

BILL C-31: THE EXPERIENCES OF 'INDIAN' WOMEN
WHO 'MARRIED OUT'

by

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ABSTRACT

For more than a century before the *Indian Act* was changed in 1985, Indian women in Canada had their legal status as Indians taken away when they married men who were not status Indians. The clauses that first discriminated against the women and their children in 1869 gradually became more restrictive. This research is a report of the experiences of seven Mi'kmaq and Maliseet women who ceased to be recognized as Indians when they married non-status men. The analysis compares sections in subsequent versions of the statutes that: outline Canada's authority to define Indians, explain the Canadian government's control over defining Indians, and outline consequences for individuals no longer considered Indian. Additionally, this research looks at a number of legal challenges to the 1985 *Indian Act* amendments. I argue that the type of change that needs to occur cannot be accomplished through legal challenges or amending the *Indian Act*.

DEDICATION

This thesis is dedicated to Gloria E. Sanipass, the most important woman in my life.

There are no adequate words to express the gratitude I feel for all you have done to help me become the woman I am today, and undertake challenges such as the research that went into this thesis. Wela`lin.

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Chapter 1

INTRODUCTION

In this thesis I examine the experiences of a group of Indian¹ women who “banded” together to have the Canadian government and First Nations recognize their heritage. I find the stories of their struggles inspiring and I tell their stories here to honour these women and acknowledge their accomplishments. In the traditional way, I humbly offer this telling of their experiences as my “giveaway” to the women who shared their stories. To each of these women, I say wela’lin.

It is unlikely that a group of women from the Tobique Reserve² in New Brunswick will ever forget the summer of 1979 – the year they “marched on” Ottawa to raise public awareness of Indian women’s problems, primarily the shortage of adequate Reserve housing. The women had originally planned to walk to Ottawa from the Tobique Reserve, but as they explained in Silman (1987), it was challenging enough to walk the 100 miles from the Oka Reserve (near Montréal) in Québec to Ottawa. Status and non-status Indian women from Reserves in British Columbia, the Yukon, the Northwest Territories, Ontario, and Québec joined the Tobique women on “the walk” (Silman, 1987). While the New Brunswick Advisory Council on the Status of Women backed the women from the Tobique Reserve, other support within

¹ I use the word Indian throughout this thesis as it is defined in the *Indian Act*, rather than Aboriginal, Native or First Nations.

² I use the word Reserve throughout this thesis as it is defined in the *Indian Act*, rather than First Nation.

the province was lacking. Members of the Tobique community discouraged the women and the men ridiculed and name-called as they set out on the walk (Silman, 1987).

What led the women from the Tobique Reserve to set out on the walk? Initially, they wanted to draw attention to the lack of on-Reserve housing, but once the walk was underway the media shifted the focus to the sexual discrimination in section 12(1)(b) of the *Indian Act* after realizing that Sandra Lovelace³ was on the walk (Silman, 1987).

Section 12 listed categories of people who were not entitled to be registered as Indians. This included “a woman who married a person who is not an Indian” unless she becomes the wife or widow of a person who is entitled to be registered as a status Indian (R.S.C. 1970, c. I-6, p. 4255). Lovelace, of the Tobique Reserve, answered media questions about her case (discussed in more detail later in this thesis) that was at that time before the United Nations while other women fielded questions about the housing issue. Once the media shifted attention to the “status issue,” the walk joined a long list of events (see Appendix I) that pressured Parliament to enact Bill C-31, “An Act to Amend the *Indian Act*,” to reverse the statute’s discriminatory clauses.

In this thesis I examine some of the issues associated with Bill C-31, namely the legitimacy and relevance of the Canadian government denying then reinstating

³ Lovelace is a Maliseet woman from Tobique First Nation in New Brunswick who fought the Canadian government’s denial of her Indian status and Band membership after her 1970 marriage to a non-Indian ended in divorce. She became Senator Lovelace Nicholas in 2005 (Barrera, 2005).

Indian status (Mercredi & Turpel, 1994) among peoples of “Indian,”⁴ Aboriginal,⁵ Native or Indigenous⁶ descent.

Background: What is Bill C-31?

Bill C-31 is a statute that Parliament enacted in 1985 to reverse the discriminatory clauses of the *Indian Act*. At that point, scholars had argued that for more than a century the *Indian Act* had denied⁷ legal recognition to status Indian women when they married non-status men.⁸ Although the *Indian Act* defines a number of words and phrases, it does not define status. However, status was conferred on Indians in Canada in legislation passed in the British Parliament in 1670 and affirmed in the *Royal Proclamation of 1763* (Leslie & Maguire, 1978; Warburton, 1997). Canada’s “laws respecting Indians” (P.S.C. 1857, c. 26) use the word status to indicate that a person with Indian status is registered or is entitled to be registered as an Indian under the *Indian Act* and is eligible for the rights and entitlements granted to status Indians.

⁴ The *Indian Act* defines an “Indian” as an individual who is “registered as an Indian or is entitled to be registered as an Indian” (R. S. C. 1970, C. I-6, p. 4250).

⁵ As defined in the *Constitution Act*, 1982, Aboriginal peoples include “Indian, Inuit, and Métis peoples” (Canada, 1982, p. 5)

⁶ I use “Indigenous” rather than “indigenous” where possible to differentiate between Indigenous peoples and indigenous or things developed in specific places (Wilson, 2008, p. 15)

⁷ I use phrases other than “loss of status” when describing this experience to underscore the fact that *status was taken away* from these women and getting it back involved a lengthy struggle in various arenas.

⁸ See Bayefsky, 1982; Bear, 1991; Bear Nicholas, 1994; Daniels, n.d.; Department of Indian Affairs and Northern Development, 1982; Douglas, 1985; Dunkley, 1992; Furi & Wherrett, 1996/2003, Gehl, 2000, Green, 1985; Isaac, 2004; Jacobs, 2005; Jamieson, 1978; Jones, 1984; Joseph, 1991; Kirby, 1985; McIvor, 1994; Moss, 1990, 1997; Mothers of Red Nations Women’s Council of Manitoba, 2006; Napoleon, 2001; Native Women’s Association of Canada, 1986, 1988, 1991, 2005; Paul, 1990; Royal Commission on Aboriginal Peoples, 1996b; Robson, 1991; Sprague, 1995; Turner, 1991a, 1991b, 1991c, 1991d; Turpel, 1994, Verburg, 1995; and Weaver, 1993.

The clauses that discriminated against status Indian women and their children when the women married non-status men first appeared in the 1869 Enfranchisement Act (S.C. 1869, c. 6). The Enfranchisement Act defined an Indian woman's status after marriage and that of her child if she married a non-status man. The Canadian government would not consider the woman, and any child of the marriage, Indian under the Enfranchisement Act. Additionally, a woman who married a status Indian from another tribe or Band became a member of the "tribe, band or body" where her husband was a member as did any child of the marriage (S.C. 1869, c. 6, p. 23).

These clauses remained in effect until Parliament amended the *Indian Act* in 1985. Joseph (1991) cites the goals that David Crombie, then Minister of Indian and Northern Affairs, outlined for the statute when Parliament implemented Bill C-31:

- (1) The removal of sexual discrimination from the Indian Act;
- (2) The restoration of Indian status and band membership rights to eligible individuals; and
- (3) The recognition of band control over membership. (p. 65)

The aim of this legislation was to reverse the discriminatory clauses found in section 12(1)(b) of the *Indian Act* that had denied legal status as Indians to women who married non-status men (Royal Commission on Aboriginal Peoples, 1996b).

Moreover, now Bands could assume control over Band membership. Did the revised *Indian Act* achieve the goals outlined for the statute when it became law? It would seem that the statute was a victory for both Indian women and Indian Bands; but was it? Did it make a difference for Indian women and Indian Bands, and what kind of difference?

Problem Statement

In the nearly 25 years since Bill C-31 became law, numerous Aboriginal peoples, leaders, and organizations have asserted in academic and popular literature that the legislation not only *failed* to achieve what it was reportedly designed to do but it has actually *created* problems.⁹ The numerous legal challenges by Indian women and their descendants involving *Indian Act* clauses regarding status and membership since April 1985 appear to sustain the perspectives of critics.

This thesis is a study of the history and social process of how the Canadian government and status Indians define a major point of contention: Indian status and Band membership. Specifically, I show how Canada has historically – since the time of the “fur trade” – “exploited Indian women both politically and sexually in the conquest of Indian society” (Bourgeault, 1983, pp. 55-56).

Design and Method

This study draws on the experiences of Mi’kmaq and Maliseet women to whom the Registrar restored Indian status under the terms of Bill C-31 to conduct a political-economy analysis of the impact of Indian policy on women. I interviewed seven status Indian women in New Brunswick – three Maliseet and four Mi’kmaq women – between May 2005 and June 2006. Since some of the women I invited to participate in this research had already revealed their names publicly in Silman’s (1987) *Enough is enough: Aboriginal women speak out*, I offered each woman I spoke with the option of disclosing her name or remaining anonymous.

⁹ See Assembly of First Nations, 2005; Blaney, 1998; Canada NewsWire, 2005; Québec Native Women’s Association, 2000; Holmes, 1987; 2005; Mothers of Red Nations Women’s Council of Manitoba, 2006; and Native Women’s Association of Canada, 2005.

I draw on a political-economy approach in this thesis because it enables me to examine the “*historical development of power relationships*” in the *Indian Act* and the statutes that preceded it (Marchak, 1985, p. 673). Examining the stories of women who have their status reinstated under Bill C-31 provides their perspectives on *Indian Act* status and membership clauses before and since 1985. Questions for women who participated in this research (see Appendix II) include how and when they learned they were no longer considered Indian, why it was important for them to once again be recognized as Indian, and how the reinstatement process has worked for them. It is important to examine their narratives because there are very few status Indian women’s narratives available in the literature.

I also use a political-economy analysis of the *Indian Act* and earlier “Indian legislation” to argue that the 1985 amendments to the *Indian Act* were not a victory for Indians or Indian Bands. I illustrate that the revised *Indian Act* did not achieve the goals outlined for the statute when it became law. I use these documents and study legal challenges to Bill C-31 to look at historical gender discrimination in the policy. By conducting an analysis on more than one level, I am able to compare and contrast the *Indian Act* clauses with the experiences of Indian peoples under those conditions.

I collected the data during one or two open-ended, in-depth interviews that lasted from one to two hours. I asked each woman the questions provided in Appendix II. The interview permitted each woman to talk freely about her experiences. Much of the interview depended on how the woman answered questions since I sometimes had to rephrase a question or ask the woman to elaborate on an answer. I tape-recorded some of the interviews with the woman’s permission while

taking notes as a back-up source for data. Taking notes was the only means of collecting information during interviews women did not wish to have tape-recorded. My interviews with the seven Mi'kmaq and Maliseet women took place in a variety of settings that included the women's homes, one woman's nephew's home, my parents' home, and one woman's sibling's home.

I easily located four Mi'kmaq women in one community to participate in the research. But contacting the Maliseet women to participate in the research was a challenge so I used various methods to locate the women. The first Maliseet intermediary I contacted provided names and phone numbers for two community members, neither of whom had their Indian status reinstated under Bill C-31. A second intermediary tried unsuccessfully for several months to line up an interview with at least one Bill C-31 woman. Meanwhile, I contacted the community members the first intermediary recommended with mixed results. An activist invited me to visit her to make personal contact with reinstated women. Two women agreed to interviews.

I spent several months trying to locate additional research participants in this community. I tried to locate more reinstated women through several status Indian women I knew. Although these contacts did not locate any Maliseet women to participate in the research, I was invited to speak about the research during a session on Aboriginal women's concerns at another New Brunswick Reserve. During this session, I met a member of another Maliseet community who put me in touch with the second and third Maliseet women to participate in the research. I am not sure why reinstated women were reluctant to participate in the research but Holmes (1987)

surmised that women to whom the Registrar has restored status under Bill C-31 do not want to attract further attention in light of the criticism they have already endured.

Significance of Study

It was challenging to locate publications that address issues associated with Bill C-31 since a search of the University of New Brunswick Libraries Quest Catalogue for materials on Bill C-31 returned very few titles. Titles currently available from the University of New Brunswick Libraries include the published version of Daniels's undated paper, *Bill C-31: The Abocide bill*, multiple listings for a recent report on alternatives to Bill C-31 (Fiske & George, 2006), the published version of Lawrence's 1999 dissertation, Paul's 1990 thesis, an annotated bibliography regarding Bill C-31 and related issues (Minister of Indian Affairs and Northern Development, 2005), and Holmes' 1987 background paper on Bill C-31. There is also a multi-module 1990 Department of Indian and Northern Development report, *Impacts of the 1985 amendments to the Indian Act, Bill C-31: Information about government programs and statistics* (Department of Indian Affairs and Northern Development, 1990), and Indian and Northern Affairs Canada's 1990 *Correcting historic wrongs? Report of the national Aboriginal inquiry on the impacts of Bill C-31* (Minister of Indian Affairs and Northern Development, 1990).

Although these materials provide valuable insights regarding Bill C-31 issues, they do not address New Brunswick Indians' experiences under the *Indian Act* before and since Bill C-31. Additionally, the literature overlooks many of the post-1985 legal challenges involving Aboriginal peoples that pertain to *Indian Act* status and

Band membership. Furthermore, these stories do not include the experiences of Indian women. Therefore, by drawing on the experiences of women with reinstated Indian status this thesis fills a gap in the literature.

Outline of Thesis

Chapter Two provides a review of relevant literature on Indian status and Band membership. I begin the chapter by defining “Band membership” and “Indian status” and I explain some of the entitlements that go with these designations. To locate this study in the political process of colonization, I describe how Indian status – and specifically Indian women’s status – has changed over time. Then, to clarify the contentious nature of Indian status and Band membership I outline actions that have transformed status and Band membership. Further I describe some of the limitations of Band control over membership, and draw some examples from Bill C-31 case law to illustrate conflicts over Band membership and its entitlements.

Chapter Three outlines the theoretical approach. The chapter opens with a brief background of the political-economy methods, recaps some concerns that scholars raise about using this approach to study Aboriginal peoples, and outlines some of the reasons that I chose political-economy to conduct the current research. The chapter then explores two theoretical perspectives found in the literature regarding issues related to Bill C-31: feminist analysis and “identity loss.”

Chapter Four provides a political-economy analysis of pertinent sections of various amendments to the *Indian Act*. The analysis compares similar sections in subsequent versions of the statutes that: outline Canada’s authority to define

individuals deemed to be Indian, explain the Canadian government's control over defining individuals as Indian, and outline consequences for individuals who are no longer considered Indian. The chapter draws upon legal challenges that status and non-status Indians have brought before courts and human rights bodies since Bill C-31 was enacted to explain some of the issues raised in this body of case law.

