

# Equal Status for Indigenous Women— Sometime, Not Now

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## The *Indian Act* and Bill S-3

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*Cet article interpelle la législation canadienne discriminatoire qui frappe le peuple autochtone, spécialement les femmes. Les jeunes filles sont particulièrement vulnérables et il a été prouvé qu'elles sont à la racine de cette culture de la violence contre elles. En dépit de cette réalité, l'auteure accuse le Gouvernement qui n'a jamais pris des mesures pour éradiquer ce point névralgique dans cette loi qui continue à refuser aux femmes et jeunes filles le statut qui leur est dû. Cet article demande que la loi 3 ou 6(1A) se propose d'amender cette loi qui perpétue la discrimination sexuelle.*

In its 2015 report on *Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*, the Inter-American Commission on Human Rights (IACHR) found that: “[a]ddressing violence against women is not sufficient unless the underlying factors of discrimination that originate and exacerbate the violence are also comprehensively addressed” (para 306), and historical *Indian Act* sex discrimination is a root cause of high levels of violence against Indigenous women and the “existing vulnerabilities that make Indigenous women more susceptible to violence” (paras 93, 129).

Despite the clear finding of the IACHR regarding the impact of the sex discrimination in the *Indian Act*, and the requirement that Canada comprehensively address the causes of violence against Indigenous women and girls, on December 4, 2017, the Parliament of Canada passed Bill S-3, which, one more time, amends the *Indian Act* to remove some discrimination, but re-enacts the core of the historic sex discrimination in the status registration provisions.

The effect of the long-standing sex discrimination in

the *Indian Act* is to relegate Indian women and female-line descendants, who were victims of sex discrimination prior to 1985, to an inferior category of status, and, in some instances, completely deprive them of status. These individuals are categorically denied eligibility for full 6(1)(a) status.

The Government of Canada introduced Bill S-3 in the Senate in October 2016. After considering Bill S-3 and hearing witnesses, the Standing Senate Committee on Aboriginal Peoples amended Bill S-3 in May 2017 to correct its deficiencies. This amendment, which has been dubbed the “6(1)(a) all the way” amendment, would have had the effect of eliminating the core of the sex discrimination which remains in the registration provisions of the *Indian Act*. It is referred to as the “6(1)(a) all the way” amendment because it would have entitled Indian women and their descendants born prior to April 17, 1985 to full 6(1)(a) status on the same footing as Indian men and their descendants.

Although this amendment was adopted by the full Senate, it was rejected by the Government of Canada. The Senate’s amendment was stripped from Bill S-3 in the House of Commons Committee on Indigenous and Northern Affairs. The House of Commons, in which the Liberal Government holds the majority of seats, then passed Bill S-3 minus the “6(1)(a) all the way” amendment on June 21, 2017. This created a stalemate between the Senate and the House of Commons.

On November 7, 2017, to break this stalemate, the Government’s representative in the Senate, Peter Harder, introduced a new motion to amend Bill S-3. The Government’s motion added provisions which appear, on

their face, to reflect the intent of the Senate's "6(1)(a) all the way" amendment. However, the Government's "6(1)(a) all the way" provisions will only come into force at an unspecified date in the future when a decision of Cabinet is made to enact them. On November 9, 2017, the Senate agreed to the Government's motion, although not without deep reluctance on the part of some Senators and some nay votes.

On December 4, 2017, Parliament passed the latest version of Bill S-3, which addresses the discrimination

when they married a non-Indian. On the other hand, Indian men who married non-Indians kept their Indian status and endowed status on their non-Indian wives.<sup>1</sup>

Since the 1970s, sex discrimination in the *Indian Act* has been repeatedly challenged, and Canada has failed repeatedly to take effective remedial action to eliminate it.

Highlights of this history are:

In 1970, forty-seven years ago, the Royal Commission on the Status of Women recommended that "[L]egislation should be enacted to repeal the sections of the [*Indian*

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## Canada's perpetuation of sex discrimination in the *Indian Act*, and its determination to pass Bill S-3 without eliminating the sex-based hierarchy between 6(1)(a) and 6(1)(c) from the registration provisions, violates the rights of Indigenous women and girls to equality and non-discrimination under regional and international human rights laws.

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identified in *Descheneaux v. Canada*, but leaves the core of the sex discrimination firmly in place until an unspecified date in the future. Significantly, Bill S-3 was originally titled *An Act to Eliminate Sex-Based Inequities in the Indian Act*, but the Senate Standing Committee on Aboriginal Peoples object that Bill S-3 did not do what its title promised. Bill S-3 is now titled *Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*. Bill S-3 received royal assent on December 12, 2017, and is now law.

Canada's perpetuation of sex discrimination in the *Indian Act*, and its determination to pass Bill S-3 without eliminating the sex-based hierarchy between 6(1)(a) and 6(1)(c) from the registration provisions, violates the rights of Indigenous women and girls to equality and non-discrimination under regional and international human rights laws, to which Canada is a signatory.

### Indian Act Sex Discrimination and Bill S-3: Time Lines

#### (1) History of Discrimination

Since its inception, the *Indian Act* has accorded privileged forms of Indian status to Indian men and their descendants compared to Indian women and their descendants, treating the latter as second-class Indians. In earlier versions of the *Indian Act*, an Indian was defined as "a male Indian, the wife of a male Indian, or the child of a male Indian." For the most part from 1876 to 1985, Indian women had no ability, or limited ability, to transmit status to their descendants. There was a one-parent rule for transmitting status and that parent was male. Indian women lost status

*Act*] which discriminate on the basis of sex."<sup>2</sup> Although at the time, the Government of Canada was proposing to repeal the *Indian Act* and treat all Indians the same as all Canadians, [1969 White Paper] the Royal Commission was firm that as long as the *Indian Act* existed all sex discrimination must be removed.

In 1971, Jeannette Corbiere Lavell and Yvonne Bedard brought suit under the sex equality provision of the *Canadian Bill of Rights*. They lost, although four out of nine judges of the Supreme Court of Canada agreed with Lavell and Bedard.<sup>3</sup> The decision became notorious, and was used as an example of why protections for "equality before the law" and "equal protection of the law" were insufficient without guarantees of "equality under the law" and "equal benefit of the law"—guarantees which were subsequently included in the section 15 guarantee of equality in the *Canadian Charter of Rights and Freedoms*.

