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Submission 1: Eliminating Second Generation Cut-off
Written Submission to the Standing Senate Committee on Indigenous Peoples on Bill S-2
Submitting Organization: Whitecap Dakota Nation
Date: October 17, 2025

Executive Summary

Whitecap Dakota Nation (WDN) stands in full support of the Minister of Indigenous Services Canada, the Honourable Mandy Gull-Masty, and her call for stand-alone legislation to end the second-generation cut-off. As the Minister stated before the Senate on September 24 2025, prior reforms through Bills C-31 and S-3 – and now S-2 – have not gone far enough to eliminate systemic discrimination. Senator Mary Jane McCallum described this ongoing injustice as "a form of genocide," because it legislates the gradual extinction of First Nations identity over time.

WDN agrees that comprehensive, stand-alone legislation is the only permanent and just solution. However, immediate protection is still required. Until stand-alone legislation is introduced, passed, and in force, an interim amendment to Bill S-2 is urgently needed to ensure that children with one 6(2) parent with a connection to the community can be recognized and can transmit their rights. WDN proposes that First Nations should receive, by amendment to Bill S-2, statutory authority to confer irrevocable 6(2) status on an individual, provided that individual has a parent with 6(2) status and a connection to the community. This amendment would respect self-determination, a fundamental right in the *United Nations Declaration on the Rights of Indigenous Peoples*. Under Bill C-15, adopted in 2021, the Government has an obligation to implement the *Declaration* in the federal laws of Canada. Bill S-2 presents such an opportunity, and it is the Senate's duty to uphold and protect minority rights, including, in this case, their just transfer.

Conferring 6(2) status through one 6(2) parent with a community connection is not a permanent fix. However, it is a necessary interim safeguard that prevents additional generations from being erased while Parliament develops long-term reform. WDN's proposal therefore complements the Minister's legislative vision.

Problematically, the second-generation cut-off creates different "classes" of people in the First Nation and compromises their choices in family partnerships. No other group in Canada faces a dilemma by which the choice of the person with whom one decides to have children can have a permanent, generations-spanning, devastating cultural impact: if a person with Indian status under 6(2) happens to have a child with someone who does not have Indian status, their children and children's children will cease to be considered to be "Indians" at law, as well as in the eyes of the wider community.

The second-generation cutoff is not only rooted in assimilation, it is also rooted in outright racism. It was inspired by and based on the American ideology of "blood quantum," by which recognition as an Indian was predicated on the racist idea that once a person had a certain percentage of "white blood," that person should be assumed to be intellectually and legally competent to own property and no longer be a ward of the state and therefore should be enfranchised and lose their status.

Keeping the second-generation cut-off alive tolerates continuing blanket racism in a Canadian law. Denying someone status because their genes have too much non-Indigenous content is blatant

racism, and yet that is what underpins the second-generation cut-off. It is not someone's genetic makeup that gives rise to the special legal relationship owed by the Crown to Indigenous Peoples; it is the history of the reciprocal relationship and the treaty or inherent rights, and the need to remedy the harms and injustices that have flowed from the dark chapters of that history.

Whitecap Dakota Nation's recommendations to the Senate

1. WDN supports stand-alone legislation to fully repeal the second-generation cut-off, and given the urgency, we also need an interim fix in Bill S-2, so families are not erased while stand-alone legislation is being developed.
2. Interim measure – in the meantime, there must be an interim measure. WDN proposes that children of one 6(2) parent with a connection to the community must be eligible for registration and transmission of status while legislation is being developed. Each Nation must be empowered to irrevocably confer 6(2) status on children where at least one parent is recognized as 6(2) and has a connection to the community. Without such changes, Canada will continue to legislate the erosion of First Nations identity in violation of the *Charter*, UNDRIP, and the TRC Calls to Action.