Chapter Five looks at the stories of Indian women to whom the Registrar of Indian Affairs and Northern Development has reinstated status since the 1985 amendments to the *Indian Act*. I outline some of the themes that emerged from the women's experiences that they shared with me. This chapter examines the perspectives of women whose lives have been and continue to be shaped by the *Indian Act*. I have used some of the women's own words to identify the themes among the women's responses. These themes reflect issues such as the way the *Indian Act* has discriminated and continues to discriminate against status Indian women by denying them the right to transmit Indian status to their grandchildren, and how they still cannot obtain membership entitlements after having their status reinstated.

The final chapter returns to the questions that I raised earlier in this chapter: Did the revised *Indian Act* achieve the goals outlined for the statute when it became law? It would seem that the statute was a victory for both Indian women and Indian Bands; but was it? Did it make a difference for Indian women and Indian Bands, and what kind of difference? Additionally, I review some of the conclusions reached in the analysis of Canada's Indian legislation and legal challenges to the provisions of the 1985 amendments to the *Indian Act*.

Personal Statement

I am a Maliseet-Passamaquoddy woman who is a status Indian and a member of a Mi'kmaq community. I undertook this research to increase my understanding of the struggles of the peoples in the communities from which I was excluded during my childhood and early adult years. Although I now unreservedly embrace the heritage of my ancestors, I am more than a little chagrined to admit that this was not always the case. However, my experiences and my perspective are distinctly different from those of other status Indian women. My employment and educational experiences plus spending my childhood in a small town in Maine have helped shape my worldview. Therefore, I ask that readers not consider the viewpoints in this thesis representative of other status Indians in general and status Indian women in particular.

Chapter 2

LITERATURE REVIEW

This chapter discusses some of the issues regarding Indian status and Band membership in the academic and popular literature about Bill C-31, “an Act to Amend the *Indian Act*.” I include literature that predates the 1985 *Indian Act* amendments because of the historical development of issues related to the Act but – because of time constraints – I include very little post-2005 material. Although materials are still being added to this body of literature on a regular basis, this cut-off date seems appropriate because 2005 was the 20th anniversary of Bill C-31.

“Band membership” and “Indian status” are two concepts that help determine what it means to be Indian and provide access to the entitlements that accompany these designations. The literature shows how Indian status – and specifically Indian women’s status – has changed over time. It also explores actions by “political and social actors” (Clement & Williams, 1989, p. 11) who have transformed status and Band membership, and describes some of the limitations of Band control over membership. The Bill C-31 case law illustrates some conflicts over Band membership and its entitlements.

Defining Band Membership and Indian Status

The *Indian Act* defines a “member of a band” as one whose name “appears on a Band List” or “is entitled to have his name appear on a Band List” (R.S., 1985, c. I-5, p. 2). The 1985 Act outlines “privileges” associated with Band membership which include consenting to the “band’s control of its own membership” (p. 8), surrendering Reserve lands, and electing the chief and Band council. Band members are also eligible to receive *per capita* payments, use or possess Reserve lands, request on-Reserve housing, dwell on the Reserve with their children, and enrol their children in Band schools (R.S., 1985, c. I-5).

Although the *Indian Act* does not define status, Boldt (1993) explains that the Canadian government uses “status” to describe the legal position of those individuals the government recognizes as Indian. The *Royal Proclamation of 1763* “recognized [Indian] peoplehood through special status” (cited in Boldt, 1993, p. 50). The Canadian government further acknowledged status in statutes such as the *British North America Act*, 1871 and the *Constitution Act*, 1982. Having status in a contemporary context determines eligibility to apply for programs that the Department of Indian Affairs and Northern Development and other agencies administer (Department of Indian Affairs and Northern Development, 1999). Some status Indians live on the Reserve while others live off-Reserve; other status Indians live on the Reserve but are not Band members while some Band members are non-status individuals (Imai et al., 1999).

Before the enactment of Bill C-31 in 1985, the Canadian government – specifically the Registrar, Indian and Northern Affairs Canada – determined both Indian status and Band membership. Specifically, the *Indian Act* stated:

5. An Indian Register shall be maintained in the Department [of Indian Affairs and Northern Development], which shall consist of Band Lists and General Lists and in which shall be recorded the name of every person who is entitled to be registered as an Indian [;]
6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the Band List for that band, and the name of every person who is not a member of a band and is entitled to be registered shall be entered in a General List [; and]
7. (1) The Registrar may at any time add to or delete from a Band List or a General List the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List. (R.S.C. 1970, c. I-6, pp. 4252)

Holmes (1987) explains that after 1985 the Registrar continued to determine who is eligible for Indian status while Bands gained “the right to control their own membership” or they could choose to “leave control over their membership with Indian and Northern Affairs Canada” (p. 12). Although the 1985 Act delegated some Bands the right to control their membership, the Department did not approve every Band’s request to control membership.¹⁰ In particular, the 1985 *Indian Act* states:

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.
[...]
8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.
9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.
10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of

¹⁰ For example, see *Buffalo v. Canada (Minister of Indian Affairs and Northern Development)* [2002] 1 C.N.L.R. 1 (F.C.T.D.) or *Ward, Percy Richard v. Samson Cree Nation No. 44*, 1997 CanLII 4954 (F.C.).

its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership. (R.S.C. 1970, c. I-5, pp. 4-5)

Furi and Wherrett (1996/2003) argue that although the Canadian government now shares the responsibility for determining Band membership, there is conflict “over the definition of Indian status, the authority to determine Band membership, and access to rights tied to status and membership” (p. 1). I examine the historical development of Indian status in the next section to help clarify the source of this dissension.

Conferring Indian Status

The British Parliament conferred protected status upon Indians in Canada in legislation passed in 1670 and affirmed the status in proclamations in 1761, 1762 and 1763 (Leslie & Maguire, 1978, p. 4). In the *Royal Proclamation of 1763*, King George III declared:

And whereas it is just and reasonable, and essential to our Interests, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds. (cited in Boldt, 1993, p. 271)

Warburton (1997) asserts the *Royal Proclamation of 1763* is the “most important status-granting measure during the colonial period” (p. 122). Nicholas (cited in Leavitt, 1995, p. 216) explains the Proclamation's significance: “The Royal Proclamation of 1763 only confirmed the existence of aboriginal rights, or aboriginal title. It was always there.”

Milloy (1983) asserts that before the period during which the British government assumed responsibility for Indian affairs – from 1763 until 1860 (when

the Canadian government acquired that responsibility) – “Indian tribes [...] had exclusive control over their population, land, and finances” (p. 57). However, as Milloy argues, Indian control over Indian affairs “was not destined to survive the subsequent phase of imperial organization in Canada – Confederation” (p. 57). Further, Indian control over their affairs was “abolished for the sake of the department’s developmental strategy, and thus tribal nations entered a wholly new relationship with white authority in Canada” (p.63).

The British Parliament defined Indians in the 1850 Act to Protect Indians in Upper Canada (P.S.C. 1850, c. 74) and in similar legislation enacted in Lower Canada (P.S.C. 1850, c. 42). The Act defined who was considered Indian and, therefore, entitled to use Indian lands and property. The Lower Canada Act was revised one year later (P.S.C. 1851, c. 59) to remove the section that defined as Indians “*All persons* intermarried with any such Indians” (P.S.C. 1850, c. 42, p. 1248).

Changing Women’s Status upon Marriage

The 1851 Act implemented a policy of gender inequality by revising the definition of Indian from all persons married to Indians to all women married to status Indian men. Jamieson (1978) argues that Parliament retained this definition “virtually unchanged” (p. 29) in 1868 (S.C. 1868, c.42) and redefined Indian women’s status after marriage and that of their children in the Enfranchisement Act of 1869; they would no longer be considered Indian. At that time, Indian peoples objected but in the 1876 *Indian Act* the Canadian government “consolidated the policy of assimilation and extended the administrative powers available to federal officials for

its enforcement” (Dyck, 1991, p. 53). According to Tobias (1976), the intended beneficiaries of the 1876 Act rejected it” because “they did not wish to be governed and managed by the Government of Canada” (p. 19). Tobias argues that the Canadian government, however, was unconcerned about opposition to the policy and interpreted it as demonstrating that Indians needed “more direction and guidance” (p. 19). As this chapter will soon show, subsequent amendments increased the Superintendent General’s authority over Indians. The Secretary of State assumed control of Indian lands and property when he became “Superintendent General of Indian Affairs” in 1868 (S.C. 1868, c.42, p. 91).

In the 1876 *Indian Act* Parliament redefined Indians, “emphasizing descent in the male line and the importance of legitimacy” (Jamieson, 1978, p. 43). In keeping with the earlier Act, women could continue receiving “annuities, interest moneys and rents from their former bands; but this income could be commuted¹¹ to her at ten years’ purchase with the consent of the band” (S.C. 1876, c. 18, p. 44). As in the Enfranchisement Act of 1869, Indian women who married status Indians from other Bands or non-treaty Indians had become members of their husbands’ Band. All of these clauses increased women’s dependence on their husbands. Furthering Indian women’s dependent status on her husband had the effect of institutionalizing patriarchal relations among women and men. The 1920 *Indian Act* removed the requirement for Band consent to stop women’s payments (S.C. 1920, c. 50). While the *Indian Act* of 1951 granted Indian women the right to vote in Band elections, it

¹¹ Payments that were commuted would be cut off after one final payment that equalled ten times the average annual payment.

changed the enfranchisement and membership sections (S.C. 1951, c. 29). These clauses are discussed in more detail later in this thesis.

As mentioned earlier, Band membership in Canada became a mostly formal process in the 19th century when the earliest *Indian Act* became law. It became even more prescribed in the middle of the 20th century. The 1951 *Indian Act* conditions for recognizing “illegitimate children” (children born outside a legally recognized marriage, See Appendices V and VI), and rules for transferring women’s Band membership.¹² Another major change in the 1951 *Indian Act* was commonly called the “double[-]mother rule” (Furi & Wherrett, 1996/2003, p. 3). This section prevented the registration of persons after the age of twenty-one “whose mother and whose father’s mother” were not entitled to be registered (S.C. 1951, c. 29, p. 136). Jamieson (1978) points out that one thing which temporarily lessened the effects of these clauses for Indian women who married non-status men was obtaining “Red Ticket” identity cards. However, under the 1951 Act “On the report of the Minister [of Indian Affairs and Northern Development] that an Indian woman married a person who is not an Indian” the Governor in Council could declare that the woman was “enfranchised as of the date of her marriage” (S.C. 1951, c. 29, p. 167). According to Jamieson (1978) many women who married before 1951 chose to keep their Red Ticket status rather than have it commuted, but a 1956 amendment to the *Indian Act* eliminated that option (S.C. 1956, c. 40, section 6(2)).

This discussion has illustrated how the *Indian Act* discriminated against status Indian women. In the next section, I focus on the *actions* of Indian women who

¹² Section 14 stated, “A woman who is a member of a band ceases to be a member of that band if she marries a member of another band. she thereupon becomes a member of the band of which her husband is a member” (R. S. C. 1970, C. I-6, p. 4256).

challenged the Registrar's decision to revoke their status. It seems imperative to tell these women's stories since they have not only been:

historically 'victimized' but they [have been] subject to psychological pressure from both government and Indian leaders to keep silent and to accept their position as 'martyrs for a cause', in fact apotheosizing their own oppression until the whole Indian Act is revised. (Jamieson, 1978, p. 3)

Not doing so perpetuates the women's oppression because of the "powerful blanket of silence" that was "imposed on discussion of the status of Indian women" (p. 3). It was "taboo and unwise" to raise the subject because of a "gentlemen's agreement" between the Canadian government and the National Indian Brotherhood.¹³ As the next section shows, a few did not remain silent.

Shifting Definitions of Indian Status

Four Indian women who had their status taken away after they married non-status men – Mary Two-Axe Earley, Jeanette Lavell, Yvonne Bedard, and Sandra Lovelace – pressured Parliament to enact what became Bill C-31 in 1985 in order to address the discrimination in the *Indian Act* and restore status to those individuals who had it revoked. Mary Two-Axe was the first of the women to draw attention to the women's inequitable treatment.

Mary Two-Axe was born on the Mohawk Reserve at Caughnawaga¹⁴ on Montréal's south shore. The Canadian government revoked her Indian status in the 1930s after she married a non-status man. Two-Axe Earley "could not live on the reserve where she was born, own land there, participate in the band's political life,

¹³ The National Indian Brotherhood became the Assembly of First Nations in 1982 (Frideres & Gadacz, 2001).

¹⁴ Caughnawaga is now known as Kahnawake.

vote in its elections, or be buried on the reserve” (Brown, 2003, p. 2). After one of Two-Axe Earley’s friends – who had her status taken away – died in her arms in 1966, Two-Axe Earley began to work for equal rights for Indian women. As part of her campaign, she “wrote many letters, made many passionate speeches and presented submissions to government task forces and ministers” (p. 2). In 1967, Two-Axe Earley founded the provincial organization, Equal Rights for Indian Women.¹⁵ At the urging of one of the recipients of her letters, Senator Thérèse Casgrain, she submitted a brief to the Royal Commission on the Status of Women in Canada, established in 1967. She submitted the brief in spite of pressure “from her home band at Kahnawake not to appear before the Royal Commission” (Wallace, 2006, p. 1). After her husband died in 1969, she moved back to a house on the Reserve that she had inherited from her grandmother. Band leaders made it obvious that she was not welcome on the Reserve, but she kept living in the house by giving it to her daughter who had regained status by marrying a status Indian. She continued to lobby for Indian women’s rights; a fact which has been recognized with awards such as Persons Award, the Order of Quebec, and a National Aboriginal Achievement Award. Two-Axe Earley became the first person in Canada to regain her Indian status on July 5, 1985 (Brown, 2003).

Jeannette Vivian Corbiere Lavell was the second woman to challenge section 12(1)(b) of the *Indian Act*. Lavell was a registered Indian and a member of the Wikwemikong Band in Ontario. Shortly after marrying a non-status man she received a letter from the Department of Indian Affairs advising her that she was no

¹⁵ It later became the national organization Indian Rights for Indian Women.

longer considered an Indian (Blair, 2005). Blair (2005) describes the consequences for Lavell:

This loss of status meant that her children were also deemed to be white, removing their rights to live on the reserve, to inherit family property on the reserve, to receive treaty benefits or to participate in band or social or political affairs on the reserve. As the wife of a white man, Mrs. Lavell even lost the right to be buried with her ancestors. (p. 5)

After her marriage broke up, Lavell challenged section 12(1)(b) of the *Indian Act* in court under the *Canadian Bill of Rights* because it discriminated against her based on sex. The Ontario County Court ruled that the *Indian Act* did not discriminate against her in *Re Lavell and Attorney-General of Canada* [1971]. As in other similar cases, the Court did not consider Lavell's family ties to her community, her identity as an Indian, or her treaty rights (Blair, 2005). However, the Federal Court of Appeal disagreed and declared that the *Indian Act* violated the rights of Indian women to equality before the law (Jamieson, 1978).

