

Ministre des Services
aux Autochtones



Minister of
Indigenous Services

Gérald Lafrenière
Interim Clerk of the Senate
and Clerk of the Parliaments and Chief Legislative Services Officer
Senate of Canada
2 Rideau Street, Room 408-A
OTTAWA ON K1A 0A4

February 23, 2023

Dear Gérald Lafrenière:

I am pleased to enclose, in both official languages, the Government Response to the Seventh Report of the Standing Committee on Indigenous Peoples (APPA), *Make it Stop! Ending the remaining discrimination in Indian registration*.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'P. Hajdu'.

The Honourable Patty Hajdu, P.C., M.P.

Encl.

**GOVERNMENT RESPONSE TO THE REPORT OF THE SEVENTH STANDING SENATE COMMITTEE
ON INDIGENOUS PEOPLES, ENTITLED, “MAKE IT STOP! ENDING THE REMAINING
DISCRIMINATION IN INDIAN REGISTRATION”**

Senator Brian Francis
Chair
Standing Senate Committee on Indigenous Peoples
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

Dear Colleague,

Pursuant to Rule 12-24(3) of the Senate of Canada, I am pleased to submit on behalf of the Government of Canada (the Government) the response to the seventh report of the Standing Senate Committee on Indigenous Peoples (the Committee), entitled, “*Make it stop! Ending the remaining discrimination in Indian registration*”, which was presented to the Senate of Canada on September 21, 2022.

Introduction

The Government of Canada thanks the Committee for its study and accepts most of the recommendations set out in the Committee’s Report. The Government also thanks the witnesses who participated in this critical study. The Committee’s recommendations aligns well with the current legislative proposals before Parliament under Bill C-38, An Act to amend the *Indian Act* (new registration entitlements); anticipated consultations on broader inequities in registration launching in 2023; a number of significant initiatives underway to reach persons impacted by historical inequities; and ongoing improvements to the application process. The Government of Canada notes that where the Committee has made recommendations to Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada, Indigenous Services Canada is responsible for this Government Response and its commitments.

Registration under the *Indian Act* is fundamental to fulfilling Canada’s legislative obligations and facilitating access to benefits, programs and services for registered persons. During the engagement period prior to the introduction of Bill C-38, Indigenous Services Canada continued to hear from a broad range of Indigenous partners, experts and advocates that the second-generation cut-off requires consultation, remedy and redress. While known sex-based inequities have been eliminated from the registration provisions of the *Indian Act*, the Government of Canada agrees that co-developing a path forward on other remaining inequities under the *Indian Act* must move forward as quickly as possible. At the same time, it is critical that outstanding inequities are addressed within the framework of the *United Nations Declaration on the Rights of Indigenous Peoples’ Act* (UNDA) to ensure legislative amendments reflect solutions determined by Indigenous peoples and organizations.

The Government Response fully considers the Senate Committee’s recommendations, which have been amplified by the voices of Indigenous individuals, communities and organizations across Canada. The Government of Canada acknowledges that future work is required to address remaining inequities and recommends practical and achievable ways to continue towards the full implementation of *An Act to amend the Indian Act in Response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, further legislative reforms and make substantive improvements to the registration process.

Recommendation 1(a): Provide access to historical and genealogical records held by the department to individuals to facilitate their applications and retain more employees, such as “navigators” and researchers, to assist applicants with legal, historical and genealogical research.

The Government of Canada affirms an individual’s right to access records containing their own personal information and will share information as permissible under the *Privacy Act* or with the consent of the person to whom it relates.

Services are available for applicants that need help accessing records or researching their genealogy. Indigenous Services Canada's Genealogical and Archival Research Unit searches for ancestors registered pursuant to the *Indian Act* using departmental records and provides this information to applicants at no cost. Additional staffing resources have been and continue to be dedicated to this Unit. Library and Archives Canada also maintains lists of freelance researchers, many who specialize in Indigenous genealogical research, and who will use wide-ranging sources to conduct archival and/or bibliographical research for a fee.