Background & Legal Context

- Section 6(1)/(2) of the *Indian Act* creates a two-tiered system of Indian status.
- Children of one 6(2) parent and one non-status parent (even if Indigenous) are denied status.
- Courts have repeatedly found *Indian Act* registration rules discriminatory:
- *McIvor v. Canada (2009, BCCA):* Exposed sex-based inequities in transmission of status; Parliament's response (Bill C-3) was partial, leaving the 6(1)/6(2) hierarchy intact.
- *Descheneaux v. Canada (2015, QCCS)*: Found that parts of the *Indian Act* registration framework violate section 15 of the *Charter* around gender. Senate-driven amendments to the Government's response (Bill S-3) undid additional discrimination, while leaving the 6(1)/6(2) hierarchy intact.
- *Gehl v. Canada (2017, ONCA):* Found that denying status to children of "unknown paternity" discriminated against women, particularly survivors of violence, violating section 15 of the *Charter*.

These cases demonstrate a pattern: Parliament addresses *Charter* breaches only incrementally and defensively, leaving systemic discrimination intact. The retention of the second-generation cut-off, despite the opportunity afforded by Bill S-2, is the latest example of this piecemeal and inadequate reform. A proactive approach is required to achieve just outcomes in a timely way.

Comparative Models

Métis Nations

Under the 2023 Métis Self-Government Agreements, Métis governments (MN-S, MNA, MNO, MMF) define citizenship indefinitely, allowing rights to pass generation after generation without restriction. In stark contrast, First Nations remain bound by the *Indian Act*'s cut-off, ensuring gradual population decline.

Although the *Indian Act* does allow for "custom codes," under section 10 this is largely symbolic as it does not confer any rights (e.g. treaty status), entitlements or benefits. This authority remains constrained by federal oversight and by the broader framework of section 6, which still governs who is recognized as

a "status Indian." In the eyes of not only the law, but in their own eyes and those of their community and the public at large, such individuals will have been deprived of a significant, longstanding marker and aspect of their First Nation identity. Therefore, "non-status Indians" are simply not treated in the same manner legally, economically, socially and culturally as persons with Indian status. This is of course reinforced by numerous federal and provincial policies, that directly tie programs, entitlements and rights to Indian status. The result is that individuals with status are legally, socially and culturally treated as "fully" Indian, while non-status individuals are legally, socially and culturally treated as not fully or truly First Nation. Such individuals face legal, economic, social and cultural discrimination because of the Government's denial of status. Therefore, while section 10 allows Nations to define community membership, it does not permit the transfer or recognition of Indian status, leaving the Crown as the ultimate gatekeeper of identity, benefits, and rights. The result is a framework that centralizes control in Ottawa perpetuating the systemic inequities embedded in section 6's two-tiered hierarchy.

Minority Language Rights (Charter s.23)
Section 23 ensures French minority official language communities can transmit rights intergenerationally. Only ONE parent needs to be a "rights-holder" for their child to be entitled to minority-language education.

If s. 23's application were structured like s.6, rights-holders would dwindle over time. Instead, the law ensures continuity and indeed growth of those with recognition and access to s. 23 rights. If a francophone has a child with an anglophone or allophone, their children have a right to publicly-funded French education. And if that child has children with a non-francophone parent, their children will also have that right, and so on, indefinitely.

The same principle of continuity through one parent should apply to First Nations identity and rights.

Case Law Analogy
Just as *McIvor*, *Gehl* and *Descheneaux* exposed inequities rooted in gender and parentage, the second-generation cut-off embeds systemic discrimination by denying recognition solely based on parental status. The jurisprudence strongly suggests that such rules cannot withstand *Charter* scrutiny. Such rules are also inconsistent with reconciliation principles, especially the inherent right to self-determination in UNDRIP.

Legal & Policy Framework
- **Charter s.15:** Guarantees equality before and under the law.
- **UNDRIP:** Articles 22, 33, 44 affirm women's rights, self-determination, and Indigenous peoples' right to define citizenship.
- **TRC Calls to Action:** 18, 43, 44 require Treaty promises and UNDRIP to be implemented as reconciliation frameworks.
- **Case Law:** *R. v. Badger* and *Mikisew Cree v. Canada* establish liberal, purposive interpretation of Treaty and Indigenous rights; *Corbiere* requires equality in participation.

