

Consultation Process on Second Generation Cut-Off, Two-Parent Rule, and Membership Issues

Submission to:
Indigenous Services Canada

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&
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INTRODUCTION:

This submission from the Union of BC Indian Chiefs (UBCIC) and BC Assembly of First Nations' (BCAFN) to Indigenous Services Canada (ISC) provides comments and recommendations on ISC's proposed consultation process with First Nations and individual rights holders on the second generation cut off, two-parent rule and membership issues under the federal *Indian Act*, as well as responds directly to questions posed by ISC as a part of the Indigenous Advisory Process.

ABOUT UBCIC AND BCAFN

Union of BC Indian Chiefs

The UBCIC is a First Nations political advocacy organization founded in 1969 with a mandate of advancing and protecting First Nations title and rights. The UBCIC strengthens First Nations' assertions of their title, rights, treaty rights and right of self determination as peoples, working collectively among First Nations in BC as a cohesive advocacy body.

UBCIC has a robust history of advocacy for First Nations women and girls, calling for an end to sex-based discrimination against First Nations women, including by Resolutions 2010-08, 2012-18, 2019-11 and 2021-19. The UBCIC Chiefs Council has expressed serious concerns with government-imposed definitions of First Nations identity and belonging and has called upon Canada to take immediate action, including legislative amendments, to end sex, family and race-based discrimination in the *Indian Act* and to respect sovereignty and inherent rights of First Nations to self-determine their own membership and citizenship laws.

UBCIC is committed to ending the related harms of gender-based violence alongside First Nations women in the pursuit of justice, safety, as well as the crisis of MMIWG2S+ and is a member of the Coalition on Murdered and Missing Indigenous Women, Girls, and Two-Spirit+ people (the Coalition) to help achieve those goals. The Coalition is an alliance of organizations and individuals that came together in 2010 at the time of the Oppal Inquiry into Missing and Murdered Women in British Columbia. The Coalition includes Indigenous women and their allies in women's anti-violence, human rights, and labour organizations. Members have deep knowledge, expertise, and lived experience of discrimination and violence; some are family members and friends of murdered and disappeared women, girls, and Two-Spirit + people; and many have been engaged for years in front-line, grassroots anti-violence work on the streets and in shelters across the province. Members of the Coalition also have expertise in policy development and analysis regarding Indigenous rights, child welfare, and policing, as well as knowledge and practice in human rights, civil liberties, criminal, constitutional, and international human rights law.

UBCIC is also a proud member of the *Indian Act Sex Discrimination Working Group*, an advocacy body of organizations and women experts from across Canada who convene in pursuit of full recognition of citizenship and human rights of First Nations women and their descendants who have been discriminated against under the *Indian Act*.

BC Assembly of First Nations

BCAFN is a Provincial Territorial Organization (PTO) representing the 204 First Nations in British Columbia. BCAFN representation is inclusive and extends to First Nations currently engaged in the treaty process and those who are not, those who have signed modern treaties, and those who fall under historic treaty agreements which include the Douglas Treaties and Treaty 8.

BCAFN recognizes Indigenous women are the foundation of our cultures, our communities, and our governments. The discrimination against Indigenous women has been used as a colonial tool to destabilize our communities through the inevitable reduction of our membership rolls, undermine our ability to maintain and protect the legal status and existence of our present and future citizens, and threaten our connection to our land base, our Title and Rights, our cultures, languages, knowledge, and our resources. As a result, the BCAFN Chiefs-in-Assembly moved Resolutions 03/2010, 07/2019, and 01/2023 in order to call upon Canada to immediately end sex-based discrimination in the *Indian Act* and for Canada to ensure that any amendments to the *Indian Act* are consistent with the Indigenous and human rights affirmed in *UN Declaration* and meet the requirement of Free, Prior, and Informed Consent.

BCAFN advocates for First Nations' inherent right and jurisdiction to determine citizenship and fully supports the recommendations of *Make It Stop: Ending the Remaining Discrimination in Indian Registration* and the conclusions and recommendations of the *Indian Act Sex Discrimination Working Group*.

Nationally, BCAFN is one of twelve regional organizations affiliated with the national Assembly of First Nations whose members include 633 First Nations across Canada. The BCAFN Regional Chief sits on the AFN Executive Committee whereby their role is to ensure regional concerns such as calling for an end to sex-based discrimination against First Nations women are included in national political discussions and decision-making processes. The BCAFN is also guided by elected Women's, 2SLGBTQQA+, and Youth Representatives, and Knowledge Keepers, who serve on the respective AFN Councils.

OVERVIEW

UBCIC and BCAFN Positions on Indian Act Discrimination

It is imperative that Canada consult on *how* - not *whether* - to remove all remaining discrimination from the status provisions of the *Indian Act*. As a starting place, the government of Canada must be prepared to be accountable for discrimination and remedy it. Canada must acknowledge its central role in the history of discrimination in Canada. It is that history that provides the context for the consultation process on the *Indian Act* status provisions. Ultimately, this process must meet the goal of removing discrimination from those provisions.

Through UBCIC Resolution 2023-61 (enclosed), the UBCIC Chiefs-in-Assembly call on the government of Canada to abolish all remaining sex, race, and family-based discrimination in the *Indian Act* as identified by First Nations and advocates, including legacies of sex discrimination and gender discrimination resulting from sections 6(1)(f) and 6(2) and the requirement to have two status parents to transmit status to the next generation.