Two months after the Federal Court of Appeal released its decision in October 1971, another woman – Yvonne Bedard – challenged section 12(1)(b). Bedard was born on the Six Nations Indian Reserve in Ontario and later married a non-status man with whom she had two children. When she separated from her husband after six years, she returned to the Reserve with the children where she lived in a house bequeathed to her in her mother's will (Blair, 2005). After she had been living in the house several months, the Band told her she must dispose of the property and leave the Reserve. So Bedard turned the house over to her brother, but the council again ordered her to leave. Therefore, she went to the Ontario High Court in an effort to remain on the Reserve (*Bedard v. Isaac* [1971]). The Court found that the Registrar

had discriminated against Bedard based on sex when he removed her name from the Indian Register. The victory was short-lived.

In 1973 the Supreme Court of Canada heard the joint appeal of Lavell and Bedard's cases in *Attorney-General of Canada v. Lavell; Isaac v. Bedard* (1973). Indian organizations such as the Native Council of Canada¹⁶ and the National Indian Brotherhood¹⁷ disagreed about the desired outcome (Bayefsky, 1982). After the Supreme Court overturned the earlier decisions, "going to the international level represented the only recourse for Native women at that time" (Bazilli, 2000, p. 67). Consequently, with the support of the Tobique Women's Group, Sandra Lovelace – another Indian woman who had her status taken away – filed a complaint with the United Nations Committee on Human Rights December 29, 1977 under the *Optional Protocol to the International Covenant on Civil and Political Rights* (United Nations, 1966). Lovelace, a Maliseet woman from Tobique First Nation in New Brunswick, fought the denial of her Indian status and Band membership after her 1970 marriage to a non-status man ended since after her divorce "she was forbidden to live again on her reserve" (Bazilli, 2000, p. 67). In July 1981, The United Nations Human Rights Committee decided Lovelace was still being denied "access to her native culture and language in community with other members of her group" which contravened Article 27 of the Covenant (Bayefsky, 1982, p. 251). The Committee determined that banning Lovelace from the Reserve was not "reasonable, or necessary to preserve the identity of the tribe" (*Lovelace v. Canada* (1983), p. 313). Prime Minister Paul

¹⁶ The Native Council of Canada, the national organization for Métis and non-status Indians, supported Lavell and Bedard (Bayefsky, 1982).

¹⁷ The National Indian Brotherhood, the federal organization for status Indians, opposed Lavell and Bedard, "fearing that a decision in favour of Lavell and Bedard threatened the continued retention of the Indian Act" (Bayefsky, 1982, p. 260).

Martin appointed Lovelace Nicholas, “considered a seminal figure in aboriginal women’s history” (Clark, 2005), to the Senate in 2005. In spite of the apparently favourable outcome for Indian women, the Canadian government did not respond immediately to the United Nations Human Rights Committee’s decision (Bayefsky, 1982).

Bill C-31: Shifting the Definition of Band Membership

It was not until 1985 that Parliament amended the *Indian Act*, rescinding the discriminatory provisions, restoring status and membership rights, and increasing Band control over their affairs (Furi & Wherrett, 1996/2003). Not only did Parliament revise the 1985 statute to allow Bands to assume control of their own membership, but also it increased Band By-law powers (p. 6). Now Bands can regulate “which band members and other individuals” live on the Reserve, “provision of benefits to non-member spouses and children of band members” who live on the Reserve, and “protection of dependent children’s right to reside with their parents or guardians” on the Reserve (p. 6).

Prior to Bill C-31, deleting an individual’s name from the Register and terminating Indian status under section 110 was known as “enfranchisement.” The Act stated:

A person with respect to whom an order for enfranchisement is made under this Act shall, from the date thereof, or from the date of enfranchisement provided for therein, be deemed not to be an Indian within the meaning of this Act or any other statute or law. (R.S.C. 1970, c. I-6, p. 4297)

Similarly, male children whose mother later married a non-status man kept their status and were able to transmit it to their wives. However, some were involuntarily enfranchised with their mothers under section 109(2). The Act stated:

On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as the date of her marriage and, on the recommendation of the Minister may by order declare that all or any of her children are enfranchised as of the date of the marriage or such other date as the order as the order may specify. (R.S.C. 1970, c. 1-6, p. 4297)

Not only could status Indian men transmit status to the non-status women they married under section 11(1)(f) but also status Indian men could have their wives and children enfranchised along with them when they chose to enfranchise under section 109(1)(c).¹⁸ However, to bring the *Indian Act* in line with the *Constitution Act, 1982* and the *Canadian Charter of Rights and Freedoms*, Bill C-31 removed the enfranchisement sections from the *Indian Act*.

The Royal Commission on Aboriginal Peoples (Royal Commission on Aboriginal Peoples, 1996b) describes some of the changes under Bill C-31. The Royal Commission on Aboriginal Peoples states that Parliament revised the statute so that individuals with at least one Indian parent became eligible for status, those who had had their status taken away could have it restored; and to abolish the *Indian Act* concept of enfranchisement. Additional changes included making first-generation children of reinstated women eligible for first-time status, and dividing the authority for determining Indian status and Band membership between the Registrar in Ottawa and Indians (p. 34). According to the Royal Commission on Aboriginal Peoples, Bill

¹⁸ Becoming enfranchised “shall confer upon such Indian the same legal rights and privileges, and make such Indian subject to such disabilities and liabilities as affect Her Majesty’s other subjects” (S. C. 1876, c. 18. p. 71).

C-31 created two primary categories of Indian status under subsections 6(1) and 6(2): women who were deprived of status after marrying non-Indians received status under subsection 6(1) as did individuals who had status prior to April 17, 1985, including Indian men and their wives who acquired status upon marriage; individuals with one parent eligible for status under subsection 6(1) receive status under subsection 6(2). This distinction is important since the women's descendants who obtain status under section 6(2) are subject to the "second generation cut-off" one generation earlier than those of men who married non-status women before 1985. The reason for this, suggests Furi and Wherrett (1996/2003) is that status is terminated "after two successive generations of intermarriage between Indians and non-Indians" (p. 6). Fiske (1995) argues the second generation cut-off affects the women's descendants earlier than the men's descendants because the men not only kept their status but also could transmit it to their non-Indian wives while children of reinstated women who receive status under section 6(2) can only transmit it to their children if the other parent has status. Weaver (1993) argues that the second-generation cut-off creates a situation where, if all else is the same, "the sister's descendants have fewer Indian rights than have those of her brother" (p. 117). Not only does the second-generation cut-off – like the earlier "double-mother clause"¹⁹ – have the potential for decreasing the number of status Indians, it also took effect immediately since many of the reinstated women's second-generation children or grandchildren were adults (Weaver, 1993).

¹⁹ Section 12 (a) (iv) denied registration to those "whose mother and whose father's mother are not described in paragraph 11 (1) (a), (b) or (d) or entitled to be registered by virtue of paragraph 11 (1) (e)" (R. S. C. 1970, c. I-6, p. 4255).

Status Only, Status with Band Membership, Band Membership without Status

Some scholars point out that section 10 of the 1985 Act provides the first measure of authority that Parliament has delegated to Bands since assuming control over Indian status more than a century ago. However, scholars still condemn the inherent paternalism of these gestures. Daniels (n.d.), and Mercredi and Turpel (1994) dispute the Canadian government's authority to define Indian status. Daniels (n.d.) argues that Canada does not define other segments of the population in the same manner. Mercredi and Turpel condemn the presence of the Registrar in Ottawa who decides "who's in and who's out" (1994, p. 89). The 1951 *Indian Act* appointed a "Registrar" to record in the "Indian Register" the "name of every person who is entitled to be registered as an Indian" (S.C. 1951, c. 29, p. 133). According to the Act, the Registrar was empowered to "at any time add to or delete from a Band List or a General List the name of any person who [...] is entitled or not entitled [...] to have his name included in that List" (S.C. 1951, c. 29, p. 133). Furthermore, even after Bill C-31 became law the Registrar continued to "maintain control over who is registered as an Indian and the rights that flow from registration" (Furi & Wherrett, 1996/2003, p. 4).

Participants in a New Brunswick Women's Network workshop²⁰ were among the critics of this section. They pointed out that under Bill C-31, second-generation descendants born *after* the changes *will* be eligible for status while second-generation descendants who were born *before* the changes *will not* be eligible for status (Anonymous, 1985). Among the effects, siblings or cousins with the same number of

²⁰ Participants in the August 24, 1985 workshop included Alma Brooks, New Brunswick Native Women's Council; Viola Vandijk, Advisory Council on the Status of Women; and Marjorie Gould, education coordinator at Big Cove Reserve, New Brunswick.

Indian ancestors could have *status only*, *status and Band membership*, or *Band and membership no status* (Holmes, 1987). Moreover, Bill C-31 still denies an Indian woman the right to transmit Indian status to her grandchildren through what Moss (1990) calls the “legacy of ‘12(1)(b)’ status” (p. 281). What this means is that not all status Indian women are able to transmit status to their descendants, a privilege that is not available equally to Indian women and men.

Bill C-31 requires that children have at least two grandparents with Indian status to be eligible for status. Imai, Logan, and Stein (1999) argue that the status Indian population will decline due to “a high rate of inter-marriage” (p. 157). Scholars suggest that the high rate of mixed marriages is not the only reason that some Indian populations will dwindle within “50 years or two generations” (Green, 1999, p. 7). Maureen Chapman, former Chair of the Assembly of First Nations (AFN) Women’s Council, predicts that by 2010 “nearly one in five First Nations children will no longer be eligible for status under the terms of the Indian Act” (Canada NewsWire, 2005, p. 1). She argues that under Bill C-31 the Canadian government is “legislat[ing] the extinguishment of [First Nations] citizens.” Paul (1999) argues that another effect of subsection 6(2) is the emergence of a group of “Ghost People” (p. 5) among descendants of individuals reinstated under Bill C-31. Paul says that, since they live on a Reserve, these individuals are neither counted as status Indians nor are they are counted with the rest of the Canadian population (Tobique Bill C-31 report, cited in Paul, 1999). Paul also points out that, contrary to the Minister’s pledge that “no band would be worse off because of Bill C-31” Bands are “forced by default to carry the extra load without government assistance” since

these individuals cannot “collect social assistance from either Native or non-Native governments” (p. 5).

The 1991 Report of the Aboriginal Justice Inquiry urged the Canadian government to remedy the effects of subsection 6(2) by further amending the *Indian Act* to eliminate the discrimination (cited in Québec Native Women’s Association, 2000, p. 5). Organizations such as the Nova Scotia Native Women’s Association (Nova Scotia Native Women’s Association, 1986) and Québec Native Women’s Association (Québec Native Women’s Association, 2000) were also critical of these discriminatory sections of the *Indian Act*. A year after Bill C-31 became law, the Nova Scotia Native Women’s Association said:

We, the Nova Scotia Native Women’s Association, oppose the total implementation of Bill C-31. The Bill continues to discriminate against Indian people. The Bill determines who shall and who shall not be entitled to Indian status. The new amendment to the Indian Act increased the paternalistic attitude of the Federal government toward Indian peoples. (Nova Scotia Native Women’s Association, 1986, p. 32)

The Québec Native Women’s Association called for the Canadian government to further amend the *Indian Act*:

Our rights and the rights of many of our children are being violated. We expect the Government of Canada to take the initiative to amend the *Indian Act* so as to eliminate all discriminatory provisions and to put an end to discriminatory policies within the Department of Indian Affairs. We also expect the Government of Canada to live up to its constitutional obligations to ensure that powers exercised by Band councils are exercised in a manner compatible with the Canadian Charter of Rights and the international human rights covenants²¹ to which Canada is a party. (Québec Native Women’s Association, 2000, p. 15)

²¹ International covenants and declarations include instruments such as the *Universal declaration of human rights* (United Nations, 1948b), *International covenant of civil and political rights* (United Nations, 1966a), and *International covenant on the elimination of all forms of discrimination* (United Nations, 1965).

The Québec Native Women's Association urged the Canadian government to act before being compelled to do so by a Court decision that declares the registration scheme in the Act invalid.

Membership Codes, Membership Rules, Citizenship Acts, Citizenship Rules

I will now examine Band membership because this type of recognition is central to obtaining the majority of the entitlements that accompany Indian status. Parliament revised Band membership procedures in section 10 of the 1985 *Indian Act* which permitted Bands to assume "limited" control of membership policies and practices (Raven & Gilbert, 1996, p. 130).

Raven and Gilbert (1996) maintain that Indian communities that call themselves Bands, Indian Bands, First Nations, Indian nations, or tribes, have used this section of the Act to establish their own membership codes, membership rules, citizenship acts, and citizenship rules. Although the names of the documents vary from one Reserve to another, each of these documents is designed to explain how a Band will control membership under section 10 of the *Indian Act*. However, scholars such Mercredi and Turpel (1994) argue that this type of control over membership is not acceptable to Aboriginal peoples since the "power is still with the bureaucrats" (p. 89) to determine who is Indian, dividing Indian peoples. Therefore, Mercredi and Turpel assert that it is crucial that Aboriginal peoples determine their own community membership, based on their own criteria (Mercredi & Turpel, 1994).

Another problem with Bill C-31 is that the statute did not guarantee reinstated women and their children would receive membership entitlements such as Reserve

residency (Weaver, 1993). Consequently, reinstated members have been denied membership entitlements by Indian Bands unwilling to accept reinstated individuals. There are various reasons for the reluctance to accept reinstated individuals.

Some communities say that accepting reinstated women and their children would further strain “already scarce and inadequate band resources” (Joseph, 1991 p. 66; Paul, 1990). Neither Reserve lands nor funds for on-Reserve housing are adequate for charter members or reinstated members. Moss (1990) argues that the Canadian government has not provided adequate resources “to meet the objectives of the 1985 amendments and the promise that no band would be ‘worse off’” (p. 288). Moreover, argues Moss (1990), inadequate funding and other resources are “undermining and may nullify the sexual equality objective of the law” and its “limited self-government goals”²² (p. 288).

Other scholars argue that accepting reinstated individuals could endanger culture since these individuals might not know their clan, or speak an Indian language, or they might prefer non-Indian “political and/or religious systems” (Miskimmin, 1997, pp. 68-69). This argument fails to account for the fact that current members do not take a cultural means test or an exam for “racial purity” (Green, 1997, p. 227). Nor does it justify questioning the “Indianness” of reinstated individuals when those who left Reserves voluntarily have not been challenged (Daniels, n.d., p. 5).