In 1978, the Government of Canada issued a report prepared for the Department of Indian Affairs and Northern Development, entitled *Indian Act Discrimination Against Sex*, acknowledging the sex discrimination against Indian women in the "marrying out" rule and other provisions of the *Indian Act*.

In the late 1970s, Sandra Lovelace from the Tobique First Nation in New Brunswick challenged the discriminatory "marrying out" rule in a petition to the UN Human Rights Committee. In its 1981 decision, *Lovelace v Canada*, the Committee found that the loss of Indian women's status pursuant to section 12(1)(b) of the 1951 *Indian Act* violated the right to the enjoyment of cultural life under the *International Covenant on Civil and Political Rights*.

In 1985, the Government of Canada enacted Bill

C-31,<sup>4</sup> both in response to *Lovelace* and because of the introduction of Canada's new constitutional equality rights guarantee, section 15 of the *Canadian Charter of Rights and Freedoms*. The promise made by the Government of Canada was to eliminate all of the sex discrimination.<sup>5</sup> Instead, Bill C-31 removed some of the sex discrimination and carried forward the rest.

Bill C-31 did not remove the male-female hierarchy that is intrinsic to the legislative scheme. In fact, it entrenched inequality by creating the category of 6(1)(a) for all those

not carry under the section 6(1)(a) category. Similarly, the 6(2) status which was given to the children of "Bill C-31 women" is a lesser form of Indian status, and it tells the community that these are the children of Indian women who married out, or who had children out of wedlock. The profound hurt that has been caused and the injustice that has been suffered by the women who are often referred to pejoratively as "6(1)(c) women" or "Bill C-31 women" has been neither recognized nor remedied.

Many legal cases since 1985 have attempted to unwind

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(mostly male) Indians and their descendants who already had full status prior to April 17, 1985, and the lesser category of 6(1)(c) for women whose status had been denied, or whose status had been removed because of marriage to a non-Indian. The women were considered "re-instatees," and they were re-instated to a lesser category of status. Their ability to transmit Indian status to their children was restricted by their 6(1)(c) status.

For the first time, Bill C-31 introduced a second-generation cut-off, but delayed its application to those born prior to April 17, 1985 who had 6(1)(a) status; the second-generation cut-off applied immediately to 6(1)(c) women. In other words, the "re-instated" women could pass status to their children, but not to the next generations, while their male counterparts could pass status to all their descendants born prior to April 17, 1985. The children of 6(1)(c) women were consigned to inferior 6(2) status, which is non-transmissible.

Consigning women to 6(1)(c) status has devalued them, treated them as lesser parents, and denied them the legitimacy and social standing associated with full 6(1)(a) status. Throughout the years, the so-called "Bill C-31 women" have been treated as though they are not truly Indian, or "not Indian enough," less entitled to benefits and housing, and obliged to fight continually for recognition by male Indigenous leadership, their families, communities, and broader society. In many communities, registration under section 6(1)(c) is like a "scarlet letter"—a declaration to other community members that they are outcasts, lesser Indians. As a result, many women have faced painful forms of discrimination as they are branded as "traitors" for having married out—a burden their male counterparts do

this discriminatory, sex-based hierarchy between 6(1)(a) and 6(1)(c) and its effects, but in response, the Government of Canada has made only piecemeal reforms—never completely eliminating the gender discrimination.

In 1991, the Manitoba Aboriginal Justice Inquiry, which examined racism and violence against Indigenous peoples, recommended that "The Indian Act be amended to eliminate all continuing forms of discrimination, regarding the children of Indian women who regain their status under Bill C-31."<sup>6</sup> In 1996, the Royal Commission on Indigenous Peoples also criticized the 1985 *Indian Act's* continuation of sex discrimination.<sup>7</sup>

At periodic reviews of Canada between 2003 and 2008, various UN human rights treaty bodies, including the Human Rights Committee,<sup>8</sup> the Committee on Economic, Social and Cultural Rights,<sup>9</sup> the Committee on the Elimination of Racial Discrimination,<sup>10</sup> and the Committee on the Elimination of Discrimination against Women,<sup>11</sup> criticized Canada for its continuing discrimination against Indigenous women.

In 1994, Sharon McIvor launched her constitutional sex equality challenge. Her constitutional challenge was preceded by nearly a decade of unsuccessful litigation and administrative efforts involving the Registrar of Indian and Northern Affairs who has sole jurisdiction over the determination of who is and is not an Indian under the *Indian Act*.

After more than twenty years of constitutional litigation in *McIvor v Canada* (Registrar of Indian and Northern Affairs Canada), and findings by two levels of court that the Indian Act continued to discriminate based on sex,<sup>12</sup> the Government of Canada passed Bill C-3, Gender Equity

in Indian Registration Act,<sup>13</sup> to correct the McIvor-identified discrimination.

On the government's count, Bill C-3 restored status entitlement to approximately 45,000 individuals.<sup>14</sup> On the one hand, this was an important step. On the other hand, the reforms, once again, were piecemeal. At the same time as removing the bar to some 6(1)(c) women transmitting status to their grandchildren (albeit in limited form), the Government of Canada re-enacted the 6(1)(a) – 6(1)(c) hierarchy, thereby failing to remove all the limitations on acquiring and transmitting status for Indian women and their descendants. The effect of maintaining the 6(1)(a) – 6(1)(c) hierarchy is that, to this day, Indian women and their descendants are still being denied equal status with Indian men and their descendants because the scheme treats the female line as inferior and affords their descendants lesser or no status. Indian women, like Sharon McIvor, Senator Lillian Dyck and Senator Sandra Lovelace-Nicholas can never have full 6(1)(a) Indian status like their male counterparts.

Since Bill C-3 was passed in 2010, three complaints and constitutional challenges to post-McIvor sex discrimination have been before the Canadian Human Rights Tribunal and the courts:<sup>15</sup> *Matson v. Canada (Indian Affairs and Northern Development)*,<sup>16</sup> *Lynn Gehl v. Attorney General of Canada*,<sup>17</sup> and *Descheneaux c. Canada (Procureur General)*.<sup>18</sup> More are coming.

