The Right Honourable Justin Trudeau
Prime Minister of Canada
House of Commons Ottawa
Ontario Canada K1A 0A6

September 19, 2017

Dear Prime Minister Trudeau,

As members of the B.C. Coalition on Missing and Murdered Indigenous Women and Girls, we write today with an urgent request. Please accept the Senate's '6(1)(a) all the way' amendment to Bill S-3 (*An Act to eliminate sex-based inequities in the Indian Act*) when Parliament reconvenes.

The discrimination in the *Indian Act* is one of the oldest and most blatant pieces of sexism in Canada. Since 1906, the *Indian Act* has mandated preferential treatment for male Indians and their descendants. In 1906, the Act defined an Indian as "a male Indian, the wife of a male Indian or the child of a male Indian." Under successive versions of the *Indian Act*, for the most part, Indian women had no independent status or 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 when they married a non-Indian, while Indian men endowed status on their non-Indian wives.

Changes made in anticipation of the *Charter* equality guarantees coming into force in 1985 did not remove the male-female hierarchy.In fact, these changes entrenched inequality by creating the category of 6(1)(a) for all those (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 who never had status because of the sex discrimination, or who had lost status because of marriage to a non-Indian. The women were considered re-instatees and their ability to transmit status to their children was restricted by their 6(1)(c) status. Many legal cases since then have attempted to unwind this discriminatory hierarchy and its effects, but the Government of Canada has made only piecemeal reforms - never completely eliminating the gender discrimination.

It is shocking that, in 2017, your Government asked Parliamentarians to re-enact the historic legal preference for Indian men and their descendants, and reject the Senate's amendment that was designed to finally end gender discrimination against Indian women and their descendants.

As organizations that have been working for more than a decade to bring the human rights crisis of disappearances and murders of Indigenous women and girls to an end, we are also shocked that your Government has not taken the advice of the United Nations Committee on the Elimination of Discrimination against Women and the Inter-American Commission on Human Rights on this issue. Both expert human rights bodies found in their investigations that *Indian Act* sex discrimination is a root cause of the violence against Indigenous women and girls and they called on your Government to end this discrimination immediately.

We have tried to understand why you have rejected the Senate's amendment, and why all members of the Liberal Party, with the exception of two Indigenous Members, stood in Parliament to support Bill S-3, which had been stripped of the Senate's amendment ending gender discrimination, on June 21, 2017, National Aboriginal Day.

We have listened with care to the explanations provided by Minister of Indigenous and Northern Affairs, Carolyn Bennett, and by Justice and INAC officials. Unfortunately, none of them provide a legitimate or credible justification for continuing gender discrimination.

We understand the key explanations to be:

- **More consultation is needed**.
  But, as Mary Eberts has documented in recent research, the Government of Canada has been consulting about whether it should eliminate the sex discrimination from the *Indian Act* since the 1970s. The most recent consultation on this subject was conducted only 7 years ago after the Harper Government introduced Bill C-3 ("the McIvor amendment"). At that time, B.C. First Nations rejected the need for further consultation, and supported removing the discrimination completely. 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.

  We agree with Sharon McIvor who has noted on many occasions that no government can legitimately consult about *whether* it will continue to discriminate based on sex. The Government of Canada is obliged by the Canadian Constitution, and by statute, not to discriminate based on sex; nothing anyone says can change this obligation.

  Ms. McIvor has also pointed out that status and band membership have been separated in the *Indian Act* and status is a relationship between individual Indigenous persons and the federal government. The Government of Canada can remove sex discrimination from the status provisions; it can then legitimately consult 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.

- **The '6(1)(a) all the way amendment' would entitle 80, 000 to 2 million more Indian women and their descendants to Indian status**.
  Senator Murray Sinclair called this explanation 'fear-mongering', as 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. As you know, the courts do not allow administrative or financial considerations to defeat Charter equality rights. These statements serve no helpful purpose; instead they cause divisions in and amongst communities. This fear-mongering is a practice of the past that does not belong in a Nation-to-Nation relationship based on respect for Indigenous rights, including the rights of Indian women and children.