The Government of Canada recognizes that many First Nations persons may be unaware of the services currently available and commits to sharing more information about how to access historical and genealogical records and where to find help with legal, historical and genealogical research.

Recommendation 1(b): Develop clear, plain language information about new and existing entitlements for status and make these available in Indigenous languages.

The Government of Canada acknowledges that the complex language of the legislative amendments to the *Indian Act* have made it challenging for First Nations persons to determine whether they may be newly entitled to registration. The Government shares the view that the amendments and provisions are complex and can be difficult to understand for persons who have no training or experience in applying the Act.

Indigenous Services Canada has undertaken an extensive review of all relevant website content and continues to further improve the department's digital communications to provide clear, plain language information on entitlement to registration and connect First Nations persons with trusted source partners that can provide in-person services and expertise.

Recognizing that registration under the *Indian Act* is foundational to accessing the associated rights, benefits, programs and services, it should remain as accessible as possible and free of charge.

Indigenous Services Canada engages in Gender-Based Analysis Plus to address barriers to understanding entitlement to registration under the *Indian Act* and submitting a complete application. Trusted sources organizations, designated by Indigenous Services Canada to support the registration and status card issuance process, are listed on Indigenous Services Canada's website. Partners, such as community-based Indian Registration Administrators, may be available to provide support in Indigenous languages, navigate the application process and overcome administrative barriers through a culturally informed lens.

Indigenous Services Canada commits to explore the translation of information on entitlement to registration into some Indigenous languages, based on the level of demand and the availability of resources and translators, in accordance with section 10.1 of the *Indigenous Languages Act*.

Recommendation 1(c): Consolidate online information related to registration and develop a centralized, coherent, well-organized resource that lists where application assistance is available, where registration can take place and that links to the public education materials about registration entitlement developed by Indigenous organizations more broadly.

The Government of Canada's website provides information on how to apply for registration and seek assistance. In 2022, user testing was completed, and activities are currently underway to simplify information and improve the website based on the user feedback.

Indigenous Services Canada will begin compiling the recommended information into one coherent, organized resource, with links to the websites of Indigenous organizations that provide information on registration. Indigenous Services Canada will also promote a new webpage that provides clear step-by-step instructions on registration, through various tools such as videos, infographics and samples of completed applications.

Recommendation 1(d): Ensure the same information above is available in a print format for those that require specialized supports.

The Government of Canada recognizes the accessibility and connectivity challenges some individuals face when trying to access government services. Consistent with the *Accessible Canada Act*, Indigenous Services Canada will provide registration information, in print, as requested. Printed information will be available in person at First Nations offices, the department's Regional Offices, and by mail.

Recommendation 1(e): Evaluate the effectiveness and reach of its public education campaign against population estimates of new registrants.

Indigenous Services Canada is actively engaged in ongoing communications and outreach efforts to raise public awareness on recent amendments to the *Indian Act*, and registration more generally.

The Government agrees that it is important to assess the effectiveness of these efforts against the best available demographic estimates. The number of applications received, decisions rendered, and other indicators are monitored on a weekly, monthly and annual basis and compared with the projections provided by the Parliamentary Budget Office and Statistics Canada. The effectiveness of Indigenous Services Canada's public education campaign should also be evaluated on the number of individuals and organizations reached, rather than solely on the number of registrations, since the decision to apply for registration is a personal choice.

Demographic projections are considered estimates based on the best data available at the time and expected to change over time. Based on the most recent Statistics Canada data, the highest projection estimates 251,000 registrations as a result of the implementation of *An Act to amend the Indian Act in Response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* from 2016 to 2041, or an average of approximately 11,000 newly registered persons per year over 23 years. The current number of applications being received and processed by Indigenous Services Canada is in line with these projections.

Indigenous Services Canada commits to report on the number of applications received, processed and the number of newly registered individuals per year compared to the best available data at the time of reporting as well as the estimated reach of ongoing communications and outreach efforts. The Government of Canada recognizes the importance of using data to measure the effectiveness of the implementation of the 2017 amendments and the registration process overall.

Recommendation 1(f): Establish a plan to raise awareness of the new registration provisions, including broad education and outreach beyond Indigenous organizations, and send a public notice to all individuals in Canada.