## (2) Bill S-3 Timeline

In August 2015, the Quebec Superior Court ruled in *Descheneaux c. Canada (Procureur General)*<sup>19</sup> that the registration provisions of the *Indian Act* unjustifiably violate s. 15 of the *Canadian Charter of Rights and Freedoms* (the *Charter*) because they deny status to Stéphane Descheneaux and his children on the basis of the sex of his forebears. Descheneaux was unable to transmit his Indian status to his three daughters because his status came through his Indian grandmother, who lost her status when she married a non-Indian man. Had his Indian grandparent been a man, he would have been able to keep his status, as well as being able to pass it on to his wife, their children and grandchildren. The Court declared subsections 6(1)(a), (c) and (f) and subsection 6(2) of the *Indian Act* to be invalid, but suspended the effect of its declaration for eighteen months—until 3 February 2017—to allow Parliament to make necessary legislative amendments.

In her reasons for judgment in *Descheneaux*, Madam Justice Masse criticized Canada for not passing legislation to remove all the discrimination in the *Indian Act*, and commented adversely on Canada's practice of passing only limited legislative relief after a successful court challenge and leaving the remaining discrimination in the act until

the next court challenge is successful.<sup>20</sup>

On February 22, 2016, the newly-elected Liberal Government led by Prime Minister Justin Trudeau, announced that it had withdrawn the Government of Canada's appeal of the Superior Court's decision in *Descheneaux*, and would develop new legislation.

On 28 July 2016, the Minister of Indigenous and Northern Affairs, Carolyn Bennett, announced a two-staged approach that would (1) eliminate sex-based inequities in Indian registration and (2) begin a collaborative process with First Nations and other Indigenous groups on broader issues related to Indian registration and band membership. The first phase would involve the development of legislation to cure the discrimination identified in *Descheneaux*, and eliminate "all known sex discrimination." The second phase would involve in-depth consultation on: other distinctions in Indian registration; issues relating to adoption; the 1951 cut-off date for eligibility to registration specific to Bill C-3; the second-generation cut-off; unstated/unknown paternity; cross-border issues; voluntary de-registration; the continued federal role in determining Indian and band membership under the *Indian Act*; and First Nations authorities to determine membership under the *Indian Act*.<sup>21</sup>

On 25 October 2016, Bill S-3, *An act to amend the Indian Act (elimination of sex-based inequities in registration)* was introduced in the Senate.<sup>22</sup> Bill S-3 proposed to address the particular sex-based inequities identified in *Descheneaux*, and three scenarios in particular: 1) the differential treatment in the acquisition and transmission of Indian status that arises between first cousins of the same family, depending on the sex of their Indian grandparents in situations where the grandparent was married to a non-Indian between 1951 and 1985; 2) the differential ability to transmit status of male and female children born out of wedlock between 1951 and 1985; and 3) the ineligibility for status of the minor children of Indian mothers who lost their status, along with her, if she married a non-Indian man after their birth. Bill C-31 restored Indian status to women and their children in this situation, but it did not make eligible the children of the reinstated minor child.<sup>23</sup> Bill S-3 proposed to address these inequities by creating new categories of s. 6(1)(c) Indians, while leaving the 6(1)(a) - 6(1)(c) hierarchy in place. If, prior to 1985, the female Indian ancestors in these scenarios had been treated in the same way that their male counterparts were treated with respect to entitlement to, and transmission of, status, or had they been reinstated in 1985 to 6(1)(a) status instead of 6(1)(c) status, this discrimination would never have occurred.

The October 2016 version of Bill S-3 perpetuated discrimination against Indigenous women and their de-

scendants. In particular, it did not address the sex-based exclusion of descendants of Indian women born prior to April 4, 1951, nor did it address the fact that the scheme only grants non-transmissible s. 6(2) status to some female-line descendants born prior to April 17, 1985, whereas no descendants of 6(1)(a) Indians born prior to April 17, 1985 are subject to the 6(2) cut-off. Further, Bill S-3 does not address the fact that Indian women and their descendants do not enjoy all the intangible benefits of status on a basis of equality with their peers because the scheme denies them the legitimacy, social standing and full equality associated with full 6(1)(a) status.

On December 13, 2016, the Senate Committee on Aboriginal Peoples, after holding hearings on Bill S-3, sent a letter to the Minister of Indigenous and Northern Affairs recommending that the Government seek an extension from the Court. The Senate Committee noted that the majority of witnesses testified that Bill S-3 would not remove all the sex-based discrimination from the *Indian Act*, and urged the government to seek an extension and come back with amendments to S-3 or a new bill “that achieves the stated goal of eliminating all gender-based inequities.”

On 20 January 2017, in response to a request by the Attorney General of Canada, the Quebec Superior Court agreed to extend the suspension of the declaration of invalidity in *Descheneaux* for an additional 5 months, until 3 July 2017.

In the interim, on April 20, 2017, the Ontario Court of Appeal handed down its decision in the case of *Gehl v. Canada (Attorney General)*.<sup>24</sup> Gehl challenged the Indian Registrar’s policy to give lesser or no status to the children of Indian women who would not, or could not, name the father (because of rape, incest, father’s denial of paternity, or other reasons). This is known as the “Unstated Paternity” policy which targets Indian women and their children. The Ontario Court of Appeal ruled that, on the evidence, the Registrar’s decision to deny status to Lynn Gehl because the Indian status of her grandfather was “unstated or unknown” was unreasonable.

On 9 May 2017, the Senate resumed consideration of Bill S-3. The Government of Canada tabled a revised Bill S-3 in the Senate which clarified wording in some sections, and added a section to address the unknown or unstated paternity issue. The Government’s 2017 version of Bill S-3 still did not remove all the sex discrimination, and once more re-enacted the sex-based 6(1)(a) – 6(1)(c) hierarchy.

On May 10, 2017, Senator Marilou McPhe-dran introduced an amendment to Bill S-3 [the “6(1)(a) all the way” amendment] which would have the effect of collapsing the 6(1)(a) – 6(1)(c) hierarchy and entitling Indian women and their descendants born before April 17, 1985 to full

6(1)(a) status on the same footing as Indian men and their descendants. This amendment was adopted by the Senate Standing Committee on Aboriginal Peoples (APPA Committee). It has been dubbed the “6(1)(a) all the way” amendment because it would make 6(1)(a) status the norm for Indian women and their descendants as well as for their male counterparts.

