January 2025

Indian Act Second-Generation Cut-off and Section 10 Voting Thresholds

Honouring Leadership

Purpose

This Honour Timeline highlights the extraordinary efforts of some of the many First Nations women and men who have challenged and changed discriminatory provisions in the ***Indian Act***. The journey from the early days of activism led by Mary Two-Axe Earley and Sandra Lovelace to the contemporary efforts by organizations like the *Indian Act* Sex Discrimination Working Group, highlights the persistent fight against the discriminatory clauses of the *Indian Act*.

The advocacy efforts by First Nations women and their allies have spanned several decades, marked by significant legal battles, legislative amendments, and ongoing calls for justice. Despite progress, the work continues to ensure that all forms of discrimination are eradicated and that First Nations families, women and their descendants are afforded their rightful status and rights.

On 17 April 2018, during an event to mark Equality Day, Yvonne Bedard, along with Jeannette Vivian Corbiere Lavell, Senator Sandra Lovelace Nicholas, Dr. Sharon McIvor), Dr. Lynn Gehl, and Senator Lillian Dyck, were recognized in Ottawa for their activism directed towards equality for Indigenous women under Canadian law.

This timeline honours the courage and determination of these First Nations women and allies and the legacy of positive change they have affected for all. Their tireless advocacy against systemic discrimination has shaped Canadian law, raised global awareness, and empowered future generations to continue the fight for justice and equality.

Mary Two-Axe Earley (1966)

In 1966, Mary Two-Axe Earley, a Mohawk woman from Kahnawake, Quebec, began speaking publicly against gender discrimination in the Indian Act. Her advocacy laid the groundwork for the creation of **Indian Rights for Indian Women (IRIW)** in 1974, an organization dedicated to combating sex discrimination. Mary's work influenced the Royal Commission on the Status of Women and inspired subsequent legal challenges by other Indigenous women. Mary Two-Axe Earley's unwavering advocacy challenged deeply ingrained sexism and set the stage for legislative changes in the 1980s.

Check out this short-doc, by Kahnawàk:e filmmaker Courtney Montour which explores the life and work of Mary Two-Axe Earley.

Jeannette Corbière Lavell (1971)

In 1971, Jeannette Corbiere Lavell, an Ojibwa woman and member of the Wikwemikong band on Manitoulin Island in Ontario, brought a landmark legal challenge against **Section 12(1)(b) of the Indian Ac**t after losing her status upon marrying a non-Indigenous man. Lavell argued that the provision violated the equality clause of the 1960 *Canadian Bill of Rights* by discriminating on the basis of sex. Though she initially lost her case at trial, where the judge suggested the matter was for Indigenous communities to resolve through Parliament, Lavell later won on appeal. Her victory was short-lived, however, as the Supreme Court of Canada reversed the decision in 1973.

Despite this setback, her case brought widespread attention to the systemic gender discrimination within the Indian Act, sparking bitter divisions among Indigenous women's groups and male-dominated associations. Lavell's courageous efforts laid the groundwork for the long battle to amend the Act. Jeannette is a founding member and former President of the Ontario Native Women's Association (ONWA).

"I have been fighting this sex discrimination for fifty years now. Before I join my ancestors, I think I should have equal Indian status with Indian men. I stand for justice for First Nations women now."
Implement #BillS3 #AnyTuesday

Jeannette Corbiere Lavell

Yvonne Bedard (1971)

In 1971, Yvonne Bedard, a member of the Six Nations Reserve in southern Ontario, brought a legal challenge against the Indian Act's Section 12(1)(b) after losing her status upon marrying a non-Indigenous man in 1964. Following her separation in 1970, Bedard returned to the reserve with her two children to live in a house inherited from her mother. However, as she no longer held legal status, Bedard was denied the right to reside in her family home or inherit property on the reserve. Facing eviction, she brought her case to court, which was argued on the same grounds as Jeannette Corbiere Lavell's case.