The Government of Canada agrees that an effective, strategic plan is necessary to raise awareness on amendments to the registration provisions of the *Indian Act*. To this end, Indigenous Services Canada has maintained an active communications and outreach plan throughout the implementation process for the 2017 amendments and will continue these efforts as further legislative amendments are considered.

Indigenous Services Canada engages in outreach beyond Indigenous organizations, including through (and with) federal, provincial and territorial women's and child and family services ministries, senior's organizations and parliamentarians. Current outreach efforts are being targeted towards harder-to-reach audiences, which include First Nations persons who are 65 years of age and older, those who reside in urban centres or rural/remote areas and those who may be unaware of their Indigenous ancestry.

Indigenous Services Canada commits to continue monitoring the effectiveness of all outreach efforts and take further steps to support the unique needs of the population, including those who are marginalized, that may be unaware that they are newly entitled to registration as these populations are identified.

To prevent a surge of applications from individuals who are not entitled to registration, which could hinder timely application processing, Indigenous Services Canada will continue to focus on initiatives with First Nations communities, Indigenous organizations and other government departments to best target newly entitled persons.

Recommendation 2(a): Establish and publish on the departmental website, a ten-day service standard to complete new and existing registrations following receipt of required documents from applicants.

Timely registration under the *Indian Act* is a recognition of Canada's obligations to First Nations persons and foundational to access a range of associated rights, benefits, programs and services. The Government of Canada recognizes the social, cultural and economic consequences of delays in registration and agrees that they must be mitigated as much as possible.

The current processing time for a complete application for registration under the *Indian Act* is listed on the Indigenous Services Canada's website as between six months to two years, depending on the complexity of the file. Due to current data and technical system limitations, Indigenous Services Canada can only provide approximate processing times, which are subject to fluctuation based on application volumes across various processing units.

This estimated processing time includes applications processed by the units dedicated to assessing applications impacted by recent legislative amendments and complex applications, which generally require more time to process than other applications, as there is often a need to conduct additional research and link an individual to multiple generations of ancestors to result in a single decision. These applications accounted for approximately 50% of all registration applications on average between 2018 to 2022. For applications impacted by recent legislative amendments to the *Indian Act*, 80% of complete applications are being processed within six months or less.

Once a person impacted by legislative amendments to the *Indian Act* is registered, complete applications from their descendants are likely to be processed faster since their ancestor's entitlement has already been determined. As a result of this factor, it is expected that processing times will become progressively shorter as implementation progresses, which has been the experience to date.

Complete applications processed by Regional Offices and community based Indian Registration Administrators where one or both parents are already registered are often processed within a national average of approximately six weeks. These applications accounted for approximately 50% of all other applications on average between 2018 to 2022.

Indigenous Services Canada determines processing times based on the initial date the application was received, whether it was complete or incomplete. A complete application is one for which no additional documentation or information is required from the applicant in order to render a decision. Processing times are inclusive of frequent delays in obtaining the required information from applicants or other government departments, such as vital statistics and social services agencies. While other government services do not accept incomplete applications or charge an application fee, Indigenous Services Canada is committed to assisting applicants through the process and ensuring registration remains accessible at no fee to the applicant.

The Government also notes that the decisions made on registration applications have significant impacts on the lives of First Nations persons and communities. The impacts of a registration decision affect not only the applicant, but also generations of descendants as well as federal, provincial and territorial policies and programs that rely on the accuracy of a registration decision. Reliable and consistent decision making, beyond processing efficiency, is equally critical to registration.

Indigenous Services Canada regularly analyzes application volumes, encourages complete applications, works with other government departments to find efficiencies, and proactively modernizes outdated systems, including efforts to shift from a paper-based to digital

application process. As a result of these improvements to the registration process, it is expected that processing times will continually improve.

Recommendation 2(b): Address the backlog of applications on a priority basis, ensuring that applications from older applicants are dealt with as quickly as possible.

The Government of Canada agrees that processing applications in the inventory which have exceeded publicly stated processing times is critical. In response, Indigenous Services Canada has been implementing efficiencies, creating new partnerships, and undertaking transformative measures to reduce processing times.