On June 1, 2017, Bill S-3 as amended by Senator McPhe-dran was passed by the full Senate. Bill S-3, with the new Senate “6(1)(a) all the way” amendment, was referred to the House of Commons Committee on Indigenous and Northern Affairs, whose members voted on June 15, 2017 to remove the Senate’s amendment.<sup>25</sup>

On June 21, 2017 (National Aboriginal Day in Canada), the House of Commons, in which the party of the Government has a strong majority, passed Bill S-3 without the Senate’s amendment,<sup>26</sup> and also adjourned for the summer. Because Bill S-3 was changed by the House of Commons, it had to return to the Senate for re-consideration. The House of Commons and the Senate must agree before a legislative bill can become law. However, on June 22, 2017, the Senate also adjourned for its summer recess.

On June 26, 2017, the Government asked the Quebec Superior Court to extend the suspended declaration of invalidity again. The Court rejected the motion, and the Government appealed the Court’s decision to the Quebec Court of Appeal. On August 18, 2017, the Quebec Court of Appeal allowed the appeal and extended the suspension of the declaration of invalidity to December 22, 2017.<sup>27</sup>

On November 7, 2017, to break the stalemate between the House of Commons and the Senate, Senator Peter Harder, who is the Government’s representative in the Senate, introduced a new motion to amend Bill S-3. The Government’s motion in the Senate adds provisions to Bill S-3 which appear to reflect the intent of the Senate’s “6(1)(a) all the way” amendment. However, these newly proposed provisions do not come into force on proclamation of Bill S-3. Their coming-into-force is delayed to an unspecified date in the future.

If the Government’s “6(1)(a) all the way” provisions came into force when Bill S-3 is proclaimed law, it appears that Sharon McIvor, others like her, and other re-instatees, including those born prior to 1951, would be entitled to full 6(1)(a) status on the same footing as their male counterparts. However, since the Government’s “6(1)(a) all the way” provisions do not come into force with the rest of Bill S-3, and there is no fixed date for their coming into force, these provisions are, in practice, meaningless. Bill S-3 removes the *Descheneaux*-identified discrimination. However, the core sex discrimination remains in place, at the pleasure of Cabinet.

## Government of Canada Explanations for its Refusal to Eliminate the Sex Discrimination<sup>28</sup>

Throughout the course of the deliberations on Bill S-3, representatives of Indigenous and Northern Affairs and Justice have provided the following explanations for the fact that not one of the Government's successive versions of Bill S-3 eliminates the sex discrimination from the registration provisions of the *Indian Act*.<sup>29</sup>

guarantees all Aboriginal and treaty rights equally to male and female persons. Section 15 of the *Canadian Charter of Rights and Freedoms* guarantees equality between male and female persons – the same standard being used in the court cases challenging the *Indian Act*. Federal and provincial human rights legislation prohibit discrimination on the basis of sex/gender and race.

Article 1 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) provides that Indigenous peoples have the right to the full enjoyment, as a collective

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## Madam Justice Masse criticized Canada for not passing legislation to remove all the discrimination in the *Indian Act*, and commented adversely on Canada's practice of passing only limited legislative relief after a successful court challenge and leaving the remaining discrimination in the act until the next court challenge is successful.

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### (1) *More Consultation Is Needed*

Advocates for Indigenous women fully support and expect governments to comply with their duty to consult Indigenous peoples when decisions affecting them are being considered.<sup>30</sup> However, the duty to consult is intended to facilitate the fulfillment of human rights, not to serve as an obstacle or delaying tactic. *Governments can not and should not use the duty to consult as an excuse for delaying the implementation of the right to equality.*

The Government of Canada has been consulting about eliminating the sex discrimination from the *Indian Act* since the 1970s.<sup>31</sup> The most recent consultation on this subject was conducted only seven years ago, after former Prime Minister Stephen Harper's Conservative Government introduced Bill C-3 in 2010. At that time, many rejected the need for further consultation, and supported removing the discrimination completely. For example, BC First Nations, who are more than three hundred of approximately six hundred Bands in Canada, rejected the need for any further consultation and one of the signatories of the BC consultation report was then BC representative of the Assembly of First Nations, Jody Wilson-Raybould, now Canada's Attorney General and Minister of Justice.<sup>32</sup>

Sharon McIvor, the plaintiff in *McIvor v. Canada*, has noted on many occasions that no government can legitimately consult about *whether* it will continue to discriminate based on sex.<sup>33</sup> The Government of Canada is obliged by the Canadian Constitution, by statute, and by international human rights treaties and agreements, not to discriminate based on sex; nothing anyone says during a consultation process can alter this legal obligation.

Specifically, section 35(4) of the *Constitution Act, 1982*,

*or as individuals*, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 44 of UNDRIP specifically guarantees all the rights and freedoms contained in it equally to male and female Indigenous persons, and Article 22(2) provides that States, in conjunction with Indigenous peoples, will ensure that “*indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination*”<sup>34</sup> (emphasis added).

There is no domestic or international law which permits ongoing gender discrimination against Indian women and their descendants—regardless of what the governments may or may not have heard during decades of consultations, or may hear in the future.

Significantly, the issue of equal Indian status does not engage any collective rights. Status and band membership were separated in the *Indian Act* in 1985 and status is a relationship between individual Indigenous persons and the Government of Canada. The Government of Canada can, and must, remove sex discrimination from the status provisions immediately; it can then legitimately consult Bands and others about resources and services needed to ensure that communities can include new members, and about how they wish to deal with their own membership issues, as they are already entitled to do.

### (2) *The Numbers Are Overwhelming*

In May 2017 when representatives of the Government of Canada made the claim that the Senate's “6(1)(a) all the way” amendment would newly entitle 80,000 to 2

million more people to Indian status, Senator Murray Sinclair called it “fear-mongering.”<sup>35</sup> The numbers given by Minister Bennett and INAC officials were not backed up by factual scenarios, and appeared to be introduced in order to make the Indigenous women’s claim for justice appear just too overwhelming to be dealt with. This is not the first time that the Government of Canada has characterized equality for Indian women and their descendants as a threat to Indigenous communities.

