



Femmes Autochtones du Québec Inc.
Quebec Native Women Inc.

N de ref : 2009-1021

Kahnawake, 21st, October 2009

Honourable Chuck Strahl
Minister of Indian Affairs and Northern Development and
Federal Interlocutor for Métis and Non-Status Indians
Terrasses de la Chaudière, North Tower
10 Wellington St., Room 2100,
Gatineau (QC) K1A 0H4

Subject: Sharon McIvor case – consultation with Aboriginal peoples

Dear Minister Strahl:

Quebec Native Women (QNW) would like to express its profound concerns regarding the way in which the legislative process is being conducted by the Canadian Government to amend the Indian status provisions in section 6 of the *Indian Act*. A collaborative process is necessary, in order to comply with the 2009 British Columbia Court of Appeal decision in the *Sharon McIvor* case.

QNW does not accept the present lack of consultation with Indigenous peoples – which consultation would ensure Indigenous “input” consistent with the constitutional duties of the government. In the *McIvor* case, Madame Justice Ross indicated: “A suspension would enable the registration process to continue and afford Parliament time to seek input from Aboriginal groups in its development and implementation of a scheme consistent with the courts ruling.” (para. 345)

The British Columbia Court of Appeal in this same case indicated: “We have neither an evidentiary foundation nor reasoned argument as to the extent to which Indian status should be seen as an Aboriginal right rather than a matter for statutory enactment. This case, in short, has not been presented in such a manner as to properly raise issues under s.35 of the *Constitution Act, 1982*.” (para. 161) However, even if the *McIvor* case does not provide evidence or argument on whether “Indian status should be seen as an Aboriginal right”, we believe that the Canadian Government must still seek the “input” of Aboriginal peoples through consultations since Aboriginal or treaty rights may still be affected by the “development and implementation of a scheme” to address the present discrimination arising from section 6 of the *Indian Act*.

By possibly denying Indian” status under any proposed amendments to the *Indian Act*, an Aboriginal individual would possibly be denied such rights as those relating to land and harvesting. As decided

by the Supreme Court in *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550:

The duty to consult arises when a Crown actor has knowledge, real or constructive, of the *potential existence* of Aboriginal rights or title and *contemplates conduct that might adversely affect* them. This in turn may lead to a duty to change government plans or policy to accommodate Aboriginal concerns. Responsiveness is a key requirement of both consultation and accommodation. (para. 25, emphasis added)

As highlighted by the Supreme Court, the Government of Canada has a duty to consult with Aboriginal peoples and accommodate their concerns prior to making decisions that might adversely affect their rights. As stated in *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511:

The government's duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown. The honour of the Crown is always at stake in its dealings with Aboriginal peoples ... (para. 16)

The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required ... (para. 17)

In regard to redressing the unconstitutional and discriminatory aspects in section 6 of the *Indian Act*, the financial responsibility lies squarely with your government. Federal guarantees are required for additional financial and other resources and services in First Nations communities arising from any increases in population.

Quebec Native Women (QNW) condemns the current "engagement process" conducted by your department and possibly others, which is not intended to consult but inform Aboriginal communities of the legislative process set forth by the Canadian Government. We urge you to redress this situation by conducting effective consultations in order to obtain the full input of Aboriginal peoples and accommodate our concerns. Consultation and accommodation are an essential corollary to the honourable process of reconciliation that section 35 of the *Constitution Act, 1982* demands.

In order to promote the process of reconciliation mandated by section 35 of the *Constitution Act, 1982*, QNW therefore requests that consultations begin immediately as part of a process of fair dealing and reconciliation.

We look forward to a positive response.

Respectfully,



Ellen Gabriel
President

cc. **Stephen Harper**, Prime Minister of Canada
Jean Charest, Premier ministre du Québec
Ghislain Picard, Regional Chief AFNQL
Jeannette Corbiere-Lavelle, president NWAC
Jean Crowder, NDP
Anita Neville, Liberal party of Canada
Gilles Duceppe, Bloq Québécois
Bruce Stanton, Chair Standing Committee on Aboriginal Affairs and Northern Development
Gerry St-Germain, Chair Standing Senate Committee on Aboriginal Peoples
Jennifer Lynch, Chief Commissioner Canadian Human Rights Commission