Registration applications are processed based on the date received, whether complete or incomplete, meaning that the earliest received applications are assessed before new applications. Applications may be prioritized under certain conditions, including for applicants aged 65 or older.

As of December 31, 2022, approximately 16,000 registration applications are pending. In 2022, Indigenous Services Canada received an average of 2,700 applications per month, processed an average of 3,000 applications per month and registered an average of 2,500 individuals per month. This progress demonstrates an inventory reduction, given that the number of applications being processed is higher than the number of applications received.

Further efforts, such as the digitization of records, internal policy changes and transformation projects to advance digital solutions are ongoing. Digital solutions currently in development will facilitate and enhance application intake. As a result of these efforts, Indigenous Services Canada anticipates a continual improvement in application processing time that will also prevent future backlogs.

Recommendation 2(c): Conduct a file review of previously denied status applications to determine whether applicants may be eligible under amendments to the *Indian Act* in 1985, 2010 and 2017, including those applications on unknown or unstated paternity, and that Indigenous Services Canada proactively contact individuals to notify them of their potential eligibility for registration.

The Government of Canada recognizes the importance of reaching newly entitled persons, including individuals that were previously denied or whose registration applications were impacted by unknown or unstated parentage.

Communications and engagement efforts were outlined in the *Final Report to Parliament on the Review of S-3* in December 2020, and demonstrated broad engagement with First Nations individuals, communities and organizations. In addition, Indigenous Services Canada is currently focusing on harder-to-reach audiences and exploring new partnerships with other government departments and Indigenous organizations to share information on legislative changes to registration.

In many cases, more information from applicants would be needed prior to initiating the application review process, such as updated contact information and consent to registration; further information to support entitlement to registration; identity verification; and/or proof of guardianship. Indigenous Services Canada cannot make the assumption that all previously denied applicants still wish to be registered.

Beyond the essential need for updated information from applications, in addition to the information on file, Indigenous Services Canada does not have the capacity to conduct a manual file review of all denied applications since 1985 without a significant negative impact of processing capacity of existing applications.

Due to these limitations, previously denied persons and their descendants who believe they may now be entitled to registration are encouraged to re-apply. Notably, descendants do not have to wait until previously denied ancestors apply. In the process of assessing individuals' entitlement, Indigenous Services Canada reviews existing records and documents the

entitlement of ancestors. This facilitates application processing for previously denied ancestors and other descendants, should they choose to apply in the future.

Where possible, Indigenous Services Canada takes steps to proactively assess the impacts of legislative changes on those already registered. These efforts have resulted in proactive amendments to the registration category codes of over 170,000 registered persons without having to re-apply. As a direct result, the descendants of these registered persons will be more efficiently processed.

Indigenous Services Canada will continue to proactively amend registration category codes when the registration provisions of the *Indian Act* are amended, where possible, while also encouraging anyone who believes they may be entitled to registration to apply.

Recommendation 2(d): Simplify and transform the application process, set strict publicly available timelines for department officials to respond to applicants, clearly explain the stages of the application process and communicate these to the general public, to applicants and to this committee.

The Government of Canada agrees that improvements to simplify and transform the application process are important.

Indigenous Services Canada has been modernizing and streamlining the application process in recent years. As highlighted in the *Final Report to Parliament on the Review of S-3*, registration application policies and processes are being improved on an ongoing basis through the following efforts: enhancing processing capacity; launching an integrated application process to allow an individual to apply for a status card at the same time; advancing digital tools for applicants to enable an online application; proactively amending category codes; simplifying the application process and processing requirements; introducing new guidance and tools for staff to process complex applications; priority processing persons 75 years of age or older with pending applications (since improved to 65 years of age or older); leveraging information sharing agreements to improve departmental records; developing trusted source partnerships to have more in-person points of services; and redistributing the national workload between Headquarters, and the Winnipeg and Quebec Processing Units to maximize efficiency and ensure as consistent of processing times as possible.