There appears to be an assumption in the testimony

Bill S-3 and the “6(1)(a) all the way” amendment, which had been requested months earlier by Senator McPhe-dran.<sup>38</sup> The Parliamentary Budget Officer estimates that there are 270,000 women and their descendants who would register newly for Indian status if the “6(1)(a) all the way” provisions were given effect. None of these new status Indians are expected to migrate to reserves. The estimated cost of benefits and tax exemptions would be 407 million dollars per year, or about one-tenth of one percent of Canada’s annual budget.

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of Minister Bennett and INAC officials that 80,000 to 2 million more Indians would be a problem. But if numbers are large, that merely demonstrates how effective sex discrimination has been as a tool of assimilation. The Report of the Truth and Reconciliation Commission noted that Canada’s treatment of Indigenous peoples amounted to not only cultural genocide, but also physical and biological genocide.<sup>36</sup> Canada’s attempts to eliminate or assimilate Indians have targeted Indian women in many ways, including forced sterilizations to reduce population numbers, the theft of their children into residential schools where thousands died, and the transfer, through child welfare practices, of thousands of children from Indigenous mothers to white families. Sex discrimination in the *Indian Act* has been a central tool of assimilation, used by the Government of Canada to define Indians out of existence through discriminatory treatment of matrilineal descent, and of Indian women, but not Indian men, who “married out.”

Over the summer of 2017, INAC retained Stewart Clatworthy, a demographic expert, to provide a more scientific estimate of the numbers of Indian women and their descendants who would be newly entitled to status if the “6(1)(a) all the way” amendment was adopted.

Mr. Clatworthy’s new estimates were tabled in the Senate on November 7, 2017, projecting that Indians newly entitled to status by “6(1)(a) all the way” provisions could number between 750,000 and 1.3 million. However, the Government says that these numbers are not reliable, and they are overestimated.<sup>37</sup>

On December 5, 2017, the Parliamentary Budget Officer released his report on the financial implications of

Neither financial cost nor “the numbers are too great” can be a justification for continuing sex discrimination.

***(3) Canada Has No Legal Obligation Beyond Curing Descheneaux***

The Government of Canada claims that Bill S-3, without the “6(1)(a) all the way” amendment, fulfills Canada’s legal obligations. The Government of Canada’s longstanding position is that the remaining discrimination against the female line is justified by the goal of preserving the previously acquired rights of the male line.

This claim relies on the 2009 decision in the B.C. Court of Appeal in *McIvor v. Canada*. In this decision, Justice Groberman opined that the 6(1)(a)-6(1)(c) hierarchy contravened section 15 of the *Charter* but that discrimination against Indian women and their descendants born prior to 1951 could be justified, in part, because it preserves the acquired rights of the male line.

The claim that the Government of Canada relies on is, in essence, that since Indian men and their descendants had preferred status because of their sex from as early as 1876, that sex-based privilege can be continued, even though extending the same rights to Indian women and their descendants would take away nothing from the Indian men and their descendants. In other words, the gender discrimination itself is used as the basis to justify ongoing gender discrimination.

The premise is that the preservation of the acquired rights of men is a valid objective for legislation that discriminates against women. Neither the Government’s acquired rights defence, nor the 2009 decision of the BC Court of Appeal, is consistent with the fundamental and

well-established tenets of *Charter* jurisprudence, which hold that the objective for rights-violating legislation cannot be a discriminatory one, and that where there is a reasonable alternative to discriminatory legislation, its continuation is not justified. Canada's acquired rights defence fails because: 1) it rests on a discriminatory objective; and 2) there is a reasonable alternative to maintaining the subordinate position of the female line, namely, extending to the female line the same rights as those accorded to the male line. This would take nothing away from Indian men and their descendants.

Canada's acquired rights defence is not consistent with Canada's obligations to fulfill rights articulated in Article II of the *American Declaration on the Rights of Man*. Nor is it consistent with Canada's obligations under United Nations treaties it has ratified, including the *International Covenant on Civil and Political Rights* and the *Convention on the Elimination of Discrimination against Women*. It also directly contravenes Canada's undertaking to implement the *United Nations Declaration on the Rights of Indigenous Peoples*, including Article 22(2).

Senator Peter Harder, when introducing the Government's version of "6(1)(a) all the way" on November 7, re-asserted that the Government of Canada is not required to go further than curing the discrimination identified in *Descheneaux*. But, Senator Harder said, the Government considers the *Canadian Charter of Rights and Freedoms* "a floor, not a ceiling" and was therefore prepared to include the Government's "6(1)(a) all the way" provisions, with the proviso that they have no legal effect.<sup>39</sup>

The Government's view, therefore, is that its "6(1)(a) all the way" provisions are not required to fulfill the rights of Indigenous women and their descendants. Rather, they represent an act of charity on the part of a well-meaning Government, and their coming-into-force can be delayed until it is convenient to enact them.

#### ***(4) The Indian Act Is a Colonial Law and the Government of Canada Wishes to Move Forward Quickly to Replace It***

Given the complex nature of the *Indian Act* and the many other Acts, regulations, modern treaties, self-government agreements and other legal agreements tied to various provisions of the *Indian Act*—it will not be repealed quickly. As long as the *Indian Act* is in place, be it one year or twenty, the *Act* cannot discriminate on the basis of sex. Further, if the *Indian Act* is replaced before eliminating the sex discrimination, the sex discrimination and injustice to Indian women and their descendants will infect any post-*Indian Act* regime—including self-government agreements, modern treaties, land claim settlements and other related social, cultural

and political organizations.

The Government of Canada has provided no reasonable justification for continuing the sex discrimination in the *Indian Act* registration provisions, and for re-enacting the s. 6(1)(a)–6(1)(c) hierarchy, as Bill S-3 does.