²² The latter issue – self-government – is the reason that some Indians have said that they are unwilling to accept reinstated individuals. They feel that doing so would threaten their “Nationhood” (Paul, 1990, p. 1). Apparently some Indians have lost sight of the fact that reinstated women had their status taken away because “non-Indian laws were imposed on Indian peoples” (Isaac, 1995, p. 11).

Using “the master’s tools”

Isaac and Maloughney (1992) suggest that some Indian Bands are unwilling to recognize reinstated individuals because women who have used “White laws” to have their status restored “have been co-opted by white society” (p. 464). Such arguments are divisive: they fail to take into consideration that it was “White laws” that *took away* the women’s status. Indeed, as Fiske (1995) argues “women found themselves *assimilating in order to resist state policies of assimilation*” (p. 19, emphasis added). McIvor (2004) agrees it is not a victory for Aboriginal women or their communities when they and their descendants “put their faith in the justice promised by law and the courts” since these approaches are “considered foreign to the Aboriginal theory of harmony in family and community relations” (p. 109). Although reinstated status Indian women have been forced to use what might be called “the master’s tools” (Lorde, 1984) to obtain Indian status and entitlements, using the courts will not correct the underlying problems. Turpel-Lafond elaborates:

The Canadian state is the master’s house for us, with all the demeaning slavery connotations [...] First Nations women cannot look to the Canadian state to change our lives because we do not see ourselves there at this time. The state has already perpetrated enough damage by telling First Nations people how we should live and who we should become. We do not see the master’s house as our only source of support nor can we see it [...] as a source of meaningful change (Turpel-Lafond, 1997, p. 77).

The master’s house cannot replace the houses, tools, and processes that First Peoples have used since “time immemorial” (p. 78).

Since Bill C-31, women and their descendants seeking Band membership have challenged Bands more than once.²³ Bands have also faced legal challenges after

²³ See cases such as *Poitras v. Sawridge Band*, 1999 CanLII 7782 (F.C.); *Sawridge Band v. Canada* [1995] 4 C.N.L.R. 121 (F.C.T.D.); *Huzar v. Canada*, 1997 CanLII 5779 (F.C.)

they denied Band membership and/or membership entitlements to individuals reinstated since Bill C-31 became law. I summarize some of these cases in the remainder of this section to demonstrate some of the conflicts that have arisen in relation to Band membership. The challenges involve entitlements that include access to education, on-Reserve housing, *per capita* payments, voting rights, and Band membership. The conflict is between Bands' rights to manage their own affairs and reinstated status Indians' rights to obtain the entitlements that accompany membership.

i. Education

A Canadian Human Rights Tribunal heard the cases of two women from Pointe-Bleue Band in Québec jointly in *Courtois v. Canada* [1991] 1 C.N.L.R. 40 (Can. H.R.T.). Louise Courtois asserted that the Department of Indian Affairs and Northern Development discriminated against her and her daughter by denying funding for on-Reserve education to the children of Indian women who married non-members before April 17, 1985 but not to the children of Indian men in the same situation. The other complainant, Marie-Jean Raphaël, claimed the Department discriminated against her and her six children, by not paying for their schoolbooks and lunches. The Tribunal found that a Moratorium that denied access to Band schools to new admissions was aimed at reinstated women and both Courtois and Raphaël were *prima facie* victims of discrimination.

ii. Housing

Sarah Laslo challenged the Gordon Band's denial to her and her non-status husband of on-Reserve housing as discriminatory after she regained status in *Laslo v.*

Gordon Band Council, 1996 CanLII 455 (C.H.R.T.). Laslo applied to the Band for a new house on the Reserve after she regained her status and Band membership under Bill C-31. After the Band repeatedly denied her housing, Laslo filed a complaint with the Human Rights Commission in 1989 claiming that the Band had discriminated against her based on sex, marital status, and “race.” The Tribunal upheld the Band’s decision after deciding that, despite a *prima facie* case of discrimination, the Band Council had made its decision in accordance with section 20 of the *Indian Act*²⁴ and section 67 of the *Canadian Human Rights Act* did not apply.

iii. *Per Capita* payments

Caroline Barry and five other women with reinstated status sought equal shares of *per capita* land claim settlement moneys for themselves and other reinstated women and their children in *Barry v. Garden River Band of Ojibways* [1997] 4 C.N.L.R. 28 (Ont. C.A.). The women went to court after the Garden River Band in Ontario reduced their *per capita* payments by the amount of Band moneys that the women had received when they were enfranchised. The reinstated women and their children were not Band members when the Band used part of a \$2.5 million land claim settlement to make *per capita* payments to Band members. Additionally, while Band members agreed to reduce payments to reinstated women by amounts equal to the payments made when their status was revoked, other Band members who owed the Band money did not have their *per capita* payments reduced. An initial decision denied the women and their children were eligible for equal *per capita* payments, but

²⁴ Section 20. (1) provides that no Indian is “lawfully in possession of land in a reserve unless [...] possession of the land has been allotted to him by the council of the band” (R. S. C. 1985, C. I-5, p. 11).

Ontario's Appeal Court found that they were entitled to equal shares of the land claim settlement.

Andrew Mark Buffalo also sought *per capita* payments after becoming a member of the Samson Band in Alberta in *Buffalo v. Canada (Minister of Indian Affairs and Northern Development)* [2002] 1 C.N.L.R. 1 (F.C.T.D.). When Buffalo became a Band member, the Band was trying to take control of its own membership, and the Band passed a Band Council Resolution that directed *per capita* funds be paid to individuals who were Band members between May 1987 and May 1988. The Band asserted that a 1995 agreement between the Band and Buffalo and the other claimants released the Band from making *per capita* payments to them in exchange for \$1,000. The Court decided that the agreement could not be used to defeat the claim for *per capita* payments and ordered the Band to pay.

Louise Martel and 16 others also sought the membership entitlement of *per capita* payments from the Samson Band Council in Alberta after their status was restored in *Martel v. Samson Indian Band*, 1998 CanLII 8401 (F.C.). Although 17 women took the Band to court in 1988, only two of the original plaintiffs were still trying to assert their claim against the Band 10 years later. Martel and the others were registered members of the Band but the Band would not recognize them or pay them the same *per capita* funds as other Band members. The Court ruled that Martel and the others should be treated the same as other Band members and directed the Band to pay them the same *per capita* payments as other Band members.

iv. Voting rights

John Corbiere and three other non-resident members of the Batchewana Band in Ontario sought the right to vote in Band elections in *Corbiere v. Canada (Minister of Indian and Northern Affairs)* [1999] 3 C.N.L.R. 19 (S.C.C.). The *Indian Act* does not outline a residency requirement for Band membership, but the residency requirement for electors denies non-resident members a say in managing the Band's lands. The Court found that non-resident Band members were part of a group that was "historically disadvantaged" since they could not live on the Reserve and imposing a residency requirement denied these individuals a vote based on a "personal characteristic" (*Batchewana Indian Band (Non-resident members) v. Batchewana Indian Band* [1994] 1 C.N.L.R. 71, p. 18). The Courts declared that subsection 77 (1)²⁵ of the *Indian Act* unjustifiably contravened section 15 (1) of the *Charter*.

Mary Vicky Scrimbitt also sought voting rights in *Scrimbitt v. Sakimay Indian Band Council (T.D.)* [2000] 1 C.N.L.R. 205 (F.C.T.D.). After Scrimbitt regained status and Band membership, she says that the Sakimay Band allowed her to live in a house on the Reserve and permitted her to vote and run for Council during the Band's 1991 elections. Two years later, however, a Band Council representative told her that she could no longer vote because her status had been restored under Bill C-31. The Court determined that the Band had violated the *Indian Act* and its own membership code by denying Scrimbitt the right to vote and ordered the Band to add her name to the Band List and allow her to vote in future elections.

²⁵ Under section 77. (1) "A member of a band who has attained the age of eighteen years *and is ordinarily resident on the reserve* is qualified to vote for a person nominated to be chief of the band and, where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors." (R. S. C. 1985. c. I-5, p. 35, emphasis added)

v. Band membership

Eight individuals who assert they are descendants of two members of the Ermineskin Indian Band No. 942 in Alberta sought to have their names added to the Band List in *Hodgson v. Ermineskin Indian Band*, 1997 CanLII 4909 (F.C.). The Band Council did not protest adding the names of Theodore Hodgson or the others to the Band List when they regained status but would not acknowledge that they were Band members. Although the Federal Court of Appeal said the case should go to trial as soon as possible, matters were still unresolved in the most recent decision in 2000.

Betty Ann Horseman also challenged denial of membership in the Horse Lake First Nation in Alberta after the Band assumed control of its membership in *Horseman v. Horse Lake First Nation*, 2002 ABQB 765 (CanLII). Horseman characterized the deletion of her name as wrongful because the Band did not give notice of its intention to take her name off the Band List. As a consequence of the Band's action, not only was Horseman denied membership entitlements but also she experienced pain and suffering when the Band removed her and her children from their home and damaged their personal belongings. Matters have not yet been resolved in the most recent decision in this case in 2005 (*Horseman v. Horse Lake First Nation* [2005], 1 C.N.L.R. 96 (Alta. C.A.)).

Percy Richard Ward and Bert Ward challenged denial of Band membership and membership entitlements in *Ward, Percy Richard v. Samson Cree Nation No. 44*, 1997 CanLII 4954 (F.C.). After Bill C-31 became law, the Wards regained status and Band membership and the Band notified the Minister of its desire to assume control of its Band membership although the Minister did not grant the Band control of its

membership. The Band claimed that it controlled its own membership and that the Wards were descended from non-Indians but the Court found that the Registrar had added the Ward's names to the Band List effective June 29, 1987. Although Percy Richard Ward died before the Court reached its final decision, the Court declared that Bert Ward should enjoy the entitlements of Band membership.

Summary

In this chapter, I reviewed some of the academic and popular literature about Bill C-31 to show the contentious nature of Indian status and Band membership. I further considered some of the Bill C-31 case law to illustrate a few of the conflicts over Band membership and its entitlements.

The British Parliament began defining Indians in 1850 using "ethnicity" as a source of "inequality" and "subordination" (Marchak, 1985, p. 673). The British Parliament added gender to "ethnicity" as a source of "inequality" and "subordination" (Marchak, 1985, p. 673) in 1869 by refusing to recognize as Indians those Indian women who married non-status men. The Canadian Parliament made the consolidated *Indian Act* a greater source of inequality and subordination based on gender and "ethnicity," ignoring concerns that the Indians expressed about the Canadian government managing their affairs. Not only did Parliament deny recognition to Indian women who married non-status men but also Parliament implemented voluntary and involuntary enfranchisement procedures, turning the *Indian Act* into a *threat to the survival of status Indians* (Marchak, 1985). The research indicates that measures such as enfranchisement and commuting Indian

women's annuity payments from their former Bands were designed to eliminate the "Indian problem" by gradually assimilating Indians with other Canadians. The double-mother rule was a method that Parliament incorporated into the 1951 *Indian Act* to assimilate Indians into Canadian society as was involuntarily enfranchising Indian women who married non-status men. Parliament employed "legitimate use of force" (Mahon, 1977, p. 169) to design each of these clauses to permanently sever the Indian's connection to the Reserve and transform the Reserve's "social and cultural life" (Clement & Williams, 1989, p. 6).

The research also indicates that while the *Indian Act* reflects Parliamentarians' "choices and decisions", it also reflects the "choices and decisions" (Clement & Williams, 1989, p. 11) of women such as Mary Two-Axe Earley, Jeanette Lavell, Yvonne Bedard, and Sandra Lovelace. If these women had not acted as they did to draw attention to the gender discrimination in the *Indian Act* there may not have been a Bill C-31. Bill C-31 is contentious – as reflected in the continued conflict over Indian status and Band membership and the legal challenges of reinstated individuals who have resorted to "the master's tools" to obtain Band membership and membership entitlements – but it has had a huge impact on thousands of peoples' lives. In the next chapter I explore a political-economy perspective that also examines "identity loss" and gender and patriarchy to inform my analysis of how gender, "ethnicity" and "nationalism" as sources of inequality and subordination in the *Indian Act* have affected Indian women's lives.

Chapter 3

THEORETICAL APPROACH

This chapter takes a political-economy approach, focussing specifically on those aspects of the perspective relevant to my topic. It recaps some concerns about using political economy to study issues such as Indian status and Band membership, and outlines the value of using this method to conduct the current research. It also examines the theoretical stances embodied in the literature on Bill C-31, namely feminist analysis and “identity loss.”

Tuhiwai Smith (1999) explains that methodology frames research questions, determines research tools used, and shapes research analysis. Wilson (2008) asserts the importance of developing an Indigenous research paradigm is that Indigenous researchers can use methods and forms of expression that “we judge to be valid” rather than “justify ourselves as Indigenous to the dominant society and academia” (p. 14). Consequently, it seems appropriate that Indigenous research combine “existing methodological approaches and indigenous practices” (Tuhiwai Smith, p. 143).

The viewpoint that Tuhiwai Smith shares informed the development of this research. Since I agree with Tuhiwai Smith about the necessity of mixing methodological approaches, in this thesis I draw on more than one theoretical perspective. In this thesis I use a political-economy perspective but also I examine “identity loss” and gender and patriarchy to inform the analysis.

Historical Development of Power Relationships

Today, Indigenous scholars draw attention to the fact that, historically, researchers have framed their research in ways that assume that the location of a particular research concern is an individual or community rather than in social or structural issues that modify social conditions for Indigenous communities (Tuhiwai Smith, 1999). Although there is no ideal approach for examining issues associated with Bill C-31, a political-economy approach holds the most promise for this study. A political-economy approach not only provides an appropriate theoretical framework to examine the cultural and social embodiments of the historical development of power relationships in Canada in documents such as the *Indian Act* but also foregrounds sources of inequality, subordination and resistance.

Scholars originally developed a Canadian political-economy perspective to study such things as Canada's relationship to the United States, but the perspective evolved into studying "power derived from or contingent on a system of property rights; the *historical development of power relationships*; and the *cultural and social embodiments* of them" (Marchak, 1985, p. 673, emphasis added). A political-economy perspective recognizes the "importance of sources of *inequality, subordination, and resistance*" (p. 673, emphasis added). "Gender relations", "ethnicity" and "nationalism" are sources of inequality, subordination, and resistance that are the basis of this thesis (p. 673).

A political-economy perspective is based on a tradition that "investigates the relationship between the *economy and politics* as they *affect the social and cultural life of societies*" (Clement & Williams, 1989, p. 6, emphasis added). Drawing on a

political-economy perspective, I am able to take up “concern[s] with the nature of capitalism and its political as well as economic forms” (Marchak, 1985, p. 675). Specifically I address how the *Indian Act* works as “*a threat to human survival*” (Marchak, 1985, p. 675, emphasis added).