The government of Canada must respect First Nations' sovereignty and the right to determine their own membership and citizenship laws based on their First Nation laws and traditions rather than continue to enforce racist colonial definitions of Indigenous identity.

BCAFN Chiefs-in-Assembly, fully supports the recommendations of *Make It Stop: Ending the Remaining Discrimination in Indian Registration* and the conclusions and recommendations of *The Indian Act Sex Discrimination Working Group*. Both of these call on the Federal government to address ongoing sex-based discrimination in the *Indian Act*, make reparations and to facilitate the reconnection of women with their natal bands, and remove section 6(1)(f) and section 6(2) of the *Indian Act*.

Furthermore, BCAFN Resolution 03/2010 speaks to the need to uphold First Nations' inherent rights to determine citizenship and self-government in accordance with their own laws, customs, and traditions. It recognizes that the solution to addressing ongoing discrimination in the *Indian Act* lies in the full recognition of First Nations' jurisdiction over citizenship. The BCAFN Chiefs-in-Assembly call on the government of Canada to end legislative discrimination in the determination of 'status' under the *Indian Act*.

It is past time for the removal of all remaining sex, race, and family-based discrimination from the *Indian Act*, including section 6(1)(f) and section 6(2) and the second generation cut off and two-parent rule. In this era of reconciliation and implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) the government of Canada must respect and uphold First Nations' rights to self-determination and to enact their own citizenship laws; and provide timely redress and compensation for women and their descendants who have been discriminated against by Canada through the *Indian Act*.

The inherent and constitutional rights of First Nations must be upheld. Throughout this submission, we refer to First Nations and individual rights holders, in acknowledgment that, among others, there are Band members living off reserve, status holders who are not Band members, Band members who are not status holders, individuals who are waiting for status, and those who have been refused membership by their Band or who would have status were it not for sex discrimination. It is crucial that all of these individuals be included in the consultation process on amendments to the status provisions in the *Indian Act*.

History of Discrimination

Canada's discrimination against First Nations women and their descendants has spanned generations and is at the root of intersecting forms of discrimination, violence, gender-based violence, inequities, and the Missing and Murdered Indigenous Women, Girls and Two-Spirit+ (MMIWG2S+) crisis. These destructive forms of sex and racial discrimination have been fostered, strengthened, and protected by historical and contemporary Canadian colonial structures, institutions, and legal orders, most notably the *Indian Act*. This racist, misogynistic, infantilizing, and paternalistic piece of colonial legislation is at the heart of over a hundred years of racism, sexism, discrimination, violence, forced assimilation, and systematic removal of First Nations women from their lands, communities, and cultures, and the denial of their First Nations', treaty, and land rights. The genesis of this colonial policy and centuries of mistreatment hail from the unfounded and racist doctrines of discovery and terra nullius.

These laws, most notably the *Indian Act*, and all iterations have created a damaging patriarchal system that “subjected Aboriginal women to loss of Indian status and the benefits of Band membership, eviction from reserve home, and denial of an equal share of matrimonial property.”¹ Depriving First Nation women of their status, land, treaty entitlements under recent settlement agreements, and property, this system of forced assimilation shaped the conditions of discrimination, impoverishment, and violence that continue to place First Nations women and their children at a severe economic and social disadvantage.

The goal of Canada’s so-called ‘Indian policy’ was to get rid of the ‘Indian problem,’ which is evidenced in Indian registration provisions. What’s more, Canada has actively fought First Nations women plaintiffs asserting their inherent and constitutional rights in court in an attempt to deny them and their descendants their entitlements.

Canada’s previous attempts to rectify sex-based discrimination in the *Indian Act* through amendments have been unsuccessful and piecemeal at best, creating further barriers for women and their descendants who are attempting to access their rights. Canada’s incremental and inadequate amendments have perpetuated sex, race, and family-based discrimination and will ultimately culminate in the extinction of First Nations under the *Indian Act* if they are not addressed.

Despite Canada’s efforts and the disproportionate impacts of endemic levels of violence and inequality, First Nations women and their descendants remain courageous leaders who are holding the Canadian government accountable for its ongoing role in sanctioning and condoning systemic human, international, and First Nations-rights violations and abuses.

Rights-Based Approach

In June 2021, Canada adopted the UN Declaration without qualification and, in 2021, committed to its implementation through the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) and UNDA Action Plan. The UN Declaration recognizes a bare minimum of human rights held by Indigenous peoples, including the following that are directly relevant to the need to amend the *Indian Act* status provisions:

Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 8(1): Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture;

Article 8(2): States shall provide effective mechanisms for prevention of and redress for:

- a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

¹ <https://gladue.usask.ca/sites/gladue1.usask.ca/files/gladue//resource278-2d140422.pdf>

- b) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- d) Any form of forced assimilation or integration;
- e) Any form of propaganda designed to promote or incite racial or ethnical discrimination directed against them.

Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 22(1): Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

Article 33(1): Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.