Although Bedard initially won her case based on precedent, both cases were ultimately joined and appealed to the Supreme Court of Canada in 1973, where they lost by a narrow margin. The court's decision upheld the discriminatory "marrying-out" provisions of the Indian Act, sparking new awareness of the systemic injustices faced by Indigenous women. Despite the legal defeat, Bedard's case underscored the tension between women's rights and Indigenous self-determination, highlighting the need for legislative reform. When Yvonne Bedard passed away in December 2021, she was honored as a trailblazer and revered Elder whose advocacy for justice left a lasting legacy.

Check out the Native Women's Association of Canada tribute to Yvonne Bedard.

Sandra Lovelace (1971)

In 1977, Sandra Lovelace, a Maliseet woman from Tobique First Nation, filed a complaint with the United Nations Human Rights Committee (UNHRC), arguing that Section 12(1)(b) violated her rights under the *International Covenant on Civil and Political Rights*. Sandra Lovelace, who had been born and registered as a Maliseet Indian, lost her status after marrying a non-Indian man in 1970. This loss of status stripped her of her rights to band membership and cultural participation.

The UNHRC found that the Indian Act violated her cultural rights under Article 27 of the Covenant. This landmark ruling in 1981 brought *international* pressure on Canada to address systemic discrimination against Indigenous women. Sandra Lovelace's victory at the United Nations demonstrated the power of international advocacy and shifted Canada's approach to Indigenous women's rights.

Check out this honour video from
Aboriginal Peoples Television Network.

"A person who ceases to be an Indian under the Indian Act suffers the following consequences:

(1) Loss of the right to possess or reside on lands on a reserve (ss. 25 and 28 (1)). This includes loss of the right to return to the reserve after leaving, the right to inherit possessory interest in the land from parents or others, and the right to be buried on a reserve;

(2) An Indian without status cannot receive loans from the Consolidated Revenue Fund for the purposes set out in section 70;

(3) An Indian without status cannot benefit from instruction in farming and cannot receive seed with charge from the Minister (see section 71);

(4) An Indian without status cannot benefit from medical treatment or health services provided under section 73 (1) (g);

(5) An Indian without status cannot reside on tax exempt lands (Section 87);

(6) A person ceasing to be an Indian loses the right to borrow money for housing from the Band Council (Consolidated Regulations of Canada, 1978, c. 949);

(7) A person ceasing to be an Indian loses the right to cut timber free of dues on an Indian reserve (section 4–Indian Timber Regulations, c. 961, 1978 Consolidated Regulations of Canada);

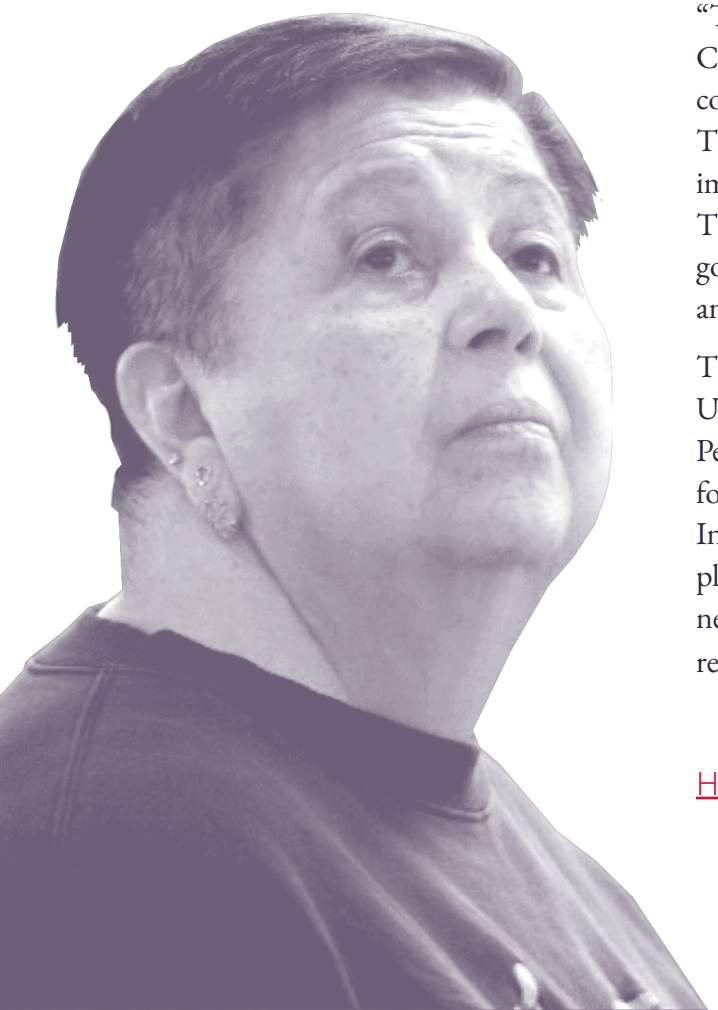
(8) A person ceasing to be an Indian loses traditional hunting and fishing rights that may exist;