#### **In Recent Reports and Concluding Observations, United Nations Treaty Bodies Urge Canada to Eliminate the Sex Discrimination from the *Indian Act***

On March 6, 2015, the UN Committee on the Elimination of Discrimination against Women released a report on its Article 8 inquiry into missing and murdered women in Canada.<sup>40</sup> The CEDAW Committee made the same finding as the IACHR, and recommended that Canada:

amend the Indian Act to eliminate discrimination against women with respect to the transmission of Indian status, and in particular to ensure that [Indigenous] women enjoy the same rights as men to transmit status to children and grandchildren, regardless of whether their [Indigenous] ancestor is a woman, and remove administrative impediments to ensure effective registration as a Status Indian for [Indigenous] women and their children, regardless of whether or not the father has recognized the child.<sup>41</sup>

Similarly, the UN Human Rights Committee, following the 2015 periodic review of Canada, urged Canada to "remove all remaining discriminatory effects of the *Indian Act* that affect indigenous women and their descendants, so that they enjoy all rights on an equal footing with men."<sup>42</sup>

In addition, Canada has been urged at periodic reviews of Canada in 2016 by the CEDAW Committee and the Committee on Economic, Social and Cultural Rights, and through the 2013 Universal Periodic Review Process of the Human Rights Council to eliminate any remaining sex discrimination from the *Indian Act* registration provisions.<sup>43</sup>

There are also two outstanding petitions with United Nations treaty bodies seeking a remedy for the sex discrimination in the registration provisions of the *Indian Act*, which has not been available through Canada's domestic laws: the Petition of Sharon McIvor and Jacob Grismer to the United Nations Human Rights Committee,<sup>44</sup> and the Petition of Jeremy Matson to the Committee on the Elimination of Discrimination against Women.<sup>45</sup>

The Government of Canada has made repeated requests for delay of the adjudication of these petitions, ostensibly because there is a legislative reform process in play that will resolve them. At the same time, the Government of



Canada has blocked efforts to ensure that the legislative process actually eliminates all the sex discrimination that is complained of.

### **Delay, Unjust Enrichment, and Impunity**

There is no valid justification for waiting any longer to eliminate the sex discrimination from the *Indian Act*. This sex discrimination can be, and should have been eliminated by now. This discrimination is 141 years old, and the rights of Indigenous women need to be finally recognized and fulfilled by Canada.

The only beneficiary of continued discrimination is the Government of Canada which—through its denial of status to descendants—saves money. It does not have to provide critical programs and services, and does not have to make annual treaty payments or per capita payments related to land claims. This is an unjust enrichment on Canada's part, which is not penalized for ongoing discrimination, but instead legislatively insulates itself from liability for this discrimination in both Bills C-3 and S-3.<sup>46</sup> Even a finding of discrimination will not entitle any of the women or their descendants to compensation for the harms done to them by the discrimination. In other words, there is no disincentive for Canada to stop discrimination because there is no penalty for continuing. All of the Government's rationales, including prolonged consultations, allow it to continue discrimination with impunity – a concept repugnant to the law of human rights.

### **Canada Violates the Right to Equality and Non-Discrimination in Article II of the *American Declaration on the Rights of Man***

Bill S-3, as passed by Parliament, perpetuates discrimination against Indigenous women and their descendants. Bill S-3:

perpetuates the sex-based exclusion of descendants of status females born prior to September 4, 1951; perpetuates the sex-based exclusion of descendants on the female line who are affected by premature application of the second-generation cut-off; perpetuates the denigration and stigmatization of Indian women and their descendants by withholding from them the legitimacy and social standing associated with full 6(1)(a) status, and restricting their ability to transmit status to their descendants.

By virtue of Senator Harder's November 7, 2017 motion, with its inclusion of "6(1)(a) all the way" provisions, the Government of Canada concedes that discrimination

against Indian women and their descendants persists. However, the Government of Canada has not removed the discrimination. Rather, it has forced women and their descendants to wait longer, with no fixed date and no certainty.

Promises to remove the sex discrimination from the *Indian Act* have been made to Indigenous women for more than forty years. No Government has lived up to its promises.

### **(1) *Canada Must Implement Rights in the American Declaration Within its Jurisdiction***

As a party to the OAS *Charter*, Canada has obligations in regard to human rights. The Inter-American Commission on Human Rights stated in its 2015 report, *Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*, [hereinafter *Missing and Murdered Report*] (that parties to the OAS Charter "must implement the rights established in the *American Declaration* in practice within their jurisdiction."<sup>47</sup>

### **(2) *Article II Rights to Equality and Non-Discrimination are Fundamental***

In its *Missing and Murdered Report* the IACHR stated:

The Commission has repeatedly established that the right to equality and non-discrimination contained in Article II of the American Declaration is a fundamental principle of the inter-American system of human rights. It provides that "all persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." The principle of non-discrimination is the backbone of the universal and regional human rights systems.

As with all fundamental rights and freedoms, the Commission has observed that States are not only obligated to provide for equal protection of the law, they must also adopt the legislative, policy and other measures necessary to guarantee the effective enjoyment of the rights protected under Article II of the American Declaration.

### **(3) *The Inter-American Commission found that the sex discrimination in the Indian Act is a root cause of the crisis of violence against Indigenous women and girls in Canada***

In the *Missing and Murdered Report*, the IACHR set out these findings:

- historical *Indian Act* sex discrimination is a root cause of high levels of violence against Indigenous

women and the “existing vulnerabilities that make Indigenous women more susceptible to violence” (paras 93, 129)

- sex discrimination persists in the *Indian Act* even after the 2010 amendment, (Bill C-3, the *Gender Equity Registration Act*), which followed the McIvor litigation (para 68)

- “the presence of a second, intermediate status classification [6(1)(c)] can rise to the level of cultural and spiritual violence against indigenous women, since it creates a perception that certain subsets of indigenous women are less purely indigenous than those with ‘full’ status. This can have severe negative social and psychological effects on the women in question, even aside from the consequences for a woman’s descendants.” (para 69)

- Canada has an obligation to comprehensively address the “underlying factors of discrimination that originate and exacerbate the violence” against Indigenous women and girls (para 306)

#### ***(4) Canada Violates Article II of the American Declaration on the Rights of Man by Continuing to Deny Equal Status to Women under the Indian Act***

Article II of the American Declaration on the Rights of Man states that “All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”

Canada violates Article II by perpetuating the discrimination against women in the *Indian Act*, discrimination that has been repeatedly identified and protested by Indigenous women in litigation, United Nations petitions and petitions to the Inter-American Commission since the 1970s.