Article 44: All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

In addition to ensuring its laws are in compliance with these and other UN Declaration Articles, as required under UNDA, Canada also has a legal duty and fiduciary obligation to ensure that legislation enacted under section 91(24) of the *Constitution Act, 1867* complies with other of its own laws, including, but not limited to the following:

- Section 15 of the *Canadian Charter of Rights and Freedoms* 1982, which guarantees equality between men and women;
- Section 35(4) of the *Constitution Act, 1982* which guarantees that the inherent Aboriginal, treaty and land rights of “Indians” are guaranteed equally between male and female persons;
- Section 3(1) of the *Canadian Human Rights Act* which prohibits the federal government from discriminating on the basis of race or sex;

UBCIC and BCAFN reaffirm Canada’s duty to consult and to uphold the rights of First Nations peoples as well as Indigenous peoples’ rights upheld through UN Declaration including the right not to be subjected to forced assimilation (Article 8), the right to belong to an Indigenous community or Nation (Article 9); the right to participate in decision-making (Article 18); and states’ obligation to consult and cooperate in good faith (Article 19).

Canada must amend the *Indian Act* to be consistent with UN Declaration, further to its obligations under UNDA, including by eliminating sex, race and family-based discrimination in the status provisions of the *Indian Act*. To that end, Canada must consult First Nations, Bands, and individual rights holders on the most effective ways to remove discrimination, on tangible policies and legislation to upholding UN Declaration and First Nations’ self-determination over citizenship law, and on the resources and supports necessary to ensure that the elimination of discrimination results in effective sustainable remedies and restitution and assures the health and survival of First Nations. It is long overdue for Canada to address the historical attempts to extinguish First Nations people once and for all.

RESPONSES TO QUESTIONS FROM INDIGENOUS SERVICES CANADA

QUESTIONS RELATED TO SECTION 5 OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

1. In concrete terms, what would it look like for Canada to meet significant/high thresholds for cooperation and consultation as it seeks (a) solution(s) to the second-generation cut-off and looks to address issues related to section 10 voting thresholds?

Consulting all Rights Holders

Meeting the threshold for consultation and cooperation requires consultation with all First Nations title and rights holders and other impacted individuals in accordance with Canada's legal obligations under UNDA and the principles of Free Prior and Informed Consent. In addition to First Nations governments, women and their descendants who are affected by sex discrimination in the *Indian Act* need opportunities and capacity to fully engage in this process. In particular, all individuals registered under section 6(2) of the *Indian Act* who have been discriminated against by Canada and who have a serious stake in the forthcoming consultation process should be made aware of this process and the potential impact on their rights and the rights of their descendants. For various reasons including colonization, land dispossession, disconnection from place and culture, poor communications, lack of infrastructure and internet, poverty, and barriers to education, many individuals registered under 6(2) live away from their community and may not be made aware of this process by Chief and Council or may face challenges engaging with the *Indian Act* provisions that so greatly affect them.

Through the IAP process, we have been made aware that Indian Bands and Chief and Councils will be the primary contacts for consultation. However, we are concerned that there are no defined methods for reaching community members living off reserve, status and non-status Indians who are not members of Bands, and individuals who would have status but for sex discrimination. As these individuals are likely to be among those greatly harmed by the second generation cut-off and the two parent rule, it is essential that effective ways of reaching them be devised.

These individual rights holders who have been discriminated against must be heard, and their voices uplifted. It is essential that ISC makes every effort to include these individuals by making consultation announcements widespread and encouraging participation through various means, not limited at the level of the Band Council. This would include additions to the Consultation Readiness Declaration Form section, where ISC must create an additional web page for individuals to submit responses on behalf of themselves without being affiliated with a First Nation. In addition, ISC needs to further support First Nations in completing the Consultation Readiness Declaration Form if they experience any barriers due to connectivity or other technical issues.

Capacity Support

Canada needs to provide meaningful funding for all First Nations to participate fully in consultation, covering the costs of hosting meetings in communities, offering virtual options and options for urban populations; promoting the meetings; travel; food; and the value of time. Equitable support should be provided as a priority to all remote or isolated First Nations. Various forms of consultation need to be offered to promote accessibility, such as First Nations and individual right holders being invited to

provide written or verbal submissions via email, online portals, over the phone, fax, or in-person meetings with the ISC Registration Reform Department or similar.

Accessible, Accurate, and Rights-Based Materials

All materials provided by ISC must be accessible, plain language, accurate, rights-based, distinctions-based, culturally-sensitive, and available to First Nations as well as to on-and off-reserve individuals. These materials should be embedded in a gender-based analysis+ approach and grounded in a historically accurate context that is immersed in the truth of colonialism and in which Canada takes full accountability for its historical and ongoing role in discrimination.

It is essential to allow First Nations leadership, First Nation members/citizens, and other affected individuals adequate time to engage with draft consultation materials, and if extensions are required, they should be given. As part of the consultation process, Canada should release quantitative statistics on the number of 6(1)(f) and 6(2) status holders, including demographic data related to birth and death rates, out-parentage rates, rates of children impacted by unstated paternity, membership affiliations for new registrations of status Indian children and the worst-case projected legislative “extinction” dates for First Nations individuals and Indian bands/First Nations.

Consultation sessions must be conducted in a culturally-sensitive way by an experienced First Nations facilitator who has a strong understanding of the legal context of the *Indian Act* and its impacts.