(9) The major loss to a person ceasing to be an Indian is the loss of cultural benefits of living in an Indian community, the emotional ties to home, family, friends and neighbours, and the loss of identity."

Sandra Lovelace v. Canada,
Communication No. 24/1977,
U.N. Doc CCPR/C/OP/1 at 83 (1984)

Sharon McIvor (1987)

Sharon is a member of the Lower Nicola Band in British Columbia , a practicing lawyer, and a Professor of Aboriginal Law at Nicola Valley Institute of Technology. She has spent over two decades fighting to end sex discrimination under the status provisions of the *Indian Act*. A member of the Nlaka'pamux Nation, began her legal challenge in 1987, targeting the second-generation cut-off rule and other discriminatory provisions of the *Indian Act.* Her persistence led to a 2007 ruling by the British Columbia Supreme Court that found these provisions unconstitutional. Although the resulting legislative amendment, Bill C-3, addressed some issues, McIvor continued to advocate for the complete elimination of gender-based discrimination. Her work extended to filing a petition with the United Nations, emphasizing Canada's failure to fully rectify the inequities. Sharon McIvor's relentless pursuit of justice has reshaped Canadian law and policy, ensuring greater visibility for the issues faced by Indigenous women and their descendants.



"The larger implication of adopting UNDRIP is the need for Canada to align its domestic policies with its international commitments, ensuring justice and equity for First Nations. There is an overwhelming amount of historical litigation and impacts resulting from previous changes to the Indian Act. There have been numerous recommendations to the federal government regarding its obligations both internationally and nationally, around ensuring the Indian Act.

The Government of Canada has obligations under the United Nations Declaration on the Right of Indigenous Peoples, or UNDRIP, to provide effective redress for any form of forced assimilation that violates the rights of Indigenous people. Canada is committed to making a plan for the implementation of UNDRIP in Canada and needs urgently to address the registration of women and repair the harms done."

Sharon McIvor to Senate 2022

Hear Sharon in her own words.

Descheneaux (1987)

Descheneaux v. Canada, brought by plaintiffs Stéphane Descheneaux, Susan Yantha, and Tammy Yantha, challenged residual sex-based discrimination in the *Indian Act*. Stéphane Descheneaux, a member of the Abenaki Nation, faced inequities stemming from his grandmother's loss of status due to gender discrimination. Susan and Tammy Yantha, descendants of an Indigenous woman who married a non-Indigenous man, were denied status under the second-generation cut-off rule. The Quebec Superior Court found these provisions unconstitutional, prompting the introduction of Bill S-3 in 2016, which was aimed to address known inequities, including those related to unstated paternity. Descheneaux brought their lived experiences and legal challenges to light, showcasing the persistent intergenerational impacts of discriminatory policies and pushing for legislative reforms.