  However, we ask: would 80,000 to 2 million more Indians be bad? Sex discrimination in the *Indian Act* has notoriously been a tool of assimilation, used by the Government of Canada to define Indians out of existence through discriminatory treatment of matrilineal descent, and discrimination against Indian women, but not Indian men, who "married out." Consequently we wonder: is the Government of Canada concerned about money that would be needed to support benefits for newly entitled Indians or about expanding the pool of those to whom it has a fiduciary duty? Does the Government of Canada, in fact, not want more Indians, and will it only accept those Indian women and their descendants whom it is forced to accept, bit by bit, by a continuing stream of litigants who are suing in courts and tribunals to obtain their rightful entitlement? We hope that this is not the answer, as it does not square with your public statements that you are a feminist and that your relationship with Indigenous peoples is a top priority.

  We note that INAC has now contracted with Stewart Clatworthy 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; we look forward to hearing the results. However, whatever Mr. Clatworthy's estimates reveal, we reject 'the numbers are too great' as a justification for continuing sex discrimination.

- **Bill S-3 unamended is Charter compliant and the Government is not required to do anything further.**

  This claim, that the unamended version of Bill S-3 is *Charter* compliant, relies on Justice Harvey Groberman's 2009 decision in the B.C. Court of Appeal in *McIvor v. Canada*. Justice Groberman wrote that the 6(1)(a) - 6(1)(c) hierarchy contravened section 15 of the *Charter* but could be justified under section 1 as a reasonable limit on the equality rights of Indigenous women because it preserves the acquired rights of the male line**.**

  In our view, relying on Justice Groberman's decision, and on section 1 to justify sex discrimination against Indigenous women and their descendants, is poor policy for your government in 2017 as it holds in place the assimilationist policy of the past. Groberman's decision is wrong, and it offends equality rights advocates deeply. The claim you rely on is essentially that since Indian men and their descendants had preferred status because of their sex from as early as 1906, that sex-based privilege should 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. The Government of Canada should be thinking about how to move past Justice Groberman's decision, in order to undo the decades of discrimination which the 6(1)(a) - 6(1)(c) hierarchy has caused, not clinging to it. Relying on this s. 1 argument in 2017 is not a credible position for a feminist and human rights-respecting Prime Minister and Government.

In short, we see no good reason why your Government cannot adopt the Senate's amendment and many excellent reasons why it should. This discrimination is old and should be ended. Indian women and their descendants have the right to be treated equally with Indian men and their descendants under the law. The Indian Act is a colonial law which you have promised to replace because it does not recognize Indigenous laws and governance. However, as long as the *Indian Act* is in place, it 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 bleed into any post-*Indian Act* regime.

We also note that the National Inquiry, which is foundering, needs the Government of Canada to demonstrate genuine and substantive support for its work by taking the step, long recommended, of removing the sex discrimination from the *Indian Act*.

Finally, the many Indigenous women, like Senator Sandra Lovelace and Senator Lillian Dyck, Jeanette Corbiere Lavell, Sharon McIvor and Lynn Gehl, who have fought over the last forty years to see this discrimination ended, deserve respect and equality from the Government of Canada before they die.

Please accept the Senate's '6(1)(a) all the way' amendment to Bill S-3. We look forward to your reply.

Sincerely,
Members of the Coalition on Missing and Murdered Indigenous Women in BC:

Aboriginal Women's Action Network
Amnesty International Canada
Atira Women's Resource Society
BC Civil Liberties Association
BC Federation of Labour
Butterflies in Spirit
Carrier Sekani Family Services (Mary Teegee)
Julie Kaye, University of Saskatchewan
Neskonlith Indian Band (Kukpi7 Judy Wilson)
Poverty and Human Rights Centre
Union of British Columbia Indian Chiefs
Women Against Violence Against Women Rape Crisis Centre
Vancouver Rape Relief and Women's Shelter
Vancouver Aboriginal Community Policing Centre Society
Vancouver Council of Women
Yale First Nation

cc: All Senators