Equality is a right that, for States, carries an obligation of immediate implementation. Equality delayed is equality denied.

#### **Postscript: United Nations Rules Canada Must Stop Sex Discrimination in the *Indian Act***

On January 11, 2019, the United Nations Human Rights Committee issued its decision on the petition of *Sharon McIvor and Jacob Grismer v. Canada*.<sup>48</sup> The petition was filed in 2010 under the First Optional Protocol to the *International Covenant on Civil and Political Rights*, alleging that the continuing sex discrimination in the *Indian Act* violates rights to equality and enjoyment of culture, which Canada has agreed to respect and fulfill.

In its decision,<sup>49</sup> the United Nations Committee ruled that:

- The sex-based hierarchy between s. 6(1)(a) and s. 6(1)(c), introduced by the 1985 *Indian Act*, and continued by the amendments of 2011 and 2017, violates the right to the equal protection of the law without discrimination based on sex, and violates the equal right of men and women to the enjoyment of Indigenous culture, guaranteed by the *International Covenant on Civil and Political Rights*.

- First Nations women and their descendants are entitled to status, and to full 6(1)(a) status, on the same footing as First Nations men and their descendants.

- Distinctions between the maternal line and the paternal line, including the “1951 cut-off”, which bars some maternal line descendants born before 1951 from eligibility for status, are discriminatory and not permissible.

- All those excluded from status because of sex discrimination, and those denied 6(1)(a) status because of sex discrimination, must be included and granted full status.

Canada has 180 days (until July 10, 2019) to report back to the United Nations Committee on steps it has taken to implement this decision.

*This paper was prepared by the Canadian Feminist Alliance for International Action (FAFIA: [fafia-afai.org](http://fafia-afai.org)) in anticipation of a hearing at the Inter-American Commission on Human Rights on December 7, 2017 regarding “Reports of Sexual Discrimination in the Indian Act.” The hearing can be viewed online.*

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#### **Endnotes**

<sup>1</sup>Royal Commission on Aboriginal Peoples, Volume I, *Looking Forward, Looking Back*, pp. 251-262. Web; Volume 4, *Perspectives and Realities*, pp. 20-43. Web.

<sup>2</sup>Report of the Royal Commission on the Status of Women in Canada, 28 September 1970, p. 238, paragraph 58. Web.

<sup>3</sup>*Canada (AG) v Lavell*, [1974] SCR 1349.

<sup>4</sup>Bill C-31, *An Act to Amend the Indian Act*, SC 1985, c 27. Bill C-31 was enacted as *Indian Act*, RSC 1985, c I-5.

<sup>5</sup>*Minutes of Proceedings and Evidence of the Standing Committee on Legal and Constitutional Affairs*, 33rd Parl, 1st Sess (7 March 1985) at 12:7–12:9 (David Crombie, Minister of Indian Affairs and Northern Development).

<sup>6</sup>Report of the Manitoba Aboriginal Justice Inquiry, Appendix I Recommendations, *Indian Act*. Web.

<sup>7</sup>*Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Supply and Services Canada, 1996), pp. 20-50, Volume 4, Chapter 2.

<sup>8</sup>Human Rights Committee, *Concluding Observations of the Human Rights Committee*, CCPROR, 85th Sess, UN Doc C/CAN/CO/5 (2006).

<sup>9</sup>Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UNGAOR, 36th Sess, UN Doc E/C.12/CAN/CO/5 (2006).

<sup>10</sup>Committee on the Elimination of Racial Discrimination (CERD) CERD/C/CAN/CO/8, 25 May 2007, para. 15

<sup>11</sup>Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, CEDAWOR, 42nd Sess, UN Doc C/CAN/CO/7 (2008); CEDAW, *Report of the Committee on the Elimination of Discrimination against Women*, UNGAOR, 58th Sess, Supp no 38, UN Doc A/58/38 (2003).

<sup>12</sup>*McIvor v. Canada* (Registrar of Indian and Northern Affairs), 2009 BCCA 153; *McIvor v. Canada* (Registrar, Indian and Northern Affairs) 2007 BCSC 827.

<sup>13</sup>Bill C-3, *Gender Equity in Indian Registration Act*, 3rd Sess, 40th Parl, 2010 (received royal assent on 15 December 2010); *Gender Equity in Indian Registration Act*, SC 2010, c 18.

<sup>14</sup>Indigenous and Northern Affairs Canada, "Registration Process for Bill C-3 Applicants," Government of Canada. Web.

<sup>15</sup>See Petitioner Observations in Response to Canada's Request For Suspension of the Committee's Consideration of the Petition of Sharon McIvor and Jacob Grismer, Communication No. 2020/2010 (UN Human Rights Committee), submitted by Gwen Brodsky, June 20, 2016, online.

<sup>16</sup>*Matson v. Canada* (Indian Affairs and Northern Development), [2013] C.H.R.T. No. 13; *Canada (Canadian Human Rights Commission) v. Canada* (Indian and Northern Affairs) [2015] F.C.J. No. 400.

<sup>17</sup>*Lynn Gehl v. Attorney General of Canada*, 2015 ONSC 3481 (CanLII).

<sup>18</sup>*Descheneaux c. Canada* (Procureur Général), 2015 QCCS 3555.

<sup>19</sup>Supra, note 24. *Descheneaux c. Canada* (Procureur Général), 2015 QCCS 3555.

<sup>20</sup>Ibid, at paras 235-243.

<sup>21</sup>Government of Canada's Response to the Descheneaux Decision. Web.

<sup>22</sup>Senate of Canada, Sénat du Canada, Bill S-3 Projet de Loi S-3, An Act to amend the *Indian Act* (elimination of sex-based inequities in registration) First Reading, October 25, 2016. Web.

<sup>23</sup>Indigenous and Northern Affairs Canada, Plain Text Description of Bill S-3, An Act to amend the *Indian Act* (elimination of sex-based inequities in registration). Web.

<sup>24</sup>*Gehl v. Canada* (Attorney General), 2017 ONCA 319.

