take into account the fundamental rights of Indigenous Peoples and nations as supported in international human rights law to define who can be a citizen of their nation; to define their own nationality and identity and what obligations and rights are entailed within their definition.

Self-determining rights for Indigenous Peoples are supported in international law, as well as the Canadian constitution. International instruments includes the *United Nations Declaration of the Rights of Indigenous Peoples*; *International Covenant on Civil and Political Rights*; *International Covenant on Economic and Social and Cultural Rights*; *Universal Declaration of Human Rights*

International law:

UNDRIP: art. 3 Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 33: 1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. 2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

UDHR: Article 15.(1) Everyone has the right to a nationality.(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality

ICESC and ICCPR: Article 1 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Indigenous peoples have the right to govern themselves, to reinforce their own forms of government and citizenship - not as a grant from the Government of Canada, but as an inherent right as peoples.

Thus we recommend:

3. That the Government of Canada recognizes the inherent right of Aboriginal peoples to define who can be a citizen of their nation and what obligations and rights are entailed within their definition. However, this must be done in accordance with international human rights law. Consequently allowing Indigenous peoples to move positively towards **self-determination** accompanied with sufficient resources required to make self-determination a success

Conclusion on Bill C-3 and the idea of a separate joint process to tackle broader issues:

While QNW recognizes the need to amend the archaic nature of the *Indian Act* which is of itself discriminatory, QNW, as stated earlier, deplores the restrictive vision of the Federal Government focusing solely on a "patchwork" remedy to the specific problem of discrimination brought to light in the *McIvor* case as analyzed by the Court of appeal for BC on limited grounds.

This is a missed opportunity for the Government of Canada to put an end to the **patriarchal regime** of Indigenous guardianship that the *Indian Act* constitutes by implementing a decolonization process whereby Indigenous peoples' values, self-determination, culture and language institutions and nationhood will be respected, supported and reinforced.

In spite of the Federal Government's acknowledgement that there are a number of broader issues relating to registration, membership that go beyond the specifics of the McIvor decision, the proposed changes to the *Indian Act* will not extend to these broader issues. Instead the Canadian government is relying on a separate parallel process whereby Minister of INAC will work in partnership with national Aboriginal organizations to establish an exploratory process with the participation of First Nations and other Aboriginal groups and organizations to tackle these issues.

Such an exclusive process restricted to National Aboriginal Organizations is cause for concern as it evacuates the notion of democracy within these discussions and ignores Canada's constitutional obligation to conduct proper consultations on matters affecting the rights of Aboriginal peoples.

The intended parallel "discussions" also excludes Aboriginal peoples' right to self-determination from the ongoing legislative process by dictating once again who has the right to determine "Indian status" which has an important link to Aboriginal identity, membership and citizenship.

Therefore it begs the question: Does this mean that only court orders will motivate the Government Canada to address the thorny question of the

legitimacy of the *Indian Act* and that the federal response is bound to be circumscribed? With Bill C-3, the deplorable answer seems to be YES **thus** it is reasonable to expect that new cases will be brought before the courts to denounce the continuing **gender and racial** discrimination within the *Indian Act*.