[..T]here is no logical reason to deprive individuals of the benefit of law who would no longer be accepted by their collectivities because they were separated from them by government policies and, it must be repeated, in order to respect the same protection of the benefit of law under the right to equality guaranteed by Section 15 of the Canadian Charter. In 1985, however, this is what Parliament did, according to the debates, having made a compromise between the right to equality and the collectivities' wish to decide on the rules concerning Band membership. To tell the truth, the Court was and remains entirely in agreement, in principle, with the remedy granted by the trial judge in the McIvor case. This remedy aimed at nothing less than giving equal treatment to the descendants of Indian women excluded on discriminatory grounds, even as the descendants of Indian men in the male line could and those born before 1985 still can obtain Indian Status by tracing themselves back to a registered Indian or Band member among their ancestors and thereby obtain all the related benefits.

An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général), S.C. 2017, c. 25, s. 15(2).

Dr. Lynn Gelh (2017)

Dr. Lynn Gehl is an Algonquin Anishinaabe-kwe from the Ottawa River Valley, Ontario, Canada. She is a dedicated advocate, artist, and author, focusing on anti-colonial work and the celebration of Indigenous knowledge. Dr. Gehl applied for Indian status in 1994 but was denied due to the unknown identity of her paternal grandfather.

Dr. Lynn Gehl's legal battle against sex discrimination in the *Indian Act* culminated in the landmark case Gehl v. Canada (Attorney General) in 2017. The crux of the case was the Indian Registrar's Proof of Paternity Policy, which presumed that if a father's identity was not stated on a birth certificate, he was non-Indigenous. This presumption disproportionately affected Indigenous women and their descendants, especially in situations where paternity was unknown or could not be disclosed due to circumstances like sexual violence or the father's refusal to acknowledge the child. In April 2017, the Ontario Court of Appeal ruled in Dr. Gehl's favor, declaring the Registrar's decision unreasonable and granting her Indian status under section 6(2) of the *Indian Act*. The court acknowledged that the strict application of the Proof of Paternity Policy failed to consider the lived realities of Indigenous women and perpetuated historical disadvantages.

However, the court's decision to grant Dr. Gehl 6(2) status meant she could not pass on status to her descendants, highlighting ongoing issues within the Act's registration provisions. This outcome underscored the need for comprehensive legislative reform to eliminate residual sex-based discrimination in the *Indian Act*.

Dr. Gehl in conversation:
https://www.youtube.com/watch?v=XE1R8OXN_Ew

Nicholas (2021)

In 2021 the Nicholas family, members of the Elsipogtog First Nation in New Brunswick, brought a constitutional challenge, *Nicholas v. Canada (Attorney General)*, in 2021 to address the ongoing inequities caused by the *Indian Act*'s enfranchisement provisions.

The family argued that those with a history of enfranchisement were unfairly denied the ability to pass on their status to their descendants, a capacity granted to others without such a history. This landmark case highlighted the generational harms inflicted on Indigenous families due to colonial policies aimed at assimilation, which stripped First Nation people of their status and disconnected them from their communities. As the Nicholas family stated during the proceedings, "We are here to ensure that the voices of our ancestors, who were unjustly erased from history, are heard loud and clear today." This case influenced the introduction of Bill C-38 in 2022, which proposed amendments to remedy the impacts of historical enfranchisement.

> UBCIC supports the proposed amendment to remedy the long-standing discrimination outlined in the Nicholas case and supports the reinstatement of status to those who:
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> - lost status for being out of the country for five years without permission of the Minister (section 13 just prior to Sept 4, 1951, or any former provision relating to same subject matter);
> - joined certain professions or were ordained ministers (section 111 just prior to July 1, 1920, or any former provision relating to same subject-matter);
> - were enfranchised through band enfranchisement (section 112 just prior to April 17, 1985, or any former provision relating to same subject matter)
> - "voluntary" and involuntary enfranchisement of any kind under any provision.
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> UBCIC "Comments on Proposed Amendments to the Indian Act" Submission to Indigenous Services Canada and Justice Canada, November 10, 2022