Accountability Mechanisms

Going into the consultation process, there must be a clear process outlined for rights holders which includes mechanisms for reporting back on their input. ISC must demonstrate how rights holder input is incorporated in decision making, or if it is not, why not. The reporting and decision-making processes need clear timelines and transparent oversight. The consultation and decision-making processes need an independent monitor, who reports publicly to the Minister and to those consulted, as Claudette Dumont-Smith did as the Minister’s Special Representative for the Bill S-3 consultation.

Removal of Sections 6(1)(f) and 6(2) and the 2nd Generation Cut Off Rule

Consistent with UBCIC Resolution 2023-61 and BCAFN Resolution 1/2023, the only solution to the second generation cut off is the repeal of sections 6(1)(f) and 6(2) and an end to the second generation cut off rule. UBCIC, along with members of the *Indian Act Sex Discrimination Working Group*, have repeatedly noted that the government of Canada cannot consult communities, Bands, individuals, organizations, or other levels of government about *whether* to remove discrimination from the *Indian Act*, or any other law in Canada. It is the obligation of governments under UNDA, international human rights law, the *Charter*, and statutory human rights laws not to discriminate *de jure* or *de facto*. Despite this threshold obligation, the Government of Canada in the past, including in its last consultation process on *Indian Act* sex discrimination, asked participants *whether* sex discrimination against First Nations women and their descendants should be removed.

Canada must meaningfully consult communities, Bands, individuals and organizations about the most effective ways to remove discrimination, and about the resources and supports necessary to ensure that the elimination of discrimination results in effective remedies and restitution. However, in order to do

this, the government of Canada must acknowledge that it is addressing discrimination which it has perpetuated throughout history.

In the consultation process, we expect to see effective solutions proposed for rights holders' consideration to eliminate all remaining sex, race and family-based discrimination in eligibility for status and transmission of status once and for all. Pending a full repeal of the *Indian Act* status provisions, the only effective solution to fully eliminating this sex discrimination in the *Indian Act* that is consistent with anti-discrimination law, is to replace the second generation cut-off and two parent rules with a one parent rule.

2. How should Canada reconcile the need to find a remedy for the second-generation cut-off with the magnitude of the importance for cooperation and consultation under UNDA?

Timely Rights-Based Consultation

While it is essential that rights holders be informed and given time to meaningfully engage in the consultation process, the reality is that, under the existing legislation, Canada continues to discriminate against individuals who would otherwise be entitled to status. The Crown must end that discrimination as soon as possible. Piecemeal and drawn out consultation under the guise of consultation and cooperation under UNDA must not be used to delay First Nations and entitled individuals from accessing their rights, further perpetuating discrimination.

First Nations, advocates and individual plaintiffs have taken on the burden of calling for an end to discrimination for decades. By UBCIC Resolutions 2010-08, 2012-18, and 2019-11, and BCAFN Resolutions 03/2010, 07/2019, and 01/2023, the UBCIC Chiefs Council and BCAFN Chiefs-in-Assembly has expressed concerns with government-imposed definitions of First Nations identity and belonging and has called upon Canada to immediately end sex-based discrimination in the *Indian Act*.

3. To support the Department's desire to amplify partners' perspectives in the consultation materials, would your organization be willing to provide your assessment of the second-generation cut-off and its impacts?

From 1876 to 1985, the *Indian Act* had a one parent rule for transmission of status, which only included men who were status Indians, not women who were status Indians, meaning that only children of men with status could have status. Children of women with status could gain status in only one narrow situation: if the mother was not married, and the authorities could not establish that the father of the child was not a status Indian.

Previous reform of the status provisions in the *Indian Act* could have been to ensure that from 1985 onward, children of both women and men with status were equally entitled to status. Canada chose not to do that. Amendments to the *Indian Act* introduced in 1985 via Bill C-31 introduced a new form of discrimination by creating a hierarchy of status between individuals entitled to status under section 6(1) (mostly men who already had 'full status' and had never lost it), and those entitled to status - or "half status" under 6(2), for those women who had lost status because of 'marrying out'.

Individuals with status under section 6(2) must have children with another status Indian for their children to be entitled to Indian status under the *Indian Act*. Section 6(2) provides that someone who has only one status parent will get status for their lifetime. However, that is the only generation where

having one status parent will get you status. This is referred to as the “second generation cut-off” or “two parent rule” because a 6(2) status Indian alone cannot transmit status to the next generation.

The second generation cut off causes many problems, especially for women. Who is a child’s mother is usually pretty apparent. Who is the father is not always apparent. Moreover, there are some cases where it is not desirable or possible to name the father. A child may be born of incest, and putting that on the birth certificate or status application will have negative effects on both the child and the mother. The father of the child may be unknown, as in cases of sexual assault(s).

Where the father of the child is unnamed or unknown, the “Gehl provision” introduced in 2017 in Bill S-3 allows the mother to bring forward any evidence that she can to establish the father’s Indian status, and the Registrar must give that evidence a reasonable interpretation. The father need not be named. However, if she is unable to obtain that evidence, the child will not receive Indian status because of the fact that the mother is registered under section 6(2). Her children cannot have status through their relationship with her because she herself got status from one status parent, not two of them.

