

'Legal discrimination is alive and well': Canada's indigenous women fight for equality

Canada recently passed an amendment to end inequality, but a lack of timeline means a colonial-era act still holds back indigenous women



'What I lost was a big piece of me, of who I am and how I was recognised. My people saw me as not one of them,' said Sharon McIvor, who was not entitled to indigenous status. Photograph: Kevin Frayer/AP

Ashifa Kassam in Toronto

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As a child, Sharon McIvor spent her days roaming her grandmother's First Nations community deep in British Columbia, learning to fish, harvest sap and pick berries, as the Nlaka'pamux Nation had done for millennia.

When the time came to teach those skills to her grandchildren, however, more than a century of gender discrimination stood in her way.

For nearly 150 years, legislation stipulating who the Canadian government officially recognises as First Nations has discriminated against women, making it more difficult for them to hold status and pass it to their descendants.

"We're the only group in Canada that has got legislated discrimination still active, alive and well," said McIvor.

Early versions of the Indian Act - the 1876 colonial-era legislation that attempts to wrangle Canada's more than 600 First Nations bands into a bureaucratic category - defined First Nations as "a male Indian, the wife of a male Indian or the child of a male Indian".

Campaigners have long challenged this definition, managing to chip away at some of the inequality.

But today - in a country with a prime minister who proclaims himself a feminist and whose government has sought to usher in feminist foreign policy around the world - the law still continues to discriminate.

Campaigners say the repercussions of that discrimination range from the denial of services and rights to a crisis in which as many as 4,000 indigenous women in Canada have gone missing or been murdered.

McIvor was not entitled to indigenous status because she had married a non-indigenous man. A 1985 change to the act eventually allowed her and her children to gain status - but prevented her from passing it to her grandchildren.

Without status, McIvor wasn't able to live on reserve land and was excluded from hunting, gathering and fishing as well as traditional marriage, funeral and healing ceremonies.

In contrast, her brother - twice married to non-indigenous women - was able to pass his status to his children and grandchildren.

"What I lost was my community, and what I lost was my ability to feel like I belonged," said McIvor.

She and her descendants also had no claims to the tax breaks, healthcare and education benefits accessed by some First Nations.



Sharon McIvor at the United Nations in Geneva. Photograph: Shelagh Day

She began what a decades-long fight for equality, using her training as a lawyer to pursue the issue in court. Her case joined a string of others that in recent years have sought to tackle the sex discrimination in the legislation.

Last year, it finally seemed that equality was imminent, after Canada's senate unanimously passed a legislative amendment. After initially balking at the idea, the federal government - led by the Canadian prime minister, Justin Trudeau - eventually approved the provisions.

But no timeline has been set for these changes, and the government now says that it must first consult with First Nations and other indigenous groups.

"There's no way that anybody in the world should be consulting with somebody on whether or not they should continue to discriminate," said McIvor.



Sharon McIvor, Jeannette Corbiere Lavel, Sandra Lovelace-Nicholas and Lynn Gehl, who led the struggle to end the discrimination. Photograph: Shelagh Day

Campaigners acknowledge that there are legitimate concerns over issues such as access to resources for the country's 1.6 million indigenous peoples, but they express concerns that the consultations are being used to further delay equality.

"What we're getting is words - nice words - but no action," said Shelagh Day of the Canadian Feminist Alliance for International Action. "How could this still be happening with a government that is committed to women's equality and that has said it's interested in a new nation-to-nation relationship?"

Previous comments from the government hint at concerns over the costs involved. A recent report from the country's parliamentary budget officer estimated that around 260,000 people would actually register if equality was granted - which could cost the government more than C\$400m a year in health and education benefits.

Several United Nations bodies have drawn a direct line between sexual discrimination in the Indian Act and Canada's crisis of missing and murdered indigenous women.

In a 2015 report, the Inter-American Commission on Human Rights cited the Indian Act as "an important factor in understanding the persistence of unequal treatment and stereotyping of indigenous women, which in turn continue to place indigenous women at an increased risk for multiple forms of violence".

The push for change comes amid a wider conversation on replacing the Indian Act with the indigenous self-government and self-determination. But as long as the act endures, it must treat men and women equally, said Day.

"When the federal government is talking about forging a new nation-to-nation relationship with indigenous peoples, it seems critical that the pool of people with whom the new relationship is being forged not be distorted by colonial-era sex discrimination."

In an email to the Guardian, the federal ministry responsible for the Indian Act said officials are working with First Nations communities and other partners to design consultations on eliminating the remaining sex-based discrimination in the act. The ministry declined to detail their timeline.

After more than two decades of litigation, McIvor's grandchildren are now entitled to status but - unlike her brother's grandchildren - will not be able to pass this to successive generations.

So her battle for equality continues.

"What I lost was a big piece of me, of who I am and how I was recognised. My people saw me as not one of them," she said.

"People say it's about getting your medical and your dental and your education. It has very little to do with that," she said. "It's the recognition that I belong to this group of people. That they recognise me as belonging - and I recognise them. That was lost."

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