While these efforts have resulted in significant improvements to processing times and client service, work to bolster process enhancements continues. As Indigenous Services Canada shifts away from paper-based processing, applying for registration will become easier and faster. Digital solutions are being developed and launched in a staged approach with the ultimate goal of offering a complete online application process for registration.

Indigenous Services Canada also recognizes that applicants should expect clear and responsive communication throughout the application process. Resources are being reallocated to provide stronger responses by better connecting applicants with processing staff. The current call centre and correspondence model is being reassessed to find new ways of working and improve response times.

Recommendation 2(e): Conduct an internal evaluation of registration more broadly focused on improving service delivery to First Nations.

The Government of Canada agrees that registration activities must be evaluated, with a broad focus on improving service delivery to First Nations.

Indigenous Services Canada adheres to the Government of Canada's Policy on Results, which sets out the requirements for departmental performance information and evaluation. The latest Five-Year Departmental Evaluation Plan includes registration. The findings of this evaluation and the Management Response and Action Plan were published on Indigenous Services Canada's website in February 2022.

Indigenous Services Canada concurs with the evaluation's recommendations, many of which echo the findings of this Committee and reflect known and acknowledged challenges in registration. The Management Response and Action Plan, which is regularly updated and monitored, outlines current activities and future plans to advance and improve client experience, ensure accuracy and efficiency in operations and continue on a pathway to further transfer the administration of programs and services to First Nations.

Recommendation 2(f): Publish an annual service standard report that includes: Indigenous Services Canada's estimates of new registrations, actual registrations disaggregated by gender, region, and linguistic profile; the effectiveness of Indigenous Services Canada's public education campaign, and the number of new applications for registration; average and median wait times for application processing, including times for the processing of complex applications; progress toward implementing a ten-day service standard; and, number of protests and number of registration decisions that are appealed to the Superior Courts of each province.

The Government of Canada commits to publish an annual report on registration, starting in 2024 for the 2023 calendar year. The report will be published on Indigenous Services Canada's website and could include registration data and information, such as:

- Total registered population, disaggregated by region (province or territory) and gender (male, female or another gender)
- Total number of received registration applications per year
- Total number of registrations per year compared to the best available demographic projections at the time of publication
- Total number of registration decisions protested per year
- Total number of registration decisions appealed to the courts per year
- A summary of efforts and initiatives related to registration, for example:
 - The estimated reach of communications and outreach
 - Work with First Nations and partners
 - Consultation and implementation progress regarding legislative changes to the registration provisions of the *Indian Act*
 - Improvements to the registration process
- The perspectives of First Nations leaders, legal and statistical experts

Indigenous Services Canada continues to improve its technical systems to improve processing and enable more precise registration data and information. This report will not impose any additional reporting requirements on First Nations.

Recommendation 2(g): Establish a service standard committee that reviews the above report in order to make recommendations to monitor progress and assess policies and processes, provide guidance to officials and achieve greater accountability within Indigenous Services Canada. This committee should be comprised of First Nations leaders, as well as legal and statistical experts that reflect the diversity of First Nations.

The Government of Canada welcomes and appreciates the perspective of First Nations leaders and legal and statistical experts in making recommendations to strengthen the registration process and achieve greater accountability.

Indigenous Services Canada commits to engaging a wide range of experts and advocates in reviewing the aforementioned annual report in advance of publication and considering how best to integrate their diverse perspectives.

Recommendation 2(h): Establish a robust independent registration review panel with First Nations representation to review denials, protests and complex applications to achieve greater accountability and transparency.

While the Government of Canada agrees that accurate decision making in registration is critical, several existing, and effective, review mechanisms are already in place.

Indigenous Services Canada has established an internal Committee to assess evidence supporting entitlement to registration in order to present this information to the Registrar in complex situations. This committee is comprised of registration and policy experts from various units to promote sound decision making from diverse perspectives.

The legal standard used to determine entitlement to registration is 'the balance of probabilities'. This means that all credible evidence must be assessed to determine if the applicant is more likely than not entitled to registration. Entitlement is not determined through stricter standards, such as 'certainty' or 'beyond a reasonable doubt'. This approach to assessing evidence ensures that, in the absence of evidence to the contrary, every reasonable inference is made in favour of the applicant.

