

Permanent Mission of Canada
to the United Nations
and the World Trade Organization



Mission permanente du Canada
auprès des Nations Unies
et de l'Organisation mondiale du commerce

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The Permanent Mission of Canada to the United Nations and the World Trade Organization at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to make reference to the joint communication AL CAN 3/2023, dated 27 October 2023.

In this regard, the Permanent Mission of Canada has the honour to submit Canada's response.

The submission consists of one document.

The Permanent Mission of Canada to the United Nations and the World Trade Organization at Geneva avails itself of the opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.





RESPONSE OF THE GOVERNMENT OF CANADA TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES

REFERENCE AL CAN 3/2023

I. INTRODUCTION

1. On October 27, 2023, a Joint Communication to Canada (Ref: AL CAN 3/2023) was sent by: the Special Rapporteur on violence against women and girls, its causes and consequence; the Special Rapporteur on the rights of Indigenous Peoples; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.
2. The Joint Communication provides comments on information received by the Special Rapporteurs concerning “gender-based discrimination of Indigenous women and their descendants under the Indian Act and failure to provide an effective remedy to victims of such discrimination” and seeks clarity on expressed concerns and observations.
3. Canada is committed to constructive dialogue with United Nations mechanisms, including the Special Procedures, and welcomes the opportunity to respond to the Special Rapporteurs upon serious and good faith consideration of the Joint Communication.
4. In this response, Canada provides general observations regarding the information received by the Special Rapporteurs, as well as information on the status of Bill C-38 and additional measures Canada has taken to address remaining discrimination under the *Indian Act*, including a collaborative consultation process on broader issues related to registration and band membership under the *Indian Act*.

II. GENERAL OBSERVATIONS

5. Canada takes very seriously its international human rights treaty obligations, including those under the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights*.
6. Canada reiterates its commitment to a nation-to-nation relationship with Indigenous Peoples that is based on a recognition of rights, respect and cooperation and is guided by the *United Nations Declaration on the Rights of Indigenous Peoples* (the “Declaration”).
7. Canada is pleased to inform the Special Rapporteurs that the *United Nations Declaration on the Rights of Indigenous Peoples Act* (the “UN Declaration Act”) came into force in



Canada in June 2021. The UN Declaration Act requires that all necessary measures be taken, in consultation and cooperation with Indigenous Peoples, to ensure that the laws of Canada are consistent with the Declaration.

8. In June 2023, Canada released the *United Nations Declaration on the Rights of Indigenous Peoples Act* Action Plan (the “UN Declaration Act Action Plan”). Developed in consultation and cooperation with First Nations, Inuit and Métis, the UN Declaration Act Action Plan commits Canada to, inter alia:
 - a. Support the adoption of Bill C-38, which seeks to address discrimination in the registration and membership provisions of the *Indian Act*;
 - b. Co-develop a collaborative consultation process on a suite of broader reforms related to registration and band membership issues, prior to any transition from the *Indian Act*. This process includes to consult, cooperate and effectively engage with First Nations women, 2SLGBTQI+ peoples, elders, and youth to eliminate remaining gender-based issues;
 - c. Seek to make the *Indian Act*’s registration and band membership provisions more consistent with the Declaration, until a clear consensus on a way forward on comprehensive change or the *Indian Act*’s repeal is possible;
 - d. Consult First Nations and other impacted Indigenous groups to support the co-development of opt-in alternatives to *Indian Act* registration and membership. This will include a broad spectrum of Indigenous demographic groups, including women, girls and 2SLGBTQI+ people, Elders and Treaty groups.

9. Under the UN Declaration Act (section 5), the Government of Canada is obligated to, “in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.” Canada recognizes that the *Indian Act* is a colonial-era law designed to exert control over the affairs of First Nations and that, as such, the *Indian Act* will never be fully aligned with the Declaration. Canada further recognizes that for Canada’s laws to fulfill the Declaration, the *Indian Act* must be repealed. The government is seeking to make the Act’s registration and band membership provisions more consistent with the UN Declaration, until a clear consensus on a way forward on comprehensive change or the Act’s repeal is possible.

III. CURRENT STATUS OF BILL C-38

10. In March 2022, Canada committed to pursuing a legislative solution to address the residual impacts of enfranchisement, a historical process in which First Nations persons lost their entitlement to registration, as well as membership in their home communities, in exchange for certain basic entitlements of Canadian citizenship.



