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## Liberals weighing new language to fix sexist Indian Act, says Sen. Sinclair

**Senators** say they won't budge on removing all grounds for gender discrimination through Bill S-3, as they wait to see in what form it will return. A Quebec court gave the government until late December to legislate a solution.

Samantha Wright Allen

The government is likely working on new language to address sex discrimination in the Indian Act, to bring it in line with yet another court order and a **Senate** that may be unwilling to compromise on a bill that could fail a charter test, says one of the **Senators** advocating for changes to the bill.

Independent **Senator Murray Sinclair** said he has been told the **Liberal government** is working on Bill S-3, possibly preparing to propose an **amendment** to the existing bill that would address both the concerns of the **Senate** and make it "charter compliant."

It would be a departure from the House's stance in June when it rejected outright all changes the **Senate** offered. Without those **amendments** some descendants of Indigenous women will still be without status, and the ability to access government services. Instead of correcting that historical wrong, proponents argued, the government bill didn't go far enough, only dealing with a narrow aspect of the Indian Act it was compelled to address by a court in 2015.

But being told government is "working on it" doesn't necessarily bring confidence, said Sen. Sinclair (Manitoba): that won't come until he sees a revised bill.

"This is not a new conversation," said Sen. Sinclair, who wouldn't say who had told him the government was readying the **amendment**. "This has been an ongoing back and forth for well over a year now."

The office of the government's representative in the **Senate**, unaffiliated **Senator Peter Harder**, referred questions about changes to the bill to the government. **Minister** of Crown-Indigenous Relations **Carolyn Bennett** (Toronto-St. Paul's, Ont.) did not respond to requests for comment. Independent **Senator Frances Lankin** (Ontario), who introduced the government's bill, could not be reached for comment.

[caption id="attachment\_118617" align="aligncenter" width="800"] Independent **Senator Murray Sinclair** said he's been told the government is working on a proposal addressing problems with Bill S-3 to bring back to the **Senate**. The Hill Times file photograph[/caption]

The ground has shifted slightly over the summer. Proponents of changing S-3 feel bolstered by "damning" language [in an August Quebec Court of Appeal decision](#), said **Senator Lillian Dyck** (Saskatchewan), the chair of the **Senate Committee** on **Aboriginal Peoples**. It granted the government a second extension, until Dec. 22, to draft **legislation**. It also warned that the more than two years it has taken to finalize **legislation** is "very significant," can be viewed as an "injustice" for those waiting and "is likely to undermine public confidence" in the courts.

The bill was discussed at general assemblies held over the summer by the Assembly of First Nations and Native Women's Association of **Canada**, both of which support the **Senate amendments**, adding further weight to their call on the government to act, **Liberal** Sen. Dyck said.

The bill holds symbolic importance for the **Liberal government**, she said, as the first piece of **legislation** that affects First Nations.

"It splits families up and it denies the basic citizenship rights to people that they should have, so let's do it right-this is our last chance, probably," said Sen. Dyck, who was denied status until 1985 because her mother married a non-Indigenous man. Her son, too, was denied status until 2010 after another court case forced **Canada** to shift language in the Indian Act.

But many still fall under what is known as the second generation cut-off rule.

"It's quite clear to me that the government has bungled this over the decades and they have bungled it with S-3 as well," she said, calling the bill a contradiction for **Prime Minister Justin Trudeau** (Papineau, Que.)

"Why aren't Indigenous women included in his feminist agenda?"

## Bill must come back 'as soon as possible'

The **Senators** who advocated most strongly on the issue didn't have any idea when Sen. Harder would introduce a motion on the **legislation**, or if it would come Sept. 19, the first day back in session.

Sen. Harder's office said the timing of a motion connected to Bill S-3 "has not been decided."

[caption id="attachment\_118619" align="alignright" width="213"] Independent **Senator Marilou McPhedran** introduced **amendments** to S-3 to address sex discrimination in the bill. The Hill Times file photograph[/caption]

Back in June on the last day before summer break, Independent **Senator Marilou McPhedran** (Manitoba) and others were "ready with a multi-stage strategy" to make sure the version of S-3 the House wanted didn't pass.

Sen. Sinclair speculated that was one of the reasons Sen. Harder shocked colleagues when he chose not to bring the matter to the floor.

"I think they saw there was going to be a fight."

Sen. Harder has a number of options now: he could introduce a motion to accept the bill as passed by the House, reject it, accept **amendments** in part, or introduce new language drafted by the government. And **Senators**, in turn, can respond by **amending legislation** if they think the language isn't inclusive enough.

For some **Senators** a compromise isn't a likely outcome, since Sen. McPhedran's **amendment**-dubbed "6(1)(a) all the way"-was drafted to remove all discrimination.

"It would be wrong-morally, logically, and constitutionally-to accept a compromise," said Sen. Dyck, given their **amendment** addresses "sexist provisions."

[caption id="attachment\_118621" align="aligncenter" width="800"] **Indigenous and Northern Affairs Canada** was split in an Aug. 28 **cabinet** shuffle, now headed by, from left, Crown-Indigenous Relations **Minister Carolyn Bennett** and Indigenous Services **Minister Jane Philpott**. The Hill Times file photograph[/caption]

Sen. Dyck said it should be brought forward "as soon as possible" and that she plans to speak to Sen. Harder if that doesn't happen the first day.

"We won't let it just sit, it's too important, too much pressure on it. We don't want to do what the government did and leave it to the last minute."

There is "significant support" in the Upper Chamber to do away with "gender-based discrimination," said Nunavut **Senator Dennis Patterson** by email.

"I believe that the time for half-measures is over, and that it's time to fully rectify this inequity," said the Conservative **Senator**.

Tradition typically dictates the **Senate** would defer to the **House of Commons** if the elected chamber insists on its form of **legislation**, but several of the **Senators** questioned that approach if it leads to discrimination. The role of the Red Chamber, they added, is to protect minority rights.

"I can't be a **human rights** lawyer and think this is okay," said Sen. McPhedran, whose key **amendment** stretched status rights back to 1876 whereas the government only addressed those who lost their status from 1951 on.

Should the government come forward with a compromise, Independent **Senator Daniel Christmas** (Nova Scotia) said he'll take a "wait and see" attitude before dismissing any language.

But the key is upholding gender equality, and if a new proposal doesn't meet that threshold then he, like other **Senators**, has

no problem voting it down, he said.

"The objections coming from the government are more about cost and the general operation of [**Indigenous and Northern Affairs Canada**] and those seem to me very secondary points," said Sen. Christmas. "Why are we sacrificing gender equality for those points?"

The change could grant Indian status to between 80,000 and two million people, according to an **estimate** from the government, a range Sen. Dyck has called "overinflated" and shows the government has not done its research. Pam Palmater, a Mi'kmaq lawyer and professor who helped draft Sen. McPhedran's **amendment**, estimated the number was closer to 200,000.

Sen. Sinclair said "there's a process that's available" the government might not have considered. He's recommended a constitutionally compliant bill that is enacted in stages following consultation about implementation.

For these **Senators**, at least, the summer has simply delayed a showdown.

Given the court's "clear message" and that most **Senators** remain unswayed, several expressed hope the break gave the government time to work on a better bill.

"The fact [Bill S-3] hasn't been tabled may mean there could be some changes," said Independent **Senator Kim Pate** (Ontario). "My hope would be that over the summer there has been sober second thought by those in government."

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