Bill C-31 also perpetuated historical discrimination in relation to “marrying out”. In stark contrast to status men, pre-1985 status women had their Indian status taken away upon marriage to a non-Indian man and their children were not entitled to Indian status. Conversely, when a status man married a non-Indian woman, she gained Indian status and status entitlements, and their children were entitled to be registered as status Indians. The woman retained her status even after divorce. In this way, a whole population of eligible two-parent status families came into being in 1985.

Non-status men who had married status Indian women, resulting in the loss of those women’s status, were not given status. As a result, the women restored to status after “marrying out” were left out of the circle of families with two status parents, resulting in a higher likelihood that the children of women who “married out” be registered under section 6(2) than the children of men who “married out”. The new rules simply perpetuate the old discrimination against the female line under a new guise.

This inequity has real lived consequences within families and communities whereby individuals within the same generation who descend from mixed status and non status marriages will have differing status under section 6(2) or 6(1) with varying entitlements, depending on if their entitlement to status is traced through the female or male lines. This can cause profound distress for individuals registered under section 6(2) because their children are not eligible for registration as status. Instead, they are forced to make difficult decisions around who they choose to parent with because of government-imposed definitions of status and identity. This demonstrates that Canada’s attempts to qualify Indian status through policies of notional blood quantum allotments have been inherently sexist in that they only applied to First Nations women.

The imposed power imbalance between men and women created by sexist colonial policies has had everlasting effects on how First Nations communities operate. Women’s roles in governance have been highly impacted – and in some cases completely taken away – by the status provisions.

The inequities of status transfer through marriage for status holding men, vs. status holding women have not been fully remedied. Today, the Canadian government’s determination of status eligibility is still rooted in proximity to another status holder, under a tiered system. Applicants are faced with authenticating their descent from an Indian versus their ancestry and kinship in their Nations. They must

do this using government records to prove ‘adequate’ closeness in relation to another status holder – one of their parents must be a “full Indian” (section 6(1) Indian) or both of their parents must be status Indians. The child of a section 6(2) Indian alone is denied status – thereby cutting off entitlement to status.

The federal government’s historic and ongoing attempts to ultimately extinguish First Nations have disproportionately targeted and discriminated against First Nations women and their descendants as a means of speeding up forced assimilation and legislative extinction.

The federal government continues to subject First Nations to a disappearing formula under the *Indian Act* via sections 6(1)(f) and 6(2) that, if left unaddressed, will result in the legislated extinction of *Indian Act* bands and status Indians. Demographer Stewart Clatworthy predicts that, in three to four generations, over half of Indigenous individuals will not be entitled to status. The extinguishment of Indian Bands under the *Indian Act* could impact the legal status, ownership, and ability to access any and all reserve lands, together with any monies held in trust for First Nations. The government of Canada claims to be in an era of reconciliation. This program of legislated extinction contradicts these commitments and cannot be allowed to continue.

4. Does your organization have a current view on what the legislative remedy to the second-generation cut-off should be?

As stated above, per BCAFN 1/2023 and UBCIC Resolution 2023-61, which are endorsed by the BCAFN Chiefs in Assembly and UBCIC Chiefs-in-Assembly respectively, we take the position that the only solution to the second generation cut off is the repeal of sections 6(1)(f) and 6(2) and that the *Indian Act* should have a one-parent rule for transmittal of status for both women and men.

Removal of the Bar to Compensation

In addition to the repeal of sections 6(1)(f) and 6(2), Canada must provide redress and compensate for decades of discrimination. To date, Canada has failed to meaningfully acknowledge the loss and harm to First Nations women and generations of descendants by barring access to reparations or compensation through the enactment of a non-liability clause. This continued discrimination speaks to a long-standing position that Canada has taken to strip First Nations women of their place in their communities and their human rights. Generations of women and their descendants have endured irreparable harm as a result of sex-based discrimination in the *Indian Act* including forcible disconnection from the land, their family, communities, cultures, language, roles in governance, access to education, medical care, and identities. Indigenous people harmed by discrimination under other federal laws are not barred from receiving compensation, which has been granted for other historic harms including to:

- First Nations, Inuit & Métis survivors of Indian residential schools;
- First Nations, Inuit and Métis survivors of Indian day schools;
- First Nations, Inuit and Métis survivors of the sixties scoop;
- First Nations children in the child welfare system;
- Inuit for dog slaughter and forced relocation;
- First Nations for lack of clean drinking water;
- First Nations for the construction of hydroelectric dams;
- First Nations for stolen lands

- First Nations people for historic treaty entitlements

The bar to compensation is sexist, racist and discriminatory. It fails to consider the devastating harms caused by genocidal laws and policies under the *Indian Act*. It speaks to a long-standing position that Canada has taken to strip First Nations women of their place in their communities and their human rights. Disallowing women and their descendants from claiming compensation for *Indian Act* sex discrimination and the forced systematic removal from their communities, which has today resulted in disproportionate experiences of poverty, violence, incarceration, and poorer health outcomes, is blatant sex discrimination. Women and their descendants must be compensated for the things that were systematically taken from them by Canada who purposefully excluded them from their communities.