The process for protesting a registration decision under section 14.2 of the *Indian Act* provides another important mechanism to achieve greater accountability and accuracy in decision making. The protest mechanism enables individuals, and First Nations whose membership list is maintained by Indigenous Services Canada, to hold the government accountable for registration decisions. There is no fee to submit a protest and every protest decision is made by the Registrar following an in-depth investigation of all available evidence.

When a person completes the registration process but there is insufficient ancestral information, the individual receives a letter of denial which explains the rationale for the decision. Indigenous Services Canada also has an established practice of reconsidering applications when new and valid evidence has been presented. This means an individual can re-apply after receiving a letter of denial and provide additional evidence without having to protest the decision.

As a last measure of recourse, the courts serve as an independent mechanism to review registration decisions. The Government of Canada avoids resolving registration decisions through the courts whenever possible. Sometimes however, these challenges speak to limitations within the provisions of the *Indian Act* and can provide the impetus for important legislative change.

Recommendation 2(i): The Committee requests a progress report on the implementation of these recommendations on a quarterly basis starting in October 2022.

The Government of Canada will report on the Committee's recommendations through the aforementioned annual report outlined in response to recommendation 2(f). Indigenous Services Canada has reported regularly on its progress on the implementation of *An Act to amend the Indian Act in Response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*. As opposed to quarterly updates, one annual report will provide a current snapshot of key indicators and initiatives related to registration under the *Indian Act*.

Recommendation 3: We therefore recommend that the Office of the Auditor General of Canada conduct a performance audit of the registration of individuals by Indigenous Services Canada with a focus on the implementation of legislative amendments to the registration provisions of the *Indian Act* since 1985.

The Government of Canada notes that the Office of the Auditor General has responded to the Committee, both by testimony and in writing, and has made the determination not to undertake an audit at this time.

In September 2021, an internal audit advisory engagement was conducted to assess initiatives to reduce the inventory of registration applications, such as workload management realignments, digitization efforts, internal policy changes and transformation projects. Indigenous Services Canada will continue to provide updates to its Departmental Audit Committee demonstrating that these initiatives are continuing to move forward and showing early results.

Indigenous Services Canada will continue monitoring and reporting on the implementation of amendments to the *Indian Act* to ensure transparency and accountability, which will include

regular check-ins with the Office of the Auditor General and would welcome a performance audit should the Office of the Auditor General deem it appropriate in the future.

Recommendation 4: That the Government of Canada introduce legislation repealing section 6(2) of the *Indian Act* and develop an accompanying transition plan for those registered under section 6(2) as soon as possible, but no later than June 2023.

Indigenous Services Canada supports the need to consult on options for the timely resolution of the second-generation cut-off as an important remaining, broader issue in the registration provisions of the *Indian Act*.

While there is consensus that the second-generation cut-off should be addressed, there is currently no consensus on the solution. The 2018-19 *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship*, demonstrated mixed support for a complex range of views on a way forward. In turn, the Ministerial Special Representative's Report recommended that a separate and more in-depth consultation process begin to develop solutions to address this inequity and remove the second-generation cut-off.

Indigenous Services Canada recognizes the diverse viewpoints of First Nations individuals and communities and will continue to work in collaboration with First Nations and Indigenous organizations to ensure these views are represented in the process of addressing any remaining issues in registration.

In alignment with the principles of the *United Nations Declaration on the Rights of Indigenous Peoples' Act* (UNDA), Indigenous Services Canada will co-develop and launch a collaborative consultation process, in 2023, on known remaining inequities, including on the second-generation cut-off, and broader reform issues in registration and First Nations membership.

Recommendation 5: That Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada provide quarterly reports to the committee on the process and consultations undertaken to co-develop legislation to address enfranchisement with the first report due in October 2022.

On December 14, 2022, the Government introduced Bill C-38, An Act to amend the *Indian Act* (new registration entitlements) to address the remaining inequities relating to enfranchisement.