A political-economy stance analyzes the relations among people within a particular society by examining how “*society has unfolded historically* and, in particular, how its *economic system* is organically *linked to the social/ cultural/ ideological/ political order*” (Drache & Clement, 1985, p. x, emphasis added). In this thesis I attempt to connect these dimensions while focusing on “*social change and transformation*” (p. 10) using a “*historical developmental approach* in order to locate [my] subject in time” (Drache & Clement, 1985, p. 10, emphasis added).

Canadian political economists are especially concerned with aspects of society such as the government using its coercive powers to “maintain or impose social order” (Panitch, 1977, p. 18). Additionally, a political-economy perspective focuses on how the Canadian government has made “*legitimate use of force*” to ensure “an effective (if contradictory) unity by *forcing any particular fraction to make concessions in the common interest of the bloc* as a whole” (Mahon, 1977, p. 169, emphasis added). When exploring the Canadian state’s use of its coercive power of legitimation, political economists define legitimation “in the sense of concrete state activities” that try to integrate “subordinate classes” (Panitch, 1977, p. 19). Abele and Stasiulis (1989), Asch (1989), Bourgeault (1983), Mahon (1977), Marchak (1985), Warburton (1997), and Whitaker (1999) use a political-economy approach to examine Indian relations with the Canadian state. Panitch (1977) argues one way that the

Canadian government has used this strategy is by inviting leaders to participate in “consultations” that give the leaders the “*semblance of power without the substance* – so as to employ them as agencies of social control over their members” (p. 19, emphasis added). Scholars who have conducted previous analyses of Canada’s First Nations relations maintain that the Canadian government has used this tactic more than once while developing and implementing Indian policy: for example, the days before the 1927 and 1951 *Indian Act* amendments became law, and before Aboriginal and treaty rights were enshrined in the *Constitution Act*, 1982 (Jamieson, 1978; Fiske, 1996). In this study I show how the Canadian government co-opted Indian leaders to control Indian women through *Indian Act* sections regarding Band membership.

A political-economy approach enables scholars to conduct public policy analysis that centres on the “notion of the ‘unequal structure of representation’” (Mahon, 1977, p. 166). Mahon (1977) applies political-economy analysis to study the Department of Indian and Northern Development – an agency that “represents” interest groups with conflicting interests. According to Mahon, at the same time this department theoretically speaks for Aboriginal peoples, it represents “large corporations engaged in resource exploitation [seeking] to develop the North” (p. 190).

Not only is it essential to consider the Canadian government’s actions in the current research but also it is important to consider individual actions. Therefore, *human agency* is an aspect of a political-economy approach that is key to this thesis since it argues that people’s decisions and actions are “integral to *explaining the course of history*” (Clement & Williams, 1989, p. 7). As part of a process of

examining human agency,²⁶ a political-economy approach looks at the “*choices and decisions*” of “*political, economic and social actors*” and the impact that these choices have on others (Clement & Williams, 1989, p. 11, emphasis added).

Additionally, political economists focus on the “ways in which people socially produce and reproduce the conditions for their existence” (Wotherspoon & Satzewich, 2000, p. 13). Wotherspoon and Satzewich explain:

Production and reproduction are accomplished by people who act not strictly as individuals but as interacting social subjects who are situated in particular social locations and who bear distinct *social* and *cultural characteristics* including class, [and] *gender*. (p. 13, emphasis added)

People act based on social traits such as gender and membership in certain “racial and ethnic formations” (Wotherspoon & Satzewich, 2000, p. 13). The intersections of gender and Indianness are key considerations in a thesis about Indian women’s experiences under the *Indian Act*.

However, Asch (1989) and Abele and Stasiulis (1989) have raised some concerns to consider when using a political-economy approach for research involving Aboriginal peoples. Asch worries that political economy tends to overlook Aboriginal peoples’ responses to the challenges to their ways of life and their “determination to struggle to maintain autonomy against pressures to assimilate them” into a national norm” (Asch, 1989, p. 152). At the same time, Asch seems to be encouraged by the fact that political economy has been used to study Aboriginal peoples and the “effect on the indigenous population of the development of its territory into a major European-settler state under liberal-democratic government and capitalism” (p. 152). Similarly, Abele and Stasiulis (1989) point out that political

²⁶ Whitaker (1999) provides an example of human agency at work in his political-economy analysis of how the James Bay Cree defeated James Bay Two.

economists tend not to “recognize the complexity of oppressive relations and the historical relations of struggle” within which Aboriginal peoples are implicated and treat “[r]ace and ethnicity” as “peripheral to the way that Canadian society has unfolded historically and to the connections that have developed between the economic system and ideological, cultural, and political orders” (p. 242). However, the authors assert that the “centrality and significance of race [...] and culture [in the approach] can say much about the nature of the Canadian social formation and its incorporation into the international political economy” (p. 242). They also point out that before we can understand individual and collective experiences we need to analyze the “matrix of social relations in which they are embedded” (p. 242). A political-economy perspective can demonstrate that “relations of oppression are constructed through complex intersections among [...] gender, [and] racial, and ethnic forms of subordination” (p. 242).

Still, even some of political economy’s critics see merit in using the political-economy approach for research involving Aboriginal peoples (Bourgeault, 1983; Wotherspoon & Satzewich, 2000). According to Bourgeault, one reason that this approach is well-suited for studying Aboriginal peoples is because it helps explain current effects / issues / or material conditions related to the “historical, political and economic existence of the native (including mixed-blood) people in North America” (p. 45). Moreover, Bourgeault (1983) argues that a political-economy approach is effective for this type of research because “[i]t is within this system that the contradictions of race, class and nationalism have their antecedents and that the foundations were laid for the formation of Canada as a nation-state” (p. 45).

Additionally, according to Wotherspoon and Satzewich, a political-economy approach is suitable for research involving Aboriginal peoples because it emphasizes the “*changing material circumstances which shape and are shaped by aboriginal [sic] life experience*” (2000, p. 12). Wotherspoon and Satzewich caution that such an analysis of Canada’s Aboriginal peoples “must be grounded in the consideration of native [sic] peoples’ struggles for subsistence and survival under changing material circumstances” (2000, p. 13). They also maintain that it is crucial when using this approach to study Aboriginal peoples to determine how “social relations are regulated by dominant class and other institutional interests, including the state, and what kinds of organized responses, with what impact, subordinate groups have provided to these arrangements” (2000, p. 14).

Having examined some of the pros and cons of using a political-economy perspective for this research, I now turn to issues associated with identity.

“Identity Loss”

There is some discussion in the Bill C-31 literature of “identity loss”²⁷ by women who were banished from their birth communities. This thesis is not exclusively about loss of identity. However, I believe that there is much to learn from the literature on identity, to which I now turn.

Some theorists explain identity as something people develop rather than an attribute with which they are born (Stone, 1962; Strauss, 1969, Jordan, 1984; and Vryan et al, 2003). Others explore concepts that are specific to determining an

²⁷ See *Lovelace v. Canada* (1983) 1 C.H.R.Y. 305-314 (U.N.H.R.C.), Christoferrson (1991), Morrison (1997), or Frideres and Gadacz (2001).

Aboriginal identity (Blu, 1980; McCorquodale, 1994; Fogelson, 1998; Mihesuah, 1998; Krouse, 1999; Coates, 1999; Dickson-Gilmore, 1999; Grande, 2000; Davis Jackson, 2001; Weaver, 2001; and Hamill, 2003).

Aboriginal scholars argue that the Canadian government lacks the power to alter Aboriginal peoples' eye, hair and skin color; to prevent self-identification; or alter their "Indian blood" or "degree of ancestry" (Davis Jackson, 2001, p. 14). As Krouse (1999) argues, while the Canadian government has attempted to take away Aboriginal peoples' cultural traits or skills such as language mastery, "participation in ritual activities" or "adherence to traditional values" it has failed (p. 78). Moreover, because of these attempts, individuals may be justifiably *confused* about their identity when they confront involuntary attempts to alienate it, but "*Identity itself is never lost*" (Fixico, 2000, p. 187, emphasis added).

Since identity is inalienable, loss of identity is what Wasacase (2003) calls a "bogus issue" (p. 1). Loss of identity is not a bona fide issue, and "treating problems of identity as central means quite literally that indigenous peoples must *neglect problems of much greater importance*" (p. 1, emphasis added). However, Weaver (2001) asserts that since non-Natives have defined "Native identity" it is vital to determine "[w]ho decides who is an indigenous person, Natives or non[-]natives?" (p. 246).

Another problem is the denial of the "central and critical difference" of Aboriginal peoples as "tribal peoples of distinct nations with sovereign status and treaty rights" (Grande, 2000, p. 344). Grande (2000) argues that the "ongoing historical denial of this difference *provides the conditions for the sustained project of*

cultural genocide” by failing to address the Aboriginal right to “sovereignty and self-determination” and concealing the “real sources of oppression” (p. 344, emphasis added). As Churchill explains, it is vital that nations or peoples demonstrate their right to self-determination and gauge their “sovereign standing” by freely choosing their own standards for establishing membership or citizenship (Churchill, 1999b, pp. 39-40).

Grande asserts that although Aboriginal peoples *are* facing a crisis, it is *not* an identity crisis. I agree with Grande that a focus on identity negates the unique position of Aboriginal peoples as “distinct nations with sovereign status and treaty rights” and “*provides the conditions for the sustained project of cultural genocide*” by overlooking issues of sovereignty and self-determination (Grande, p. 344). It turns a “*crisis of power*” into an *identity crisis* that enables colonial governments such as the one in Canada to exercise the “power to name, shape, and control the products and conditions” (Grande, p. 348, emphasis added) of Aboriginal peoples’ lives.

The next section explains some concerns that have been raised about taking a strictly feminist approach to this research.

Gender and Patriarchy

Feminist approaches draw attention women’s experiences of gender and patriarchy. A look at the unsuitability of a feminist framework by itself helps me highlight other issues pertinent to the study of Indian women’s experiences. These issues include lack of a universal Aboriginal women’s perspective, emphasis on equality rights, and the intersections of racism and colonialism.

Aboriginal scholars such as Monture-Angus (1995) and Turpel-Lafond (1997) assert that there is no universal theoretical framework for conducting research involving Aboriginal peoples. Monture-Angus states, “[T]here is not a single Aboriginal women’s perspective or movement. Aboriginal women are women of many different nations and many different experiences” (1995, p. 169). Similarly, Turpel-Lafond argues that feminist analysis is inappropriate because it has “fashioned an agenda based on its own conceptions of gender without questioning the universality of its methods and prescriptions” (Turpel-Lafond, 1997, p. 78).

Although Indian women who had their status taken away have used the equality rights legislation to have status and Band membership restored, it does not mean that they wish to obtain equality with other Canadians. Skonaganleh:rá (Osenntonion & Skonaganleh:rá, 1989) explains that she does not want equality. Rather, she wants to “go back to where women, in aboriginal communities [...] were treated as more than equal” (p.15). Osenntonion (Osenntonion & Skonaganleh:rá, 1989) also finds different feminisms’ emphasis on equality troublesome:

[Feminists] want to be treated the same as a man [...] and, they consider all women, regardless of origin, to be the same, to share the same concerns. I, for one, maintain that aboriginal women are *different*. (p.15)

Anderson (2000) asserts that one reason that Aboriginal women resist feminism is because some women working in the feminist movement have not “recognized or acknowledged some of their own racist or elitist behaviours” (p. 274). She calls for an analysis that includes an examination of different histories and how “white women of this country are complicit in the oppression of Native women” (p. 275).

Aboriginal women also take issue with the notion of the individual rather than the

community that forms the basis of Western feminism (p. 274). Tuhiwai Smith (1999)

says:

The work being carried out by Western feminists has been countered by the work of black women and other 'women with labels' [...] These Other/ ed women have argued that oppression takes different forms, and that there are interlocking relationships between race, gender and class which makes oppression a complex sociological and psychological condition. Many have argued that this condition cannot be understood or analysed by outsiders or people who have not experienced, and have not been born into, this way of life. (p. 167)

Mihesuah (2003) asserts that many Aboriginal women shun feminism and avoid those who identify as feminists because they prefer to direct their efforts to "tribal and cultural survival and advancement" rather than "male oppression or individual success" (p. xx). Aboriginal women may also avoid feminists because White women have reaped the privileges of power as White women at the "expense of women of color" (p. xx). Furthermore, Aboriginal women might be further troubled by feminist expectations of separating gender and "race", giving gender precedence over "race."

Monture (1993) explains:

My identity flows from the fact that I am first and foremost a Mohawk. My women's identity flows from my race. It is even said in that order. I am a Mohawk woman not a woman Mohawk. This is also true when you speak in the languages of the First Nations. It is in the traditional teachings which speak to and of creation that my understanding of woman exists. What the feminist movement has expected me to do is invert my experience so they can talk to me. I am not willing to stand on my head for them. (p. 334)

Drawing on the work of these Aboriginal scholars, a thesis that examines Indian women's experiences requires a broad theoretical analysis. One perspective that is especially useful is what Smith (1990b, 1987) identifies as the "relations and apparatuses of ruling" (1990b, p. 83) that are "external to, and beyond, [their] everyday world" (1987, p. 65). Scholars such as Tuhiwai Smith provide a rationale

that supports my decision to conduct a sociological analysis of Indian women's experiences under the *Indian Act*.

Summary

In this chapter I have argued that not only is a political-economy perspective useful for examining the “historical development of power relationships” in this thesis but also that it takes into account “gender relations, ethnicity, [and] nationalism” as sources of “inequality, subordination, and resistance” (Marchak, p. 673). This focus makes a political-economy approach worthwhile since the *Indian Act* continues to be a source of inequality and subordination in Indian women's lives based on gender, “ethnicity” and “nationalism”, threatening human survival through the development and administration of the *Indian Act*. Additionally, this type of approach strives to examine how the economy and politics affect the “social and cultural life of societies” (Clement & Williams, 1989, p. 6) and the importance of examining how Canadian and Aboriginal societies have “unfolded historically” (Drache & Clement, 1985, p. x). Furthermore, it seems fitting to use a perspective that focuses on “social change and transformation” and takes a “historical developmental approach in order to locate [a] subject in time” (Clement & Williams, 1989, p. 10). Additionally, it is important to use an approach that examines human agency to look at the choices and decisions that political, economic and social actors make (Clement & Williams, 1989) and how people behave based on social characteristics such as gender and membership in specific racial groups (Wotherspoon & Satzewich, 2000). While I argue that it is important to address issues of gender and identity, I suggest that using a political-

economy perspective looks beyond such issues to an analysis that addresses the social, cultural, political, and historical realities of Indian women's lives.