Ultimately, sex discrimination has fostered a destructive belief that First Nations women are second class persons with fewer rights and powers than their male counterparts. This has persisted into the present and exacerbated the MMIWG2S+ human rights crisis. Sex discrimination in the *Indian Act* is a root cause of the MMIWG2S+ crisis and a key element of the Canadian genocide against Indigenous peoples. The government continues to ignore the critical connections between sex discrimination in the *Indian Act* and the MMIWG2S+ crisis by failing to prioritize the restoration of status in its MMIWG2S+ National Action Plan. Released on June 3, 2021, the National Action Plan to end systemic racism and violence against Indigenous women, girls, and 2SLGBTQQIA+ people in Canada contains no detailed strategies, timelines, commitments, or significant resources for the registration of disenfranchised women and their descendants.

Until the harmful, longstanding impacts of the *Indian Act's* sex discrimination are redressed and those newly entitled to status are registered, and compensation is granted, First Nations women and their descendants will continue to bear the brunt of the discrimination and disenfranchisement that has contributed to the disappearances and murders through MMIWG2S+ crisis.

Canada has already placed the burden of legislative remedy on individual plaintiffs to come forward with legal challenges at great personal expense and mental, emotional, and spiritual costs. The consultation process and subsequent legislative reform must include timely, built-in pathways for compensation if Canada is to truly remedy discrimination once and for all.

Ensuring the Future of Thriving First Nations

Beyond the consultation process, Canada must plan to uphold First Nations' rights and meaningfully contribute to the long-term health and security of First Nations. First Nations continue to face chronic scarcity of resources for capacity and core funding to support their existing membership. There must be assurances that any legislative amendment, such as the removal of 6(2), lead to increased entitlements and an upfront guarantee to First Nations of increased funding for newly entitled individuals. The assimilationist effect of sex discrimination continues to be reflected in Canada's funding agreements and self-government agreements, which are limited by being based on deficient funding formulas that only count current Band members with status. Canada must address the concerns for financial security and land bases to prevent any potential uncertainty which could disincentive already under-funded First Nations from expanding and supporting further membership.

Beyond this consultation process, Canada must uphold First Nations' rights and meaningfully contribute to the long-term health and financial security of First Nations. By UBCIC Resolution 2023-47 (enclosed),

the UBCIC Chiefs-in-Assembly call on Canada to immediately increase and prioritize sustainable and ongoing funding directly to First Nations governments and Nation governments to exercise self-determination and jurisdiction over all their citizens whether on or off reserve. By BCAFN Resolution 1(g)/2012 the Chiefs in Assembly support BC First Nations in advocating for an updated membership-based funding formula and call on Canada to update band funding formulas to reflect the increase in membership as a result of bill C-3: the Gender Equity in Indian Registration Act.

Canada must reform their current funding formula in order to create an equitable funding formula that is co-developed with First Nations and to include new members who have been excluded because of decades of sex discrimination and its generational effects, which will include those who live off reserve.

Canada's fiduciary obligations, including financial obligations, must be addressed through the consultation process. Ending discrimination and supporting First Nations' right to self-determination necessarily means Canada must support Nations to thrive as sustainable self-governing Nations that are equipped with capacity support, increased infrastructure, and land transfers. Ultimately Nation members need a place to come home to as they are connected to their lands and territories and have a right to access them.

5. Based on your organization's work and your unique knowledge of those you represent, how might Canada support understanding and facilitate dialogue among rights-holders on this issue?

Building upon the points made in response to question one, Canada can further support understanding by providing a simplified breakdown of ISC materials and adding clear timelines of consultation phases and events. There should be multiple event options, such as non-Nation-specific consultation events for individuals from any community including off-reserve individuals, urban and rural, and those entitled to status, as well as specific events for each First Nation to invite and promote to their members.

Before each engagement event, meeting materials such as briefing notes, reports, videos, and presentations must include analysis that demonstrates the severity and urgency of addressing the serious problems created by sections 6(1)(f) and 6(2) - ie visuals such as maps and charts to depict demographic data and trends, and estimates of extinction of status Indians and Bands under the current *Indian Act* for First Nations by region.

Again, the meeting materials provided must be grounded in rights-based factually and historically accurate information and must be culturally sensitive. In addition, it is critical that meeting materials are provided at least three weeks prior to each event in order for attendees to have adequate time to read, understand, and discuss materials. During this period of review by First Nations and individual rights holders, there must be a way for First Nations to submit questions to ISC and for ISC to prepare informed answers to First Nations or individuals prior to and during the meeting.

BCAFN and UBCIC call for ISC to fund and support regional meetings, outreach, and engagement to connect with First Nations in person or through virtual means (Zoom/Teams) to kick off further engagement with individual First Nation leaders, including attending political meetings with First Nations such as the UBCIC AGA and BCAFN AGM to report out on the consultative process.

6. How should different solutions be presented during consultation activities to encourage the best facilitation of productive dialogue?

The presentation of solutions must not only be delivered verbally, visually, and in written form but must also clearly demonstrate all of the possible options and outcomes of this engagement process to eliminate discrimination and include timelines and scenarios based on legislative amendments. All solutions need to be assessed and measured against the standard of non-discrimination. Each offered solution needs to be assessed and measured as to whether it will either: end discrimination (including forced assimilation), or perpetuate discrimination. The analysis needs to be worked on jointly with First Nations and shared widely. Including multiple ways of communicating solutions will likely increase transparency and accountability as individual rights holders and First Nations will be able to identify which solution works best for them.