<sup>25</sup>House of Commons Standing Committee on Indigenous and Northern Affairs, Minutes of Proceedings, June 15, 2017, online.

<sup>26</sup>Parliament of Canada, Legisinfo, Bill S-3, online.

<sup>27</sup>*Descheneaux v. Canada* (Attorney General), 2017 QCCA 1238.

<sup>28</sup>See: *The Globe and Mail*, "Senators amend legislation aimed at removing sexism from *Indian Act*," May 24, 2017; *The Globe and Mail*, "Bennett urges MPs to kill Senate amendment that aims to take sexism out of the *Indian Act*," June 8, 2017. These explanations can also be found in the Proceedings of the Senate Standing Committee on Aboriginal Peoples and the House of Commons Standing Committee on Indigenous and Northern Affairs: Proceedings of the Senate Standing Committee on Aboriginal Peoples, Issue 13, Evidence, November 22, 2016, online; Proceedings of the Standing Committee on Aboriginal Peoples, Issue 14, Evidence, November 30, 2016; Proceedings of the Standing Committee on Aboriginal Peoples, Issue 21, Evidence, May 21, 2017; Meeting of the House of Commons Standing Committee on Indigenous and Northern Affairs, June 8, 2017. Web.

<sup>29</sup>See BC Coalition on Missing and Murdered Indigenous Women and Girls, letter to Prime Minister Trudeau, September 1, 2017. Explanations given by Government of Canada are set out in the BC Coalition letter.

<sup>30</sup>United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly 61/295, Article 19.

<sup>31</sup>Research of Mary Eberts in the possession of FAFIA.

<sup>32</sup>2010 Consensus Agreement – Collective support for amendments to Bill C-3 (*Gender Equity in Indian Registration Act*), Union of B.C. Indian Chiefs, First Nations Summit, B.C. Assembly of First Nations.

<sup>33</sup>McIvor letters to APPA Committee, attached.

<sup>34</sup>Universal Declaration on the Rights of Indigenous Peoples, Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A, Articles 1, 44 and 22(2).

<sup>35</sup>Proceedings of the Standing Senate Committee on Aboriginal Peoples, Issue 22–Evidence–May 16, 2017 (afternoon meeting).

<sup>36</sup>Truth and Reconciliation Commission, *Honouring the Truth, Reconciling for the Future*, Executive Summary, at 1. Web.

<sup>37</sup>Senator Peter Harder, Government Representative in the Senate, November 7, 2017, Hansard, 1st Session, 42nd Parliament, Volume 150, Issue 156, Orders of the

Day, *Indian Act*.

<sup>38</sup>Parliamentary Budget Officer, *Bill S-3: Addressing Sex-Based Inequities in the Indian Act*, December 5, 2017. Web.

<sup>39</sup>Ibid.

<sup>40</sup>CEDAW, Report of the Inquiry Concerning Canada of the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Committee on the Elimination of Discrimination against Women, CAN/CEDAW/C/O P.8/CAN/1 (2015).

<sup>41</sup>Ibid. at para 219(e).

<sup>42</sup>United Nations Human Rights Committee, Concluding Observations of the Human Rights Committee, CCPR, 114th Sess, UNDOC C/CAN/CO/7 (2015), at paras 17-18.

<sup>43</sup>See, for example, CEDAW/C/CAN/CO/8-9, 18 November 2016, para. 13; E/C.12/CAN/CO/6, 23 March 2016, para 22 (b); Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/24/11, 28 June 2013, para 128.59.

<sup>44</sup>*Sharon McIvor and Jacob Grismer v. Canada*, Communication Submitted for Consideration Under the First Optional Protocol to the International Covenant on Civil And Political Rights, November 24, 2011. Web.

<sup>45</sup>Communication of Jeremy Matson to the Committee on the Elimination of Discrimination against Women, Communication No. 68/2014.

<sup>46</sup>Bill C-3, *Act to promote gender equity in Indian registration by responding to the Court of Appeal for British Columbia decision in McIvor v. Canada* (Registrar of Indian and Northern Affairs) (assented to December 15, 2010), at s.9, online; Bill S-3, *Projet De Loi S-3, An Act to amend the Indian Act* (elimination of sex-based inequities in registration) First Reading, October 25, 2016, at s. 8.

<sup>47</sup>The Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women and Girls in British Columbia, Canada*, January 2015, online, at para 107 [hereinafter *Missing and Murdered Report*]. The IACHR report cites as references, Statute of the Inter-American Commission on Human Rights (1979), Article 1, providing that the Commission was created “to promote the observance and defense of human rights” and defining human rights as those rights set forth both in the American Declaration and the American Convention. See also, American Convention on Human Rights, Article 29(d), stating that no provision of the Convention should be interpreted “excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have;” See also, Rules of Procedure of the Inter-American Commission of Human Rights (2009), Articles 51 and 52, empowering

the Commission to receive and examine petitions that allege violations of the rights contained in the American Declaration in relation to OAS members states that are not parties to the American Convention.

<sup>48</sup>*Sharon McIvor and Jacob Grismer v. Canada*, *Communication Submitted for consideration under the First Optional Protocol to the International Covenant on Civil and Political Rights*, November 24, 2010. Web.

<sup>49</sup>United Nations Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2020/2010*, January 11, 2019. Web.

## ILONA MARTONFI

### Rue Lépine

Marshmallows on sticks  
at the cabin in Lanaudière,  
rusty metal barrel  
at night our children  
roasting marshmallows  
by a boulder, raccoons  
35 rue Lépine, Saint-Calixte  
Lac des Artistes  
steep gravel road, bullfrogs  
fetching source water  
walking in the forest.

At night when we sleep in this hut  
long-tailed grey wood mouse,  
builds a nest for a litter  
of six blind babies  
mouse mother hides from us  
she, who eats the raw potatoes  
she, who owns my country kitchen  
behind the black iron stove  
he saves her,  
pups in her mouth  
lets her bring them to safety.

Where should I hide  
from his fists?

Wild raspberries, blue irises.

*Ilona Martonfi has published three poetry books, Blue Poppy (2009), Black Grass (2012) and The Snow Kimono (2015). Forthcoming are Salt Bride (2019) and The Tempest (2020).*