Chapter 4

DEVELOPMENT OF INDIAN STATUS IN THE *INDIAN ACT*

To understand Indian women's experiences of Indian status and Band membership, it is important to look at the historical development of power relations (Marchak, 1985) in sections of the *Indian Act* that outline Indian status and Band membership. As this examination will show, the "roots" of Bill C-31 reach far beyond the 1985 amendment to the Act – and even before the first *Indian Act* in 1876.

Before the Canadian Parliament enacted the 1876 *Indian Act*, the British Parliament used the language of protection to name early laws regarding Indians. For example, the 1839 *Crown Lands Protection Act concerning trespass committed upon Indian lands*, the 1850 *Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury*, and the 1850 *Act for the better protection of the lands and property of the Indians in Lower Canada* set the terms for a paternalistic relationship between Britain and Indian peoples. However, authors such as Bourgeault (1991) and Monture-Angus (1995) assert that Parliament did not make legitimate use of force (Mahon, 1977) to protect the Indians when implementing these laws. Bourgeault asserts that Parliamentarians designed the *Indian Act* to "subjugate a free people" (p. 150). Monture-Angus says:

The patriarchal nature of the state has different meanings and consequences from the vantage point of Aboriginal Peoples. Understanding how patriarchy operates in Canada without understanding colonization is a meaningless

endeavour from the perspective of Aboriginal People. The Canadian state is the invisible male perpetrator who unlike Aboriginal men does *not* have a victim face. And at the feet of the state I can lay my anger to rest. Being able to name the state as my oppressor has allowed me to sit outside the personal cycle of pain that once raged out of control in my life. (p. 175, emphasis in original)

This chapter explores the “cultural and social embodiments” (Marchak, 1985 p. 673) of the historical development of power relations in Canada’s “laws respecting Indians.” I compare similar sections in subsequent versions of the statutes, focussing on those sections that: (1) outline Canada’s authority to define individuals deemed to be Indian; (2) attempt to justify the Canadian government’s power to define individuals as Indian; and (3) outline the consequences for individuals²⁸ who the government no longer considers Indian.

Protecting and Defending “the Indians”

In the early statutes, the British Parliament purported to allocate a protective role for itself with Indians. As cited in Leslie and Maguire (1978), a 1670 statute commanded all governors to “protect and defend” the Indians “from adversaries,” punish those who “dare offer any violence to [Indians] in persons, goods or possessions” and consider how best to instruct and invite Indians to the “Christian religion” (p. 2). The latter portion of this decree was designed to bring about social change and transformation (Drache & Clement, 1985) among the Indians. Nearly 100 years later, the *Royal Proclamation of 1763* declared that the “several Nations or Tribes of Indians with whom [the Crown is] connected, and who live under [Crown]

²⁸ Using the word individuals rather than persons is intentional since Indians are not persons under the 1876 Act, which defines “person” as “an individual other than an Indian, unless the context clearly requires another construction” (S. C. 1876, c. 18, p. 45).

Protection should not be molested or disturbed” when using “Parts of [Crown] Dominions and Territories” that were “reserved to the said Indians” (cited in Boldt, 1993, p. 271). Leslie and Maguire assert that the 1763 Proclamation protected Indians from “unscrupulous settlers and traders,” introduced Christianity to (and later “civilized”) Indians, and outlined an “‘activist’ role for the Crown as a protector of ‘Indians’” (p. 2). Not only did the early statutes establish a paternalistic relationship between the Crown and status Indians but also the early statutes outlined the cultural and social embodiments (Marchak, 1985) of evolving power relations that established Crown control over Indian lands and mechanisms such as the Reserve system in order to do so.

In the 1839 Crown Lands Protection Act the Crown assumed the role of guardian to “protect” Indian lands from “encroachment and fraud” (cited in Leslie & Maguire, p. 20). Tobias (1976) asserts that the Reserve system was designed to cause social change and transformation, “to be the keystone of Canada’s Indian Policy [and] was conceived as a *social laboratory*, where the Indian could be ‘civilized’ and prepared for coping with the European” (p. 15, emphasis added). In the Upper Canada Act of 1850 the Canadian government assumed a protective/paternalistic role toward those individuals identified as Indians, those “inter-married with Indians”, and their lands (P.S.C. 1850, c. 74, p. 1411). The Act outlined an “expedient” role of protecting status Indians who were in danger of being “imposed upon by the designing and unprincipled” and protecting them in the “unmolested possession and enjoyment of the lands and other property in their use or occupation” (P.S.C. 1850, c. 74, p. 1409). The Upper Canada Act also protected Indians by requiring that they

obtain Crown consent to sell land and by outlining penalties for those who bought or leased Indian lands without Crown consent and prohibiting purchase or seizure of annuities and presents that had been given to the Band. Bourgeault (1983) asserts that the British government was giving Indians such “presents” to “conquer the communal society economically” (p. 50). The Canadian government was working to change Indian societies from producing goods for internal use to producing goods for “commodity exchange” (p. 50). This type of change altered “social relations” for the Indians:

[I]nequalities were created between women and men, and unequal external relations were created between Indians and Europeans. The fact of a foreign economic system imposing itself upon another national or indigenous grouping became the basis of colonialism and colonial relations. (p. 50)

Lower Canada enacted legislation similar to the Upper Canada Act in 1850 to avoid “encroachments upon and injury to the lands appropriated to the use of the several Tribes and Bodies of Indians in Lower Canada” (P.S.C. 1850, c. 42, p. 1247). The Act empowered the Governor to appoint a Commissioner of Indian Lands to hold in trust all Indian lands in Lower Canada and defined who was considered Indian and, therefore, entitled to use Indian lands and property:

First. – All persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants.

Secondly. – All persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons.

Thirdly. – All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such; And

Fourthly. – All persons adopted in infancy by any such Indians and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendents. (p. 1248)

Miller (1989) explains that the importance of the Canadian government defining status in this Act was that in Lower Canada the “civil government, an agency beyond the control of the Indians, a body in which Indians were not even eligible to have representation” assumed the “authority to define who was or was not Indian” (pp. 109-110).

Changing Status for Indian Women

The British Parliament revised the definition of status Indians in 1851 in *An Act to repeal in part and to amend an Act, intituled, An Act for the better protection of the lands and property of the Indians in Lower Canada*. Indians included “All women, now or hereafter to be lawfully married” to status Indian men and “the children issue of such marriages” and exclude non-status men who were married to Indian women and their children (P. S. C. 1851, c. 59, p. 1898). Jamieson (1978) argues that with this new clause Indian status “depended on Indian descent or marriage to a male Indian” (p. 25). Indian women’s status was further defined by their relationship to status Indian men in the 1857 *An act to encourage the gradual civilization of the Indian tribes in this province and to amend the laws respecting Indians*. It “encourage[d] the *progress of Civilization* among the Indian tribes” – progress of civilization meaning enfranchisement – and the “gradual removal of all legal distinctions between [the Indians] and Her Majesty’s other Canadian Subjects” (P.S.C. 1857, c. 26, p. 84, emphasis added). The 1857 Act was a source of “inequality” and “subordination” based on gender, “ethnicity”, and “nationalism” (Marchak, 1985, p. 673). Moreover, it threatened status Indians’ “survival” (p. 675).

Under the 1857 Act, to be considered for enfranchisement, status Indian men had to be at least 21 years of age, able to speak, read and write English or French, of “good moral character” and “free from debt” (P.S.C. 1857, c. 26, p. 85). Other status Indian men aged 21 to 40 years of age would be considered if they could speak English or French and if they had “sober and industrious habits,” were “free from debt,” and “sufficiently intelligent” to manage their own affairs (p. 85). Under this policy gender became an added source of “inequality and subordination” (Marchak, 1985, p. 673) since men had to meet certain requirements to become enfranchised but there were no similar requirements for the women and children who were enfranchised at the same time as the men:

The wife, widow, and lineal descendants of an Indian enfranchised under this Act, shall be enfranchised by the operation thereof, and shall not be deemed members of his former tribe, unless such widow or any such lineal descendant being a female, shall marry an Indian not enfranchised and a member of such tribe, in which case she shall again belong to it and shall no longer be held to be enfranchised under this Act. (p. 87)

The 1857 Act replaced the previous goal of “conciliation” with one of “full civilization” and slow erosion of Reserves “twenty hectares by twenty hectares” (Milloy, 1983, pp. 56-59). The revised policy went against the desires Tribal Councils expressed after the 1844 Bagot Commission when Indian leaders asked that the Act be repealed, lobbied to keep the “pre-1857 status quo”, and protested shifting authority to conduct Indian affairs to the “government of the United Canadas” (p. 60).

At Confederation, the Canadian government assumed control of Indian affairs and enacted the Lands and Enfranchisement Acts in 1868 and 1869 (Leslie & Maguire, 1978). The 1868 Lands Act named the Secretary of State as “Superintendent General of Indian Affairs” who “as such [shall] have the control and

management” of the “lands and property of the Indians” (S.C. 1868, c.42, p. 91). Additionally, the Act defined individuals who were considered Indian under the 1851 Act; non-status men who married Indian women and their descendants were non-Indians and not authorized to “settle, reside upon or occupy” Indian lands (S.C. 1868, c.42, p. 94).

In the 1869 Enfranchisement Act²⁹ Parliament sought the “gradual enfranchisement of the Indian” (Tobias, 1976, p. 17). The Act provided that no one with “less than one-fourth Indian blood, born after the passing of this Act” could “share in any annuity, interest or rents” (S.C. 1869, c. 6, p. 23). Jamieson (1978) asserts the Act was designed to “reduce the number of Indians and half[-]breeds on reserves” as part of the process of “doing away with reserves and of assimilating native [sic] people” into the Canadian population (p. 13). Legislation designed to achieve such objectives, therefore, threatened the survival (Marchak, 1985) of status Indians. Additionally, the Enfranchisement Act further redefined women’s status after marriage and that of their children. Specifically, the Enfranchisement Act stated:

any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such marriage be considered as Indian within the meaning of this Act; Provided also, that any Indian woman marrying an Indian of any other tribe, band or body shall cease to be a member of the tribe, band or body to which she formerly belonged, and become a member of the tribe, band or body of which her husband is a member, and the children issue of this marriage, shall belong to their father’s tribe only. (S.C. 1869, c. 6, p. 23)

Jamieson (1978) explains that when the Enfranchisement Act added gender to ethnicity and nationalism as a source of inequality and subordination (Marchak, 1985)

²⁹ *An Act for the gradual enfranchisement of Indians, the better management of Indian Affairs, and to extend the provisions of the Act 31st Victoria, chapter 42.*

status Indian women were for the first time granted fewer rights than status Indian men. Status Indian women could not vote in Band elections or inherit from their husbands and they were penalized for marrying outside their Bands. When a status Indian woman married a non-status man she and her children “would lose forever their Indian rights” (Jamieson, 1978, p. 30). There was also the possibility that a status Indian woman who married a non-status man could be forced to leave the Reserve since “her husband could be ‘summarily ejected’ at the order of the superintendent” (p. 30). The Grand Council of Ontario and Québec Indians voiced their displeasure with this section in 1872. They said that the exclusionary section should be changed so that:

Indian women may have the privilege of marrying when and whom they please; without subjecting themselves to exclusion or expulsion from their tribes and the consequent loss of property and the rights they may have by virtue of their being members of any particular tribe. (cited in Jamieson, 1978, pp. 30-31)

Parliament ignored this request and enacted “An Act to amend and consolidate the laws respecting Indians,” commonly known as the *Indian Act* in 1876, that gave Indian administrators a “cradle-to-grave set of rules, regulations and directives” (Mercredi & Turpel, 1994, p. 81). The intended beneficiaries of the first *Indian Act* rejected it, the beliefs it was based on, and the goals it was designed to achieve, leaving the Canadian government to interpret this reaction as proof that Indians did not realize what was in their best interests (Dyck, 1991).

Involuntarily Enfranchising Indians

In the 1876 *Indian Act*, the Minister of the Interior was named Superintendent General of Indian Affairs, and given the authority to control and manage Indian Reserves, lands, moneys and property. The Act perpetuated gender as a source of inequality and subordination (Marchak, 1985) for Indian women and their children. The Act defined status Indians, establishing who was Indian and entitled to have access to Indian lands. Indians included “Any male person of Indian blood reputed to belong to a particular band”, “Any child of such person”, and “Any woman who is or was lawfully married to such person” (S.C. 1876, c. 18, pp. 43-44).

Under section 3.3(c) of the 1876 *Indian Act*, Indian women who married non-status or non-treaty men were no longer considered Indians. This statute continued Indian women’s inequality and subordination and, at the same time, it created “social change and transformation” (Drache & Clement, 1985, p. 10). As in the earlier version, however, women were allowed to continue receiving “annuities, interest moneys and rents from their former bands” (p. 44). To further make Indian women’s status dependent on that of their husbands, section 3.3(d) stipulated that Indian women who married Indians from other Bands or non-treaty Indians became members of their husbands’ Band. Under this policy, Band membership and Indian blood plus relationship to a male Indian were key criteria for Indian status. These exclusionary clauses denied “Indian people the right to reside on the reserve *with other Indian people* and thereby have increased access to culture, tradition, ceremony, governance and language” (Monture-Angus, 1999, p. 142, emphasis in original). However, these women were not completely banned from their home Reserves but

they could no longer live with others who spoke their language or observed the same cultural practices. The *Indian Act* was causing social change and transformation (Drache & Clement, 1985) among status Indians.

According to Chamberlin (1975), however, this section was not designed to create the legal category of status Indian. Rather, the Canadian government defined status Indians in an effort to eliminate the category Indian. Chamberlin states: “the more specific the status, the more impressive would be relinquishing of that status and the amelioration of the condition of Indianness” (p. 33). As mentioned earlier, another way the Canadian government sought to eliminate status Indians – thereby threatening their survival (Marchak, 1985) – was through enfranchisement. Under the 1876 *Indian Act*, Indians who sought to become voluntarily enfranchised had to satisfy certain conditions after obtaining the “consent of the band” and “a suitable allotment of land” (S.C. 1876, c. 18, p. 69). Other requirements included obtaining a “degree of civilization” and displaying the “integrity, morality and sobriety” that the Superintendent General felt qualified them to own land (p. 69). Thus enfranchisement was constructed as a privilege, something more valuable than Indianness. Additionally, the conditions for becoming enfranchised outlined the Canadian government’s agenda for Indian Bands social change and transformation (Drache & Clement, 1985).