11. Between August and December 2022, Canada held over 50 engagement sessions with First Nations, Indigenous organizations and other interested or impacted individuals regarding potential legislative solutions to the residual impacts of enfranchisement as well as other issues heard during prior consultation under the 2018-2019 *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship*. These engagement sessions helped inform the drafting of Bill C-38, *An Act to amend the Indian Act (New Registration Entitlements)*.
12. On December 14, 2022, Bill C-38 was introduced in the federal Parliament to:
 - a. Address the ongoing impacts on entitlement to registration for individuals with a family history of enfranchisement.
 - b. Recognize the rights of all individuals to membership with their natal bands by providing a legal mechanism to re-affiliate women who were automatically transferred to their husbands' band list upon marriage prior to 1985, and their descendants.
 - c. Support the autonomy of registered individuals by providing to them a legal mechanism to remove their names from the Indian Register, should they wish to do so.
 - d. Remove some outdated and offensive language in the *Indian Act* related to dependent persons.
13. Bill C-38 responds to longstanding concerns raised by First Nations and other individuals affected by residual forms of discrimination under the *Indian Act*. It is expected that approximately 3,500 individuals could be newly eligible for registration as a result of the proposed legislation.
14. As of February 12, 2024, Bill C-38 is still progressing through Canada's legislative process. Its Second Reading in the House of Commons began in October 2023.

IV. CONSULTATION ON BROADER ISSUES RELATED TO REGISTRATION AND MEMBERSHIP UNDER THE INDIAN ACT

15. In 2017, S-3 mandated that consultations be conducted through the lens of the Declaration, the *Canadian Charter of Rights and Freedoms* and, if applicable, the *Canadian Human Rights Act*. Consultations under the *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship* began in June 2018 and concluded in April 2019. In her final report on the findings of the *Collaborative Process* tabled in Parliament in June 2019, Minister's Special Representatives Claudette Dumont-Smith recommended separate and more in-depth consultations to develop solutions to address the second-generation cut-off.



16. As noted above, in June 2023, Canada committed to co-develop a collaborative consultation process on a suite of broader reforms relating to registration and band membership issues prior to any transition from the *Indian Act* in the UN Declaration Act Action Plan.
17. In November 2023, Canada launched the *Collaborative Process on the Second-Generation Cut-Off and Section 10 Voting Thresholds* – two remaining issues related to registration and membership:
 - a. Second-Generation Cut-off: In 1985, Bill C-31 introduced two general registration categories under sections 6(1) and 6(2) of the *Indian Act*. Individuals entitled under these categories have different capacities to transmit entitlement to their descendants. While individuals entitled under 6(1) can pass on entitlement to their descendants on their own, persons entitled under 6(2) cannot. After two consecutive generations of parenting with a person who is not entitled to registration, the third generation is no longer entitled to registration. Entitlement is therefore cut off after the second generation. The second-generation cut-off has deep impacts on First Nation communities and families as it prevents many First Nations persons with status to transmit status to descendants simply because of the person with whom they chose to parent.
 - b. Section 10 voting thresholds: In 1985, Bill C-31 created distinct structures for the control of band membership under sections 10 and 11 of the *Indian Act*. Section 11 band membership lists are maintained by the Registrar. Under section 10, First Nations can decide to assume control of their membership by following the outlined process. For a First Nation to assume control of its membership, consent must be obtained from its electors via a referendum process. More specifically, the majority of the band's eligible electors must vote, and a majority of those who vote must be in favor.
18. As of February 2024, an Indigenous Advisory Panel including representatives from 17 national, regional, youth and women's Indigenous organizations has been established to help ensure that Indigenous perspectives are considered in the design and delivery of the *Collaborative Process*. A rights-holders information sharing initiative has also been established to support First Nations and impacted Indigenous rights-holders in preparation for consultation events. The recommendations heard during this co-development and information phase will inform consultation activities and events.

V. ADDRESSING SEX AND GENDER DISCRIMINATION IN THE REGISTRATION SYSTEM

19. With respect to addressing sex and gender discrimination in the registration system for the status recognition of Indigenous women and girls, Canada maintains that sex-based inequities in the registration provisions of the *Indian Act* were fully eliminated in 2019



with the coming into force of Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada*. S-3 responded to long-standing concerns raised by First Nations peoples and organizations, the Committee on the Elimination of Discrimination against Women, the Human Rights Committee, the *National Inquiry into Missing and Murdered Indigenous Women and Girls* and other key stakeholders by fully aligning registration provisions for patrilineal and matrilineal lines.