Any facilitated discussion or engagement sessions hosted by ISC needs to include a strong and unbiased panel of First Nations facilitators who are knowledgeable about the issues of second generation cut off, section 10 voting thresholds and the issues of discrimination being discussed. They also need the skills and experience to conduct the sessions in a culturally sensitive manner.

During the consultation and engagement phase ISC must speak to the history of colonization and acknowledge the racist use of blood quantum as a tactic of forced assimilation and mathematical genocide used to divide communities and promote lateral violence. ISC cannot propose solutions which uphold any form of discrimination.

When it comes to addressing the legacies of these colonial policies and attitudes, it is important to include traditional knowledge keepers and pre-colonial understandings that precede the use of blood quantum used to control, oppress and assimilate First Nation communities.

The process of gathering the positions of First Nations and individual right holders should include mechanisms for First Nations to submit their feedback and rejection of options (in written form or verbally). Collection of data on First Nations or Individual rights holders who support each solution will be helpful (while maintaining confidentiality of the individuals or Nations), as the rejection of solutions may indicate the need for further consultation in order to reach consensus on how best to address the problems resulting from sections 6(1)(f) and 6(2) and the second-generation cut-off.

QUESTIONS RELATED TO SECTION 10 VOTING THRESHOLDS

General Statement on Section 10 Voting Thresholds

UBCIC and BCAFN do not have a mandate that speaks specifically to Section 10 voting thresholds. As with this entire consultation process, it is crucial that the input of First Nations and individual rights holders guide the outcome. Below we provide some general comments upholding our mandates to end sex, race, and family-based discrimination.

Membership issues must be addressed as a whole. There are outstanding concerns regarding the loss of membership in both Section 10 and Section 11 Bands by women and their descendants who were discriminated against because of sex, who lost membership and never got it back. Remedies for loss of membership are necessary. Women and their descendants have a right to be members of their Bands, whether they are Section 10 or Section 11 Bands. Bill C-38 proposes to address reinstatement to their natal Bands for women who were automatically transferred to their husbands' Bands. But this is not the only issue regarding the loss of Band membership for women and their descendants. Many women lost

Band membership because of sex discrimination, and Bill C-31 did not fully restore Band membership. The descendants of Bill C-31 women also lost Band membership.

Parameters need to be in place that enable newly entitled women and their descendants to be (re)instated to their Bands. We uphold the rights of First Nations to self-determination; however, as a result of this process Section 10 Bands cannot be permitted to discriminate or perpetuate discrimination caused by the *Indian Act* or amend membership rules in a manner that undermines the amendments to the *Indian Act* that have been made to eliminate discrimination.

7. Given the potential significant impact of a legislative remedy on the second-generation cut-off on the number of individuals who are entitled to registration, do you agree/disagree a simultaneous amendment on the double majority threshold is required? Why?

See above.

8. Does your organization have a current view on what, if any, changes should be made to the Section 10 double majority threshold requirement?

See above.

QUESTIONS RELATED TO DESIGN OF CONSULTATION

The following themes were raised during the 2018/19 Collaborative Process on Indian Registration, Band Membership and First Nations Citizenship. Some questions have been added related to these themes.

THEME 1: TRUST

Developing trust and rapport is a critical part of cooperative consultation. Based on the findings of the 2018/19 Collaborative Process, ISC knows that there is a lack of faith that the government will address issues in the *Indian Act*. There was also some concern that Canada would handpick responses that favor Canada versus impacted Indigenous peoples. One recommendation related to developing trust was that Indigenous partners would like to know how their answers to questions, their feedback and their contributions are being used by the Department, including who will view the results. It was noted that this should be made clear prior to contributions.

9. Does your organization propose any further strategies for implementing transparency and supporting the robust participation of rights-holders in the upcoming consultation?

See above section on “Accountability Mechanisms”. ISC should include a clear framework for accountability and use of rights holders’ contributions. It is important that facilitators and follow up materials including a What We Heard Report which closely capture feedback and that they are made widely available to participants. If the results of the consultation favour a particular set of actions, next steps, or policy or legislative development, it should be clear as to why or why other feedback was not incorporated or how it impacted decision making.

It is important that decision and policy makers are involved in the consultation process to hear directly from rights holders. In past consultation processes there has been a divide between the relationships built between government staff and facilitators and the outcomes decided by upper-level officials. This is important for accountability and ensuring outcomes that directly reflect the input of rights holders in the consultation process.

We suggest that ISC includes a monitoring process and inclusion of the Indigenous Advisory Process participants in the monitoring process to ensure that our feedback has been incorporated.

THEME 2: INFORMATION AND MATERIALS REQUIRED

It was heard that more information is needed in order for participants to contribute effectively. This information should be provided early and continue throughout the process. It should include projections and details on the potential impacts of decisions made. Some individuals described that anecdotal information would also be useful. For any materials that touch on family histories, it was noted that oral knowledge should be respected and communities should also be involved in researching lineage.

With information should also come transparency. It was mentioned that community members should be made aware of any updates, progress or developments. With regard to data, calculations and formulas should be shared. In addition, requests were made for access to relevant source documents and resources.

10. Does your organization propose any further strategies for providing culturally sensitive, accessible information to support the robust participation of rights-holders in the upcoming consultation?