Under the 1876 *Indian Act*, however, Parliament revised the enfranchisement provisions so that this procedure was not reserved only for individuals who were seeking to *voluntarily* relinquish their Indian status. Indians could be enfranchised *involuntarily* under section 86(1). Enfranchisement under this section applied to any

status Indian who became a doctor of medicine, received a university degree, was admitted to practice law, or became a member of the clergy. Once enfranchised, these individuals were no longer considered Indians in law but they were entitled to receive “annuities and interest moneys, and rents and councils of the band of Indians to which they belonged” (pp. 69-70). Wives and unmarried minor children of status Indian men who were enfranchised had their status as Indians revoked at the same time – another example of the gendered inequality and subordination of Indian women (Marchak, 1985).

Imposing an Electoral System

In the 1880 Act efforts to transform status Indians continued and Indian women’s status was increasingly dependent on their husband’s status (Drache & Clement, 1985). Status Indian women who married non-treaty Indians became members of their husbands’ Band or irregular Band³⁰ although as in the earlier statutes, they could still share equally in their former Bands’ annuity payments. The women could not be sure they would still receive these payments, since payments could be cut off to them “at any time, at ten years’ purchase with the consent of the band” (S.C. 1880, c. 28, p. 205).

In the 1880 Act, the Canadian government appears to be convinced that the “reserve system, other sections of the Indian Act, and missionaries” had already transformed (Drache & Clement, 1985, p. 10) Indian Bands by displacing “all other

³⁰ An irregular Band means a “tribe, band or body of persons of Indian blood who own no interest in any reserve or lands of which the legal title is vested in the Crown, who possess no common fund managed by the Government of Canada, or who have not had any treaty relations with the Crown” (p. 202).

aspects of traditional Indian values” (Tobias, 1976, p. 19). The Canadian government changed the management of Indian affairs by creating “a new branch of the civil service that was to be called the Department of Indian Affairs” (p. 19). While earlier statutes had outlined a Band-elected chief and council system, section 72 authorized the Superintendent General “to impose the elective system of band government whenever he thought a band ready” (p. 19). The purpose of the elective system was to assimilate Indians and get rid of any vestiges of self-determination. Francis (1992) states:

Band members were required to elect chiefs and councillors who exercised limited authority over local matters. Indian Department officials retained the power to interfere in the political affairs of the band. The attempt to teach the Indians democracy was part and parcel of the assimilationist agenda. The elected councils were intended to replace the traditional forms of Native government over which federal officials lacked control. (Francis, p. 204)

Parliament enacted this policy despite Indian resistance because “[t]he ability to manage elected institutions was believed to be another hallmark of civilized society” (p. 204).

An 1884 amendment to the *Indian Act* further threatened the survival (Marchak, 1985) of status Indians since it propelled them toward fulfilling the cultural component of that assimilationist mandate by “protect[ing] Indians from themselves” (Leslie & Maguire, 1978, p. 82). Section 3 of the Act opposed ceremonies such as “the Indian festival known as the ‘Potlatch’” and “the Indian dance known as the ‘Tamanawas’” (p. 108). Clerics had argued that the Potlatch would impede efforts to Christianize Indians since it was “an important part of an alternative religious and social system” and that the philosophy behind such practices clashed with principles of “individualism and competitive accumulation that underlay Euro-Canadian

society” (Miller, 1989, p. 193). Cultural practices became crimes and Indians who celebrated these festivals, encouraged participation, or helped to celebrate them could be imprisoned. This policy was not, however, always enforced. Some Indian agents were reluctant to enforce the policy since “not all were opposed to traditional practices such as these” (Royal Commission on Aboriginal Peoples, 1996a, p. 291). Further, Indians found ways to circumvent the policy since they were fighting to uphold something that “symbolized and affirmed group unity” and that was “integral to the culture and religious beliefs of the Indians” (Jamieson, 1978, p. 47). Some “political, economic and social actors” – Indians and some Indian agents – resisted this part of the Canadian government’s agenda through their choices and decisions (Clement & Williams, 1989, p. 11).

Expanding Enfranchisement

The 1918 Act expanded Parliament’s efforts to assimilate Indians – further threatening their survival (Marchak, 1985) – by removing the requirement that Indians who met certain conditions obtain Band approval to become enfranchised. A status Indian man could apply for enfranchisement if he did not hold land on a Reserve; live on a Reserve; or “follow the Indian mode of life” (S.C. 1918, c. 26, p. 85). If the Superintendent General found that the status Indian seeking to become enfranchised was “self-supporting and fit to be enfranchised” (S.C. 1918, c. 26, p. 85) and the Indian gave up any interest in the lands or other property of the Band to which he belonged, the Governor in Council could order that the man be enfranchised along with his wife and unmarried children. These are further examples of the social

change and transformation (Drache & Clement, 1985) the Canadian government outlined for status Indians. Indian men were not the only ones eligible for enfranchisement since the Act allowed an unmarried Indian woman who was 21 years of age or an Indian widow – along with her unmarried minor children – to apply for enfranchisement. In return for relinquishing Indianness, the enfranchised Indian:

[...] gains full citizenship rights, the vote, liquor [...] and, in theory, becomes a Canadian like anyone else. But he renounces his Indianness: he loses all treaty or aboriginal [sic] rights; he gives up forever his right to membership on a reserve and all title to his portion of resources or reserve land. He cannot return to the reserve to take up residence where the rest of his family, his relatives and his friends live. If the parents make this choice or if an entire Indian family enfranchises, then the children of that family and all subsequent grandchildren and direct heirs lose *forever* the right to claim title to being Indians, at least legally (Cardinal, 1969, p. 19, emphasis added).

Forsaking one's Aboriginal rights through enfranchisement is one example of the social change and transformation (Drache & Clement, 1985) that the *Indian Act* has imposed on status Indians and Indian Bands. Moreover, early Indian legislation did not outline the Canadian government's specific long-term objectives for Indians, but the finality of the enfranchisement clauses suited the Departmental goals that Deputy Superintendent General Duncan Campbell Scott outlined in 1920. Scott left little doubt about his intent when he stated that more status Indians would have been enfranchised if they had received "guidance through schooling and a more direct means of becoming enfranchised" (cited in Leslie & Maguire, p. 114). Scott sought to "get rid of the Indian problem" by absorbing every Indian into the Canadian "body politic" and eliminating the Indian Department (cited in Leslie & Maguire, p. 114).

The section that linked an Indian woman's status to her husband's status was further refined in the 1920 *Indian Act* by removing the consent clause (S.C., 1920, c.

50). The 1920 Act empowered the Superintendent General to “unilaterally” – without getting permission from the women or Bands – cut off women’s annuities to them, thereby severing their last bond with their Bands (Jamieson, 1978, p. 51). Deputy Superintendent General Duncan Campbell Scott considered it in the best interests of both the Department and the women to dissolve any bond between them and the Reserve and the “Indian mode of life” (cited in Leslie & Maguire, p. 117). Scott worked staunchly toward the social change and transformation of Canada’s original inhabitants that eliminating the “Indian problem” became “an entrenched and basic assumption which he handed on to his successors” (Jamieson, 1978, p. 50). However, Euro-Canadians and Indians had quite different attitudes toward enfranchisement:

The government expected that in time most Indians would opt for enfranchisement, which was conceived as a reward for good behaviour. In fact, the vast majority of Native people chose not to be rewarded in this way: in the sixty-three years between 1857, when enfranchisement was first legislated, and 1920, only 250 individuals took advantage of the opportunity to shed their Native identity. (Francis, 1992, pp. 201-202)

The 1920 Act gave the Superintendent General the power to appoint a Board to investigate and report the “fitness of any Indian or Indians to be enfranchised” (S.C., 1920, c. 50, p. 309). The Board was tasked with evaluating and reporting upon “the attitude of any such Indian towards his enfranchisement” and required that his attitude be considered when “determining the question of fitness” (p. 309). When the Superintendent General concluded that an individual was “fit for enfranchisement, the Governor-in-Council could order that Indian to be enfranchised within two years” (Leslie & Maguire, p. 115). After that date, a status Indian man and his wife and unmarried children would no longer be considered status Indians. Parliament

amended the section that outlined involuntary enfranchisement in 1922 to make enfranchisement contingent upon receiving a request from an individual or a Band.

Consulting the Indians

Although the nature of the 1951 *Indian Act* did not change when Parliament amended it, Indian leaders were invited to participate in “consultations” that gave the leaders the “semblance of power without the substance” in an effort to “employ them as agencies of social control over their members” (Panitch, 1977, p. 19). After World War II, growing public interest in Indian issues generated requests to create a royal commission to “review and revise the Indian Act and put an end to what was increasingly seen as discriminatory legislation” (Royal Commission on Aboriginal Peoples, 1996a, p. 308). Therefore, Parliament set up a Special Joint Committee of the Senate and House of Commons in mid-1946 to review the *Indian Act* and suggest amendments (Leslie & Maguire, p. 134). The Committee had planned to solicit feedback from Canadian government officials before hearing from status Indians, but early in the process they made an exception by hearing from Andrew Paull, then president of the North American Indian Brotherhood (Royal Commission on Aboriginal Peoples, 1996a). After Paull testified, a motion to allow Indian observers to monitor committee sessions was denied although the Committee permitted briefs from several organizations that represented³¹ Indians in the Canadian government’s first “systematic effort to consult with Indians” (Royal Commission on Aboriginal Peoples, 1996a, p. 309). These organizations opposed enfranchisement and also

³¹ Monture-Angus (1999) questions the representativeness among such organizations partly because they are not “formed by the people, but by the chiefs” (p. 14).

wanted more responsibilities for chiefs and councils and less authority for the Superintendent General. However, some of the sections that status Indians found objectionable – such as “methods for ending Indian status” – remained unchanged (Leslie & Maguire, p. 149).

For example, in the 1951 Act Parliament for the first time granted status Indian women the right to vote in Band elections while further subordinating (Marchak, 1985, p. 673) Indian women who married non-status men by changing the enfranchisement, status and Band membership sections. After 1951, “an Indian woman who married out would not only lose Indian status, she could also be enfranchised against her will as of the date of her marriage” (Royal Commission on Aboriginal Peoples, 1996b). Section 11 of the 1951 *Indian Act* defined categories of people who *could* be registered as Indians. Under section 12(1)(b), those who were *not* entitled to be registered as Indian included “a woman who married a person who is not an Indian, *unless* that woman is subsequently the wife or widow of a [status Indian man]” (S.C. 1951, c. 29, p. 136, emphasis added). As with some earlier Acts, the categories were primarily based on Band membership and being “a *male* person who is a direct descendant in the *male* line of a *male* person” who is a status Indian (cited in Jamieson, 1978, p. 7, emphasis added). Jamieson (1978) explains the significance of this section:

When the male bias in this section is then read in conjunction with section 12, which defines who is *not* entitled to be registered as an Indian, it becomes evident that the Act is designed to discriminate between Indian men and Indian women and that Indian women are not entitled to enjoy the same rights as Indian men. (p. 7, emphasis added)

A status Indian woman could be *denied* status then have it reinstated – based on her choice of marriage partner – while a White woman could *acquire* Indian status based on her choice of marriage partner. Gender remained a basis of inequality and subordination (Marchak, 1985) for Indian women who married non-status men.

Another major change in the 1951 *Indian Act*, mentioned earlier in chapter 2, was the section commonly known as the “double[-] mother rule.” This clause prevented registration of individuals after age 21 “whose mother and whose father’s mother” were not entitled to be registered unless “that person [was] the wife or widow” of a status Indian (S.C. 1951, c. 29, p. 136). This section subordinated status Indian women’s children “whose maternal grandmothers were voluntarily or involuntarily enfranchised Indians, or [...] left off band lists or lived in the U.S. for over five years” just as much as White women’s children (Jamieson, 1978, p. 60).

One thing that had temporarily eased the effects of these exclusionary sections for Indian women who married non-status men was granting them “Red Ticket” identity cards. By using “Red Ticket” identity cards that recognized them as Indians *only* for the purpose of collecting Band and treaty annuities, some status Indian women who married non-status men continued to receive some Band entitlements and possibly treaty rights (Jamieson, 1978, p. 61). However, under the 1951 Act “On the report of the Minister that an Indian woman married a person who is not an Indian” the Governor in Council could declare that the woman was “enfranchised as of the date of her marriage” (S.C. 1951, c. 29, p. 167). Many women who married before 1951 chose to retain their “Red Ticket” status rather than have it commuted, but a 1956 amendment to the *Indian Act* eliminated that option (S.C. 1956, c. 40).

Parliament revised the Act so that the Canadian government's "legitimate use of force" (Mahon, 1977, p. 169) could bring social change and transformation (Drache & Clement, 1985) to Indian Bands.

After 1956 the Minister could "pay to such woman out of the moneys of the band an amount equal to ten times the average annual amount of such payments made to her during the ten years last preceding" (S.C. 1956, c. 40, p. 287). Therefore, after 1956 all women who married non-status men faced additional inequality and subordination (Marchak, 1985) since they were "subject to the enfranchisement procedure" (Jamieson, 1978, p. 62). This procedure was especially harsh for women since it was not applied to women the same way as it was to men. Men had to prove they could survive off the Reserve before being enfranchised, but there was no similar requirement for women who "los[t] their status through marriage" (p. 63). As a result, the women and their children were unable to return to the Reserve, even if the women became divorced or widowed.

Allowing the women to return to the Reserve would have been contrary to the Canadian government's advancement of the "desirability and inevitability of Indians becoming full-fledged provincial citizens" (Royal Commission on Aboriginal Peoples, 1996a, p. 314). Consequently, the Canadian government set up another Joint Parliamentary Committee in 1959 to consider revising the *Indian Act*. Since the Committee favoured preparing Indians to participate fully in Canadian society (Royal Commission on Aboriginal Peoples, 1996a), the Canadian government proposed terminating Indian status in the *Statement of the Government of Canada on Indian Policy, 1969* – better known as the "White Paper." The Canadian government

asserted that the best alternative to the “road of different status” was one toward equal “social, economic and political participation in Canadian life” (Canada, Indian Affairs Branch, 1969, p. 5). The Canadian government proposed phasing out the federal Indian Affairs Branch and ending treaties “equitably” (Canada, Indian Affairs Branch, 1969, p. 20). The Canadian government hoped to complete the transfer within five years, thereby granting Indians “full access to provincial services” (Canada, Indian Affairs Branch, 1969, p. 24). Aboriginal organizations opposed the White Paper in presentations such as the “Brown Paper by British Columbia Aboriginal people,” the “Red Paper by Alberta Aboriginal people” and “Wahbung by Manitoba Aboriginal people” (Frideres & Gadacz, 2001, p. 319). Aboriginal peoples worked together to defeat the Canadian government’s five-year plan in the White Paper much as Aboriginal women worked together to have their Indian status reinstated.