Proposed Amendments to Bill S-2
Interim Repeal of the Second-Generation Cut-Off. Via amendment to Bill S-2, WDN proposes that section 6 of the *Indian Act* be amended such that First Nations receive statutory authority to confer

irrevocable 6(2) status on an individual, provided that individual has a parent with 6(2) status with a connection to the community.

This urgently needed, albeit band-aid solution would end the legislated "extinction formula" by ensuring that having one parent with status is sufficient for a child to be eligible for recognition, while respecting self-determination. The change aligns with equality principles under section 15 of the *Charter*, in balance with collective rights of self-determination, in considering factors for community recognition of an individual, and ensures continuity of rights through a single parental line, just as minority language rights are preserved under section 23 of the Charter.

If Parliament concludes that stand-alone legislation is required, it must include a binding commitment in Bill S-2, including a timeline. Without a statutory deadline, Canada risks perpetuating the same cycle of delay seen after *McIvor*, *Gehl*, *Descheneaux* and other *Charter* cases. A legislated pathway ensures accountability and timely reform. It would be appropriate for the Senate to make this change, as the first chamber to consider Bill S-2, and with the Senate's admirable record of protecting minority rights in relation to status through Bill S-3 in 2017.

Recommendation
To summarize, WDN supports Minister Gull-Masty's recommendation for stand-alone legislation to fully repeal the second-generation cut-off and address systemic inequities in the *Indian Act* without delay IF there is a clear and binding commitment to do so within a set deadline. WDN also recommends to:

1. Amend Bill S-2 in the interim, as noted above, to allow the transmission of 6(2) status by decision of the First Nation, where a parent has 6(2) status and a community connection, and to establish a statutory timeline for introduction of comprehensive legislation on ending the second-generation no later than the end of 2026. This ensures that families are not left unprotected while stand-alone legislation is being developed.
2. Ensure all reforms align with constitutional, statutory, and international standards, including s.15 of the Charter, UNDRIP (Articles 22, 33, 44), and the TRC Calls to Action (18, 43, 44).

Conclusion
Without reform, Bill S-2 perpetuates a bureaucratic "definitional genocide" by legislating the extinction of First Nations identity through the second-generation cut-off. WDN supports Minister Gull-Masty's call for stand-alone legislation to fully repeal the second-generation cut-off and correct systemic inequities. But until that reform is enacted, urgent amendments to Bill S-2 are essential to stop ongoing harm, such as the proposed self-determination-based mechanism to confer 6(2) status where one parent is 6(2) and has a connection to the community. By acting now through Bill S-2, while committing to stand-alone legislation, the Senate can do the right thing to help to meet Canada's obligations under the *Charter*, UNDRIP, and the TRC Calls to Action. Ultimately, Canada must recognize that true reconciliation and equality will only be achieved when each First Nation including the Dakota and Lakota Nations is empowered to define its own membership and citizenship through its own code or act, independent of the *Indian Act* and free from federal control. Upholding the rights of the Dakota and Lakota Nations means ending generations of discriminatory exclusion and fully recognizing our inherent right to self-determination and Nationhood. This approach honours section 35 of the *Constitution Act, 1982* affirming that Nations—not Canada—must determine who their citizens are, according to their own laws, kinship systems, and traditions.

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Submission 2: Addressing the Loss of Treaty Benefits
Written Submission to the Standing Senate Committee on Indigenous Peoples on Bill S-2 Submitting Organization: Whitecap Dakota Nation
Date: October 17, 2025

Executive Summary

Persons with treaty status who marry or transfer into non-numbered Treaty Nations, such as Dakota Nations, lose access to Treaty benefits including annuities and agricultural provisions ("cows and plows"). Nowhere in the Treaties does it state that marriage or transfer extinguishes these rightful benefits. This inequity arises entirely from Indian Act administration, not Treaty law.

By severing access to Treaty rights through section 6 of the Indian Act, Canada has effectively made the federal administration the gatekeeper to Treaty annuities and entitlements. This is a direct violation of Treaty and the spirit of the Treaties, which were founded on principles of reciprocity, respect, and coexistence. The Treaty relationship was intended to endure "as long as the sun shines, the grass grows, and the rivers flow" — language recorded in Treaty 6 (1876) and used across the numbered Treaties to affirm that these promises were sacred and perpetual, lasting as long as the natural world endures.