As stated above, it will be essential that the consultation approach is grounded in truth and an accurate representation of Canada's history of discrimination through the Indian Act. This is important for trust-building and repair and promotes openness in the consultation sessions. There should also be cultural supports present and acknowledgement of the far-reaching harms.

RECOMMENDATIONS:

1. The government of Canada must end the ongoing and preventable genocide against First Nations through policies of legislated extinction.
2. The government of Canada must remove all remaining sex, race, and family-based discrimination as identified by First Nations and advocates, including legacies of sex discrimination and gender discrimination, from *the Indian Act, 1876*, including in sections 6(1)(f) and 6(2) and the second generation cut-off rule, and ensure that children of all First Nations men and women – whether one parent or two – can obtain status.
3. The government of Canada must respect First Nations' sovereignty and the right to determine their own membership and citizenship laws based on their First Nation laws and traditions and uphold their fiduciary responsibility to First Nations, irrespective of racist colonial definitions of citizenship based on blood quantum.

4. The government of Canada must work in earnest to amend the *Indian Act* to comply with human rights law including UN Declaration, UNDA, CERD, CEDAW, ICESCR, and ICCPR. The conduct of the consultation and its results must satisfy human rights norms and standards articulated in these treaties.
5. The government of Canada must not consult on *whether*, but *how* to remove all remaining discrimination from the *Indian Act*.
6. The government of Canada must consult all First Nations, Bands, and individual rights holders on the most effective ways to remove discrimination, through policies and legislation to uphold the UN Declaration and First Nations' self-determination rights over citizenship law, and on the resources and supports, to help ensure the health and survival of First Nations. Options should be presented with assessments as to how they will eliminate sex discrimination, and discrimination based on Indigeneity. Options should be presented in the form of draft policy and legislation to reform the *Indian Act* with accompanying draft budgets demonstrating realistic funding formulas.
7. The government of Canada must provide redress and remedy to compensate for decades of discrimination. Women and their descendants must be compensated for the things that were systematically taken from them by Canada who purposefully excluded them from their communities. The consultation process and subsequent legislative reform must include timely built-in pathways to compensation if Canada is to remedy discrimination once and for all.
8. The government of Canada must situate this consultation process in the bigger picture of upholding First Nations' rights, resolving all remaining issues of discrimination, and taking action towards the health, self-determination, and security of First Nations. Consultation must be understood to be a part of the truth and reconciliation process, as well as a part of the resolution of the crisis of MMIWG2S+.
9. Canada must inform participants of what comes after this consultation and must address Canada's fiduciary obligations and the consequences of adding new status members on funding and landbases. Canada must provide assurances directly to First Nations that any legislative amendment, such as the elimination of 6(2) and 6(1)(f), will lead to increased entitlements, sustainable funding, resources, programs, services, and lands for newly eligible individuals and beyond. Canada must support Nations to thrive as sustainable self-governing Nations that are equipped with capacity support, increased infrastructure, and land transfers.
10. Consultation materials must be accessible, written in plain language, accurate, rights-based, distinctions-based, culturally-sensitive and available to First Nations as well as to on-and off-reserve individuals including those who have been denied status because of the discriminatory provisions. The government of Canada must take responsibility for its role in continued discrimination and provide a historically accurate context that is grounded in the truth of colonialism and harm against First Nations women and their descendants. This includes an acknowledgment that the second generation cut off and two parent rule perpetuate discrimination based on sex and constitute forced assimilation.

11. Going into the consultation process, there must be a clear process outlined for rights holders and mechanisms for reporting back on their input. ISC must demonstrate how rights holder input is incorporated, or if it is not, why not. The reporting and decision-making process needs clear timelines and oversight. The consultation and decision-making process should have an independent monitor, who reports publicly to the Minister and to those consulted, as Claudette Dumont-Smith did as the Minister's Special Representative for the Bill S-3 consultation.
12. Consultation must include resourcing, and sessions must be conducted in a culturally sensitive way by an experienced First Nations facilitator who has a strong understanding of the legal context of the *Indian Act* and its impacts.
13. The government of Canada must make every effort to consult First Nations title and rights holders, as well we individual rights holders including all individuals registered under 6(2), Band members living off reserve, status Indians who are not members of Bands, and individuals who would have status but for sex discrimination. As these individuals are likely to be among those greatly harmed by the second generation cut-off and the two parent rules, they have a serious stake in the consultation process. It is therefore essential that effective ways of reaching them be devised.

APPENDIX:

1. UBCIC Resolution 2023-61 "RE: Repeal of Second-Generation Cut-Off and Two-Parent Rule in the Determination of Indian Status (Registration) under the Indian Act"
2. UBCIC Resolution 2023-47 "RE: Call for Government of Canada to Increase First Nations Funding"
3. BCAFN Resolution 1/2023 "ENDING SEX-BASED DISCRIMINATION IN THE INDIAN ACT IN ALIGNMENT WITH THE UN DECLARATION"
4. UBCIC Comments on Proposed Amendments to the Indian Act, November 10, 2022
5. Report from Indian Act Sex Discrimination Working Group Consultation on Second Generation Cut-Off, Two-Parent Rule, and Membership Issues
6. Make It Stop: Ending the Remaining Discrimination in Indian Registration