20. In response to the Rapporteurs' call to support registration of newly entitled women and descendants, Canada invested in policy solutions, processing efficiencies and digital modernization efforts to ensure timely registration of newly entitled individuals. As of February 5, 2024, Canada has received over 74,600 applications impacted by S-3 of which over 67,000 have been processed, resulting in 50,822 newly entitled women and descendants being registered and eligible to access a full range of associated rights and benefits. Since September 2022, Canada has been processing S-3 applications within the service standard of six months.
21. Canada also continues to engage with First Nations and Indigenous organizations to increase awareness of the legislative changes to registration, encourage newly entitled persons to apply for registration and monitor the impacts of S-3, including on programs and services that could face additional pressures from increases in the registered populations. Plain language materials in both of Canada's official languages have been publicly distributed to disseminate information on entitlement to registration and clarify the registration application process.

VI. REPARATION CLAIM OF MR. MATSON (Communication No. 68/2014)

22. On March 2, 2022, Canada received the Committee on the Elimination of Discrimination against Women's (the Committee) views concerning communication no. 68/2014, submitted by Mr. Jeremy Matson under the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*.
23. In its response to the Committee dated September 1, 2022, Canada:
 - a. Acknowledged and expressed deep regret for the manner in which, in the past, registration provisions of the *Indian Act* discriminated against Indigenous women and their descendants on the basis of sex;
 - b. Maintained that all known sex-based inequities in the registration provisions were fully eliminated in 2019 with the coming into force of Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada*;
 - c. Did not accept that the current provisions of the *Indian Act*, in place since 2019, violate the rights of Mr. Jeremy Matson and his children.



24. Canada acknowledged the Committee's recommendation to provide reparation to Mr. Jeremy Matson and his children by ensuring their ability to transmit their Indigenous status to their descendants. Canada found that, with the coming into force of Bill S-3, the author and his children have equal eligibility and ability to transmit status as the descendants of Indigenous men.
25. Canada further explained that the current legislative limits to eligibility for registration, namely under the second-generation cut-off, do not discriminate on the basis of sex. The second-generation cut-off is a neutral mechanism that does not apply exclusively to the descendants of Indigenous women. Pursuant to Bill S-3, there are no longer known sex-based distinctions based on dates of birth or marriage in relation to the second-generation cut-off.
26. Canada recognizes the impacts of past sex-based inequities in registration on First Nation women and their descendants. However, measures to provide individual reparations to Indigenous women and their descendants who were previously denied status, including Mr. Jeremy Matson and his children, are not being considered at this time.
27. Canada remains responsive to Mr. Jeremy Matson's requests for information on efforts to address residual impacts of sex-based inequities and broader reform issues in the *Indian Act*.

VII. SUPPORTING GENDER INCLUSIVE SERVICES

28. The Government of Canada is renewing its approach to the collection, use and display of sex and gender information to promote the respect, inclusion and personal safety of transgender, non-binary, gender diverse and Two-Spirit persons. Canada is working to align registration and status card issuance policies with Canada's *Policy Direction to Modernize Sex and Gender Information Practices*.
29. In August 2020, a national *Directive on Recording or Amending Sex or Gender Information in the Indian Register and on the Status Card* came into force. It implemented a non-intrusive change of gender designation and introduced a non-binary gender designation option. Gender designations are now recorded or amended in the Register and displayed on the status card based solely on the applicant's declaration of their gender designation: M (male), F (female) or X (another gender).

VIII. CONCLUSION

30. Canada recognizes the *Indian Act* as a colonial and discriminatory law that has administered the lives of First Nations peoples. Canada is committed to work in consultation and cooperation with First Nations and Indigenous rights-holders to address



the residual effects of sex-based inequities as well as remaining issues in registration and membership prior to transitioning away from the *Indian Act*.

31. Canada remains committed to renewing its relationship with Indigenous Peoples based on the recognition of rights, respect, co-operation and partnership, and guided by the Declaration. This includes working to implement the commitments in the UN Declaration Act Action Plan and continuing to support Indigenous Peoples in achieving self-determination and recognizing the inherent rights of self-government.
32. Lastly, Canada maintains its steadfast support for the United Nations Human Rights Special Procedures mandate holders in promoting and protecting human rights. Independent, constructive input is critical to Canada successfully meeting its human rights obligations. Canada would like to thank the Special Rapporteurs for the opportunity to respond to their Joint Communication of October 7, 2023.