This phrase, central to the spirit and intent of Treaty, symbolizes that these agreements were not short-term transactions but sacred covenants between Crown and First Nations witnessed by the Creator.

The presence of sacred pipes, medicines, and Elders during Treaty negotiations affirmed that these were solemn promises under the Creator's law. As Elder D'Arcy Linklater (Nisichawayasihk Cree Nation) explained, sacred objects such as the pipe and tobacco were used to bind both parties to live by the spirit of the agreements. Likewise, Elder Norman Bone of Keeseekoowenin First Nation reminds us: "You have to tie where our original rights came, and that is from the Creator."

In practical terms, the spirit and intent of Treaty meant that First Nations agreed to share the land, not surrender it; that settlers were granted use of the territory, but not ownership of it; and that the Crown's obligations, including annuities, agricultural support, and aid in times of need would last as long *"as long as the sun shines, the grass grows, and the rivers flow."*

By administering Treaty benefits through the Indian Act, Canada unilaterally positioned itself as both a party and the administrator of these sacred agreements, creating a conflict of interest. This practice constitutes a breach of Treaty and undermines the honour of the Crown.

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The resulting discrimination mirrors that which was partially corrected by Bill C-31 (1985), which restored women's status after decades of gender-based exclusion but relegated many to weaker 6(2) status. Similarly, direct descendants of Treaty Nations who marry into Dakota

Nations or non-numbered Treaty Nations today continue to face legislated inequality that erodes the Treaty relationship and the identity of future generations. Treaty rights are portable, meaning they attach to the person and not to a specific location or Nation and should travel with the individual wherever they reside or marry. The promises made under Treaty were intended to follow the descendants of the signatories *"as long as the sun shines, the grass grows, and the rivers flow."* Denying those from numbered Treaty Nations and their descendant's access to Treaty annuities and benefits when they marry into non-numbered Nations violates Treaty, reducing Treaty rights to administrative privileges rather than enduring rights flowing from reciprocal agreements with the Crown.

Consequently, the "natal-band" amendments contained in Bill S-2 do not provide an adequate remedy in such situations. Although they allow persons and their descendants to opt to restore membership in their treaty nation, doing so unfairly deprives Nations like Whitecap Dakota Nation (WDN) and their members of any relevant Treaty rights, including people who identify most closely with Whitecap. This has real-world implications for WDN, particularly since many federal programs are funded based on resident *members* of the Nation. Status Indians who reside in WDN but are members of other Nations are frequently excluded from government funding and supports. In addition, individuals are effectively induced into being members of a Nation that they may not feel reflects their actual Indigenous identity.

Background & Legal Context

1. **Treaty Promises:** Treaty annuities, agricultural supports, and related benefits were guaranteed "as long as the sun shines, the grass grows, and the rivers flow."
2. **Indian Act Administration:** Uses Indian status as the gatekeeper for benefits, cutting off persons and their descendants when they marry or transfer into non-numbered Nations.
3. **Comparative Discrimination:** This replicates pre-1985 inequities addressed by Bill C-31, which punished women for their choice of partner.
4. **Practical Consequence:** Creates financial incentives for members of WDN to transfer back to natal Treaty bands, weakening membership and ties to Dakota communities.
5. **Legal Principle:** Courts *(R. v. Badger; Mikisew Cree)* have affirmed that Treaties must be interpreted liberally and in favour of First Nations; administrative restrictions that remove benefits are contrary to the Honour of the Crown.

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Comparative Models

- **Bill C-31 (1985):** Partially corrected sex-based inequities but entrenched the 6(1)/6(2) hierarchy. The denial of Treaty benefits today mirrors that historic injustice, punishing women and their descendants for their marital choice.
- **Métis Nations (2023 Self-Government Agreements):** Métis governments can define citizenship indefinitely, ensuring intergenerational continuity. By contrast, women and children lose Treaty rights through administrative exclusions, deepening inequity between Indigenous peoples.
- **Case Law:** Corbiere v. Canada recognized "Aboriginality-residence" as an analogous ground of discrimination. Denying women Treaty benefits due to residence or marital transfer similarly creates second-class citizens.