The introduction of Bill C-38 fulfills an abeyance agreement between the Minister of Indigenous Services and Juristes Power Law, who represent the plaintiffs in the *Nicholas* case, to address any remaining inequities related to enfranchisement by making the necessary amendments to the registration provisions of the *Indian Act*. Throughout the development of the legislative proposal, Indigenous Services Canada worked closely with Juristes Power Law and other key First Nation partners, including the Assembly of First Nations, the Michel Nation representatives, the Native Women's Association of Canada, the Congress of Aboriginal Peoples, various Metis organizations, as well as with non-Indigenous organizations, such as, the Feminist Alliance for International Action.

Indigenous Services Canada held over 50 engagement sessions between August and December 2022 to inform the development of Bill C-38. The proposed amendments were also communicated widely: by way of a letter to all First Nations Chiefs; across Indigenous Services Canada's website and social media channels; through Indigenous Link; and, separately to over 1,000 women's organizations.

Bill C-38 proposes a legislative remedy to address the impacts of enfranchisement based on the recommendations of the 2018-19 *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship* and recent engagement efforts. The Government of Canada will continue to report on consultation and engagement efforts and will include these details in the aforementioned annual report in recommendation 2(f) as proposed changes move forward.

Recommendation 6: That Indigenous Services Canada work with First Nations people and communities to develop an action plan with clear timeframes for the repeal of all discriminatory provisions of the *Indian Act*; the resolution of all outstanding inequities including enfranchisement, the 1985 cut-off and age and marital distinctions; and the implementation of all the recommendations from Claudette Dumont-Smith's 2019 report; and that the department provide its first progress report on this plan by December 2022 and a final report by June 2023.

The Government of Canada has affirmed its support to consult on options to address remaining inequities in the registration provisions, and for the eventual repeal of the *Indian Act*.

Canada's willingness to advance solutions on enfranchisement was first demonstrated by the swift response to the 2020 *Hele* court ruling, which reversed the voluntary enfranchisement of unmarried women between 1951 and 1985. This response resulted in quick compliance with the court decision and in 780 category amendments that enabled individuals to transmit registration entitlement to their descendants. Indigenous Services Canada also proactively communicated these changes to First Nations and on the department's website. The proposed amendments under Bill C-38 is the subsequent step in resolving the remaining inequities related to enfranchisement.

Indigenous Services Canada is addressing recommendations from the Committee and Claudette Dumont-Smith's 2019 report on the 2018-19 *Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship* in a sequenced way. This includes the introduction of solutions for individual deregistration and enfranchisement proposed in Bill C-38 as well as the forthcoming launch of a co-developed consultation process in 2023 on the second-generation cut-off and other remaining issues in registration and First Nations membership.

Recommendation 7: That the Government of Canada introduce legislation to repeal section 22 of *An Act to Amend the Indian Act* (1985); section 9 of the *Gender Equity in Indian Registration Act* (2010); and sections 10 and 10.1 of *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* (2017) to enable First Nations women and their descendants to access compensation.

The Government of Canada does not accept the recommendation to repeal non-liability clauses in those Acts, as the validity of these clauses is being assessed and determined by the courts.

There may be distinct legal implications between section 22 of *An Act to Amend the Indian Act* (1985), section 9 of the *Gender Equity in Indian Registration Act* (2010), and sections 10 and 10.1 of *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* (2017).

The non-liability clauses in the 2010 and 2017 amendments to the *Indian Act* codify a jurisprudential principle of the Supreme Court of Canada, which excludes the possibility of obtaining damages with regard to actions taken in good faith under a law that is later declared constitutionally invalid. This is also known as the principle of limited executive immunity.

This principle was affirmed by the Supreme Court of Canada in the *Mackin* case, which indicated that in the absence of clearly wrongful conduct, bad faith or abuse of power, courts will not award damages for harm suffered as a result of a law subsequently declared unconstitutional. The non-liability clauses in the 2010 and 2017 amendments to the *Indian Act* apply to the executive responsible for implementing and administering the *Indian Act* passed by Parliament, in this case, the Indian Registrar.

