



Native Women's
Association of Canada

L'Association des
femmes autochtones
du Canada



LEAF
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WOMEN'S LEGAL
EDUCATION & ACTION FUND
FONDS D'ACTION ET D'ÉDUCATION
JURIDIQUE POUR LES FEMMES

Mr. Francisco Calí Tzay

Mandate of the Special Rapporteur on the rights of indigenous peoples
OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland
hrc-sr-indigenous@un.org

June 16, 2022

To Mr. Calí Tzay:

Re: Special Procedures Submission (Report Reference 6vxqrhij): Mr. Jeremy Matson

The Native Women's Association of Canada ("NWAC") and the Women's Legal Education and Action Fund ("LEAF") jointly write this letter to express their continued support for Mr. Jeremy Matson, specifically for his Special Procedures Submission concerning access to justice for Indigenous people in Canada. We understand that you are planning a trip to examine the overall human rights situation for Indigenous people in Canada, and encourage you to consider Mr. Matson's submission as part of that visit.

NWAC represents the political voice of Indigenous women, girls, and gender diverse people in Canada, inclusive of First Nations on and off reserve, status and non-status, disenfranchised, Métis and Inuit. LEAF is a national charitable organization that advances substantive equality rights for all women, girls, trans, and non-binary people through litigation, law reform, and public legal education.

As outlined in his Special Procedures Submission, Mr. Matson has pursued justice for himself, his children, and Indigenous people in Canada in numerous fora, both domestic and international. His efforts exist alongside and build on longstanding advocacy by many Indigenous women, including Mary Two-Axe Earley, Yvonne Bédard, Jeannette Corbiere Lavell, Sandra Lovelace Nicholas, Sharon McIvor, and Dr. Lynn Gehl.

The timeline of Mr. Matson's efforts underscores the barriers Indigenous people in Canada face when seeking to access remedies for discrimination. Mr. Matson first filed a discrimination complaint in 2008, under the *Canadian Human Rights Act*, RSC, 1985, c H-6. His complaint challenged ongoing gender discrimination present within the *Indian Act*, RSC, 1985, c I-5, with particular concern regarding the "second-generation cut-off rule". This rule denies the children of First Nation parents' entitlement to status under the *Indian Act* after two consecutive



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generations of status parents have children with non-status parents. Together with the hierarchy of status established by Bill C-31 ss. 6(1) and 6(2), the “second-generation cut-off rule” disproportionately impacts Indigenous women and their descendants.

The Canadian Human Rights Tribunal dismissed Mr. Matson’s complaint, finding that it challenged legislation rather than the provision of services in a discriminatory manner. This decision was ultimately upheld by the Supreme Court of Canada in 2018.¹

While his domestic discrimination complaint was unfolding, Mr. Matson submitted Communication No. 68/2014 to the Committee on the Elimination of Discrimination against Women. NWAC and LEAF provided a letter of support for this communication in 2018, with NWAC also providing a second letter of support in 2020.

In March 2022, the Committee published its views on Communication No. 68/2014.² The Committee found that Mr. Matson had exhausted his domestic remedies, and that Canada had violated Articles 1, 2, and 3 of the *Convention on the Elimination of all Forms of Discrimination Against Women*. More specifically, it held that Canada’s legislative scheme governing entitlement to registration under the *Indian Act* discriminated against Mr. Matson and his children by “perpetuat[ing] in practice the differential treatment of descendants of previously disenfranchised [I]ndigenous women.”³ The Committee recommended that Canada provide appropriate reparation to Mr. Matson and his children, amend its legislation following an adequate process of consultation, and allocate sufficient resources for the implementation of the amendments.

The Canadian Minister of Indigenous Services has committed to amending the *Indian Act* by summer 2022.⁴ If these amendments are made, and if they successfully end gender discrimination within the *Indian Act*, it will have been over 14 years since Mr. Matson filed his initial human rights complaint. Even more egregiously, it will have been over 40 years since the

¹ See *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, [2018 SCC 31](#).

² Committee on the Elimination of Discrimination against Women, “Views adopted by the Committee under article 7(3) of the Optional Protocol, concerning communication no. 68/2014” (11 March 2022), CEDAW/C/81/D/68/2014 (“CEDAW 2022”).

³ *Ibid* at para. 18.4.

⁴ “[First Nations families and Canada agree to put litigation on hold while working to end the legacy of ‘enfranchisement’ under the Indian Act](#)” (2 March 2022).



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United Nations Human Rights Committee first recognized this discrimination in response to Sandra Lovelace Nicholas' complaint.⁵

This timeline clearly illustrates the barriers Indigenous people in Canada face when trying to access the Canadian justice system to secure a remedy for discrimination. Although Parliament repealed s. 67 of the *Canadian Human Rights Act* to allow Indigenous people to raise complaints of discrimination within the *Indian Act* through the human rights system, judicial decisions have limited the types of complaints that can be brought.⁶ The alternative is a constitutional challenge under the *Charter of Rights and Freedoms* – a process that is both costly and time-consuming. As recognized by the Committee on the Elimination of Discrimination against Women, a claim by Mr. Matson using the *Charter of Rights and Freedoms* “would have been unreasonably prolonged and unlikely to bring effective relief to [Mr. Matson] and his children.”⁷

Canada has not done enough to improve access to justice for Indigenous people. In 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls called for the creation of a National Indigenous and Human Rights Ombudsperson, and a National Indigenous and Human Rights Tribunal.⁸ Although the federal government subsequently committed to developing “a national Indigenous human rights accountability mechanism focused on Indigenous human rights that include inherent, Treaty, and Constitutional rights”,⁹ it has provided no update on any steps taken to establish any oversight mechanisms.¹⁰

As advocates for the equality of Indigenous women and girls, NWAC and LEAF have expressed and continue to express concern over the discrimination arising from the *Indian Act*, and over access to justice for Indigenous people.

⁵ Human Rights Committee, *Lovelace v. Canada*, communication No. 24/1977, views of 30 July 1981.

⁶ See e.g., *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, [2018 SCC 31](#).

⁷ CEDAW 2022, at para. 17.5.

⁸ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1B* (2019) at 178.

⁹ *2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQQIA+ People* (2021) at 29.

¹⁰ *Canada's MMIWG2S National Action Plan: Annual Scorecard* (NWAC, 2022) at 24.



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For these reasons, NWAC and LEAF reaffirm their support for Mr. Matson and endorse his recent Special Procedures Submission. Please do not hesitate to reach out if you have any questions.

Sincerely,

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