Legal Argument: Breach of Treaty and Gatekeeping of Benefits

The Supreme Court of Canada has affirmed in *R. v. Badger* ([1996] 1 S.C.R. 771) and *Mikisew Cree First Nation v. Canada* ([2005] 3 S.C.R. 388) that Treaties must be interpreted liberally and in favour of Indigenous Peoples, and that the Crown must act with honour in implementing Treaty promises. Conditioning access to Treaty benefits on *Indian Act* registration is inconsistent with these principles, as it imposes artificial legislative barriers that diminish the rights of Indigenous Peoples and their descendants. This discriminatory denial not only violates the Treaties but perpetuates the historic pattern of controlling Indigenous rights through federal legislation. This is unacceptable.

Proposed Amendment

Parallels with Bill C-31

This inequity mirrors the historic discrimination corrected in part by Bill C-31. Before 1985, First Nations women lost status by marrying out, while men retained theirs. Similarly, today, Treaty descendants who marry into non-numbered Nations lose Treaty benefits. This practice violates section 15 of the Charter, as well as Articles 22 and 44 of The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Balancing Treaty Entitlements (No Double-Dipping Clause)

At the same time, reforms must ensure fairness between Nations. Where an individual has the right to benefits under two numbered Treaties (for example, through parents from different Treaty Nations), there should be a clear statutory rule against "double-dipping." Such individuals should not receive duplicate annuities or overlapping agricultural provisions. Instead, they may elect which Treaty benefits to receive, with the more generous being the default, while retaining membership rights in both Nations. This prevents inequity while preserving the integrity of Treaty rights across Nations.

Objective of Proposed Amendment

A person who is entitled to receive benefits under a Treaty shall not lose that entitlement by reason only of transferring to, or marrying into, a Band that is not an adherent to a numbered Treaty. Such entitlement continues for that person and their descendants,

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consistent with the Treaty obligations of the Crown. Where two sets of Treaty benefits may apply, the individual may elect which to receive, with the more generous benefit being the default.

Recommendations

1. **Amend Bill S-2 in the interim** to clarify that marriage or transfer into non-numbered Nations does not extinguish Treaty benefits, ensuring Treaty persons and their descendants retain rights.
2. **Ensure parity** between numbered and non-numbered Nations, consistent with the honour of the Crown.
3. **Align reforms** with the Charter, UNDRIP (Articles 22, 44), and the Truth and Reconciliation Commission (TRC) Calls to Action (18, 43–44).
4. **Approve Whitecap Dakota Nation's request to appear in Committee hearings** to present lived experience, legal analysis, and recommendations.

Conclusion

The denial of Treaty benefits to persons who marry into non-numbered Treaty Nations is a discriminatory practice rooted in *Indian Act* administration, not Treaty law. Nowhere in the Treaties does it state that through marriage you will lose Treaty ties and benefits. This inequity mirrors the injustices corrected by Bill C-31, perpetuates discrimination, and erodes Treaty promises. By clarifying that an individual's Treaty benefits cannot be extinguished by marriage or transfer, the Senate can end a colonial and dishonourable practice, uphold the Honour of the Crown and the reciprocity of Treaties, and bring Canada's laws in line with numbered Treaties, the *Charter*, UNDRIP, and the TRC Calls to Action.

To uphold fairness and reconciliation, Canada must recognize the unique position of Dakota and Lakota Nations, whose exclusion from Treaty frameworks has perpetuated systemic inequities. Whitecap Dakota Nation proposes the establishment of a Dakota/Lakota-specific mandate within the Government of Canada to address and resolve all outstanding claims, exclusions, and matters unique to our Nations through a coordinated, Nation-to-Nation process. In addition to our shared collective concerns, each Dakota and Lakota Nation holds individual claims and unresolved matters that demand dedicated Nation-to-Nation dialogue and resolution, reflective of our specific histories, relationships, and rights. Establishing such a mandate would not only fulfill Canada's reconciliation commitments but would also ensure that our Nations are no longer treated as "second-class" within the Treaty and *Indian Act* framework.