Recommendation 8: That Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada work with Indigenous People and communities to provide reparations including an apology and compensation for the harms experienced by Indigenous women and their children. This must also include initiatives to commemorate the First Nations women who fought discrimination in the *Indian Act*.

The Government of Canada acknowledges that eliminating sex-based inequities relating to the registration under the *Indian Act* does not erase the impacts on persons who lost or were denied status for generations. Those impacted were unable to claim health, education and economic benefits, and in some cases, cultural benefits. These limitations restricted the ability of some individuals to fully participate in their First Nations communities and receive the same benefits as other members.

The Government of Canada acknowledges the importance of recognizing individual rights and continues to remedy past wrongs. As individuals have regained their entitlement to registration, they have become eligible for programs and services and participated in a number of national settlements in recent years.

The perseverance and advocacy of Indigenous women, leaders and allies that drove forward legislative changes to the *Indian Act* deserve recognition, including: Jeanette Lavell of Wikwemkoong; Yvonne Bédard of Six Nations of the Grand River; elder-activist Mary Two Axe Earley of Kanien'kehá; Senator Sandra Lovelace Nicholas of Maliseet Nation; lawyer, activist Dr. Sharon McIvor of Nle?kepmxc Nation; and Dr. Lynn Gehl of Algonquins of Pikwakanagan. Along with these leaders, countless other First Nations persons, governments and organizations have contributed to previous legislative changes and remain actively engaged in future reform initiatives. Their collective contributions in achieving greater equity in registration have impacted the lives of First Nations persons in a deeply meaningful and positive way.

Recommendation 9: That Indigenous Services Canada provide funding to support First Nations organizations to undertake consultations on how to re-establish connections between those who have lost status and their home communities. Further, that Indigenous Services Canada provide funding for any remedies or solutions proposed as a part of these consultations.

The loss of connection between First Nations and the women and their descendants that lost or were denied status is a consequence of past patriarchal, colonial and discriminatory attitudes that were embedded in the *Indian Act*. The Government of Canada acknowledges the need to remedy these historical injustices and agrees that re-establishing connections between First Nations individuals and their communities is a key part of the implementation of legislative reform relating to registration and reconciliation more broadly.

The Government of Canada recognizes that engagement with a diverse set of partners is necessary to reach First Nations persons impacted by legislative amendments pertaining to registration whose connection with their ancestral community, or wider Indigenous community, may have been lost or never established as a result of discriminatory provisions of the *Indian Act*. Indigenous Services Canada supports a range of stakeholders to raise awareness on legislative changes to the registration provisions of the *Indian Act*, including those made pursuant to *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*.

Community based Indian Registration Administrators and other organizations, such as the Native Women's Association, the Assembly of First Nations, the Feminist Alliance for International Action and trusted source partners, play a critical role in increasing the awareness of initiatives and helping those impacted by sex-based inequities in registration to reconnect with their First Nations culture. Indigenous Services Canada commits to continue providing targeted funding, based on available resources, to support First Nations and Indigenous organizations in outreach and information sharing on the 2017 amendments to the *Indian Act*.

Conclusion

The Government of Canada acknowledges the critical importance of the full implementation of the 2017 amendments and making significant improvements to the registration process. The Government further acknowledges the need for consultation on options to resolve remaining inequities related to registration and membership. While solutions to these issues must move forward in a timely manner, they must also be developed in a manner that complies with statutory obligations for consultation and cooperation with Indigenous peoples under the *United Nations Declaration on the Rights of Indigenous Peoples' Act* (UNDA). Canada will continue to demonstrate its firm commitment to this important work through collaboration and co-development with First Nations and Indigenous organizations to ensure the diverse viewpoints of First Nations individuals and communities are represented in the process of addressing any remaining issues in registration.

The Government would like to reiterate its thanks to members of the Committee for their dedication in undertaking this review and their commitment to supporting equity, fairness and efficiency for First Nations individuals seeking registration under the *Indian Act*.

Sincerely,

A handwritten signature in blue ink, appearing to read 'P. Hajdu', with a stylized flourish at the end.

The Honourable Patty Hajdu, P.C., M.P.