Revising the Act: Bill C-31

After the reaction to the White Paper and acts such as those by women including Mary Two-Axe Earley, Jeannette Vivian Corbiere Lavell, Yvonne Bedard, and Sandra Lovelace (mentioned earlier in this thesis) Parliament enacted Bill C-31 in 1985 to reverse discriminatory clauses such as section 12(1)(b) and grant Bands limited control over their own membership. However, gender remained a source of “inequality and subordination” (Marchak, 1985, p. 673) in section 6 which describes who is entitled to be registered as an Indian. This section outlines categories (see Appendix VII) of what is commonly called “full” status entitlement through section

6(1) and “half” status through section 6(2). There are six categories of “full” status under section 6(1), from 6(1)(a) to 6(1)(f). Individuals who were “registered or entitled to be registered immediately prior to April 17, 1985” (R.S., 1985, c. I-5, p. 4) receive status under subsection 6(1)(a). White women whose status Indian husbands were able to transmit status to them upon marriage are included among those individuals entitled to be registered under this section. Status Indian women with reinstated status are registered under subsection 6(1)(c). This section grants status to individuals whose names were “omitted or deleted from the Indian Register, or from a Band List” under “any former provision of this Act” (p. 9). The various classes of status in section 6(1) are so contentious that individuals such as Raymond Clayton Wilson³² have gone to court to challenge the Registrar’s decision about which subcategory under which he chose to register them.

Children of reinstated Indian women also face inequality and subordination (Marchak, 1985) since they are the ones most affected by the residual discrimination in the *Indian Act* because they receive half status under section 6(2). This section grants status to a person who is entitled to be registered “if that person is a person one of whose parents are or, if no longer living, was at the time of death entitled to be registered under subsection (1)” (R.S., 1985, c. I-5, p. 4). Children of reinstated women receive status that is different from that granted to children born of pre-1985 marriages between White women and status Indian men. The children from unions between White women and Indian men received full status since they were considered the offspring of two status Indians.

³² *Wilson v. Indian Registry (Registrar)*, 1999 CanLII 5333 (BC S.C.)

Another section that treats reinstated women unfairly is section 64.1(2) which forces them to repay a portion of the moneys that they received at the time that their status was taken from them. This section states:

[...] a person who has received an amount that exceeds one thousand dollars [...] by reason of ceasing to be a member of the band [...] is not entitled to receive any benefit afforded to members of the band as individuals as a result of the expenditure of Indian moneys [...] until the amount by which the amount so received exceeds one thousand dollars, together with any interest thereon, has been repaid to the band. (R.S., 1985, c. I-5, p. 29)

The limited control that Bands can exercise over their membership under the 1985 amendment to the *Indian Act* is one of the weaknesses of this statute. Although this section is not the primary concern of this thesis, it is an important factor during the reinstatement process since restoring status to individuals who had it taken away from them is a persistent source of conflict on Reserves. One source of strain on Reserves is that community members have been reluctant to accept reinstated individuals since they are concerned that doing so will endanger their culture and further tax limited resources (Miskimmin, 1997; Joseph, 1991). The sort of stress that the *Indian Act* has generated is causing “social change and transformation” (Drache & Clement, 1985, p. 10) that threatens the survival of the status Indian population. Another issue is that some Bands object to the limits Parliament imposed on Band control over membership.

Band members approve the membership code in principal when they consent to the Band taking control of its membership, but access to the membership code is limited and no one can be sure whether or not individuals who were automatically entitled to Band membership have received it. Although the *Indian Act* granted automatic Band membership to certain individuals, some Bands have included the

discriminatory sections that were in the pre-1985 Act in their membership rules.

Grande (2000) asserts that the reasons that Bands take such steps are quite often based on self-preservation:

[...] it needs to be recognized that [...] Indian communities that employ essentialist forms of identity policing do so not as an exercise in academic theory but as a means of patrolling against the wholesale appropriation of Indian culture and identity by global capitalistic forces. (p. 351)

The 1985 Act retained the earlier provision for “an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act” (R. S. C. 1985, C. I-5, p. 4). Additionally, section 9(1) stated that when Bands took control over their membership they would receive Band Lists that included names that were on the Indian Register as of April 17, 1985. After that date, the Registrar – not the Bands – had the authority to “at any time add to or delete from the Indian Register the name of any person who [...] is entitled or not entitled, as the case may be, to have his name included in the Indian Register” (p. 11). Section 10(6) states:

Where the conditions set out [...] have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band. (p. 12)

Although the Canadian government invited Indians to various rounds of consultations (Panitch, 1977, p. 19) prior to Parliament granting Bands a limited measure of self-government in the 1985 *Indian Act*, these consultations gave Indian Bands the “semblance of power without the substance – so as to employ them as agencies of social control over their members” (p. 19). Grande (2000) critiques the “freedom” that the United States government delegates to Indians to control their own affairs:

Contemporary American Indians are about as ‘free’ to define who we are as people as we were ‘free’ to come into compliance with the Dawes Act (1886) through which the U.S. government usurped the power to, once and for all, determine who counts as Indian and who does not. (p. 353)

Additionally, the *Indian Act* has been the subject of much commentary³³ and generated a number of legal challenges (some of which were summarized in chapter 2).

Summary

This chapter traced the “historical development of power relationships” (Marchak, 1985, p. 673) in the *Indian Act* sections that outlined Indian status and Band membership as part of the Canadian government’s efforts to eliminate the “Indian problem” by assimilating status Indians into “White stream”³⁴ Canadian society (Dyck, p. 1). I have reviewed phases in the Canadian government’s exercise of control over status Indians: protecting and defending Indians, changing Indian women’s status, involuntarily enfranchising Indians, imposing an electoral system, expanding enfranchisement, and holding consultations with Indians. The value and importance of a political-economy analysis rather than a feminist or “identity” analysis become clear after reviewing *Indian Act* mechanisms such as paternalism, and “inequality” and “subordination” based on “gender”, “ethnicity” and

³³ See for example, Assembly of First Nations, 2005, Barnsley, 1999a, 1999b, 2001b; Blaney, 1998; Buehler, 2007; Cannon, 2005; Douglas, 1986c; Doyle, 1988; Québec Native Women’s Association, 2000; Fiske & George, 2006; Furi & Wherrett, 1996/2003; Gehl, 2000; Green, 1985, 1997, 2001; Holmes, 1987; Huntley, 1998, 1999a, 1999b, 1999c; Hutchison, 1999; Minister of Indian Affairs and Northern Development, 2009; Isaac, 1994, 1995; Isaac, & Maloughney, 1992; Isfeld, 1997; Jacobs, 2005; Jamieson, 1986; Jones, 1985; Jones, 1984; Jordan, 1995; Joseph, 1991; 1997; Kirby, 1985; McKinley, 1997a; Moss, 1997; Mothers of Red Nations Women’s Council of Manitoba, 2006; Nahanee, 1997; Napoleon, 2001; Nova Scotia Native Women’s Association, 1986; Native Women’s Association of Canada, 1988, 1991, 2005; Opekokew, 1986; Paul, 1990, 1999; Platiel, 1986; Royal Commission on Aboriginal Peoples, 1996b; Reid, 1993; Robson, 1991; Simon, 1985a, 1985b; Sprague, 1995; Turner, 1991a, 1991b, 1991c, 1991d; and Turpel, 1994.

³⁴ Denis, 1997.

“nationalism” (Marchak, 1985, p. 673). Furthermore, a political-economy analysis examines the paternalism that is further evident in the justification that the Canadian government provided for enfranchising Indians in 1869. As this chapter shows, although paternalism changed over time it was still evident in the “consultation” (Panitch, 1977, p. 19) and negotiation processes that occurred as Parliament prepared to revise the *Indian Act* in the mid-20th century.

This chapter also illustrates the value of a political-economy analysis when examining how Parliament added gender to “ethnicity” and “nationalism” as sources of “inequality and subordination” (Marchak, 1985, p. 673), and means to insure genocide in the Enfranchisement Act. The clauses that discriminated based on gender evolved from excluding women who married non-status men and their children in the Enfranchisement Act to excluding their children and grandchildren in the 1985 Act. Bill C-31 reversed the “inequality” and “subordination” based on gender (Marchak, 1985, p. 673) by creating new definitions of Indian and granted Indian Bands limited control over their membership. These clauses divided status Indians who live on-Reserve by forcing them to compete with reinstated members for scarce resources. The next chapter examines the perspectives of women whose status was reinstated under the 1985 *Indian Act*.

Chapter 5

THE EXPERIENCES OF 'INDIAN' WOMEN WHO 'MARRIED OUT'

As asserted earlier in this thesis, the *Indian Act* constituted gender, in addition to “ethnicity” and “nationalism” (Marchak, 1985, p. 673) as sources of inequality and subordination in the lives of Indian women in Canada when they married men who were not considered status Indian. This chapter examines the perspectives of women whose lives have been and continue to be shaped by this statute. The chapter raises some of the issues previously discussed in this thesis. The *Indian Act* denies status Indian women the right to transmit Indian status to their grandchildren, and they still cannot obtain membership entitlements after having their status reinstated. I focus on these issues because seven women identified these issues as important to them during interviews between May 2005 and June 2006.

I have used some of the women’s own words to identify the themes among the women’s responses. The first theme, “she’s more Indian than me,” encompasses the women’s experiences of finding out they were no longer considered Indian and reactions to being denied their Aboriginal rights. The second theme, “I had no place to go” describes the women’s experiences of being caught between “two worlds;” the next theme, “I am who I am” describes the women’s thoughts about their Indianness after being told they were no longer considered Indian. Another theme, “so that I can be an Indian again” explains why the women believed it was important to once again

be recognized as Indian while the next theme, “you gotta get on the list” addresses the women’s efforts to obtain membership entitlements after having their status reinstated. Another theme, “he couldn’t get nothin’” encompasses the women’s reactions to their children’s and grandchildren’s attempts to obtain membership entitlements; the final theme, “reinstatement of what?” describes the women’s experiences with having their status restored and returning to the Indian Bands where they became members. I will discuss each of these themes in turn in this chapter.

Three Mi’kmaq women – Joan Clement, Millie Augustine, and Sandra Warner – and one Maliseet woman – Georgina Perley Kipp – chose to be identified by their real names. The other research participants – two Maliseet women and one Mi’kmaq woman – chose to be identified as “Indian #1”, “Indian #2”, and “Lillian.” I offered the women the option of being identified by their actual name or another name of their choosing (see Appendix IV) because some of the women I invited to participate in this research have already revealed their names publicly.

“She’s more Indian than me”

This section describes the women’s experiences of having the Registrar exercise the power to tell them that they were no longer considered Indian. Their descriptions of this experience include their own reactions and those of family and community members to their loss of Indian status, as well as how this change affected the women’s concept of their own identity. The process of denying and reinstating Indian status demonstrates the impact of the Canadian government’s “legitimate use of force” (Mahon, 1977, p. 169) in the women’s lives. Georgina and Lillian claimed

to have been unaffected by the Registrar's decision to revoke their Indian status when they stated that their change in status did not affect them directly because they were not living on or near the Reserve when the Registrar acted on his decision. Georgina did, however, acknowledge the gendered inequality (Marchak, 1985) in the *Indian Act* when she said that she "*didn't feel it was fair* that White women [who married Indians] were getting the benefits that [Indian women] were losing but there was nothing that [Indian women] could do about it." Georgina was not the only woman to acknowledge the inequality in the gendered provisions of the *Indian Act* while she said that her change in status did not have much of an impact on her. Lillian also said that she did not think she was really affected by her change in status, but also she did not believe it was fair that her brother not only retained his rights when she had hers taken away but also could transmit them to his White wife:

I did feel bad. Why isn't it – here I'm the Indian and you take my sister-in-law and *she's got more rights than I do! She's more Indian than me* – and that's a little upsetting. This is, I thought, my legal right – and I didn't have any at that time!

Joan said she "didn't really suffer" after her status was taken away and "it didn't mean too much because I always had a job and I was always independent." She started working in an urban area away from the Reserve once she completed her training as a practical nurse. The fact that she did not agonize over her change of status does not, however, mean she was unaffected by it. Joan explained:

I didn't like it but [...] they tell you this, and it's all [Canadian] government affairs – so *you have no choice*. When the government says something, that's it – you can't do anything about it, as I learned later (laughs).

Joan's comments about not being able to do anything about what the Canadian government says are an example of the government's *legitimate use of force* in the

Indian Act to integrate “subordinate classes” into the dominant society (Panitch, 1977, p. 19). Statutes such as the *Indian Act* are part of what Smith (1990b) identifies as the “relations and apparatuses of ruling – state administrative apparatuses” (p. 83). The Canadian government uses and enforces “methodologies of organization” – such as registering status Indians – to produce a “one-sided version” of the world that “defines the objects of its power” (pp. 83-84).

Indian #1 and Indian #2 explained that they had each left the Reserve where they were born when they were young children and did not plan to return. Since Indian #1 had not intended to live on the Reserve again, she said “it didn’t really matter about losing status.” While Indian #2 says she has always “considered [her]self Indian,” when her status changed as soon as she married, she “knew [she] couldn’t come back, of which [she] was glad.” Each of the women minimized the impact of the Registrar’s actions in their lives by devaluing the Indian status revoked. To cope with the disconnect between their experiences and the *Indian Act* definitions of Indians, women such as Indian #1 and Indian #2 “evolved practices of knowing and acting in the world that overcame the disjuncture between the sanctioned and enforced terms [...] and their actualities” (Smith, 1990b, p. 98). Although Sandra also said she did not feel the immediate impact of her change of status, she did consider the implications of her change in status:

All I knew was that I wouldn’t have the same benefits that the Native people – which I thought I was a Native but as far as they were concerned I was no longer a Native person – so I wasn’t entitled to any of the benefits – But I said well, my husband will provide for me ‘cuz he’s in the Armed Forces – and I was workin’ and I thought well, at least I’ll be gettin’ my Canada Pension. My husband will be gettin’ the same and Army pension and probably Old Age Pension. So I thought ‘My life looks alright. I’m covered.’ But *nothing is ever guaranteed forever*, eh?

Although these women say they did not believe that being denied their Aboriginal rights affected them, it would appear that denying the value of Indian culture and status was their way of coping with participating in and performing “governing processes” – such as the *Indian Act* – that organize Canadian society (Smith, 1990b, p. 15). By devaluing the Indian status that was taken from them, they became if not willing at least cooperative participants in the Registrar’s exercise of power over them. They did, however, appreciate and identify the gender-based inequality and subordination (Marchak, 1985) in the *Indian Act*. The fact that these women identified gender discrimination – rather than loss of Indian status – as problematic, illustrates how “people’s activities can come to have properties of a system” in which “what they do or ‘expect’ may become the components or parts of [that] system” (Smith, 1990b, p. 46). Furthermore, they appear to have been able to separate gender and “race”, giving gender precedence over “race.” This is something that others assert that they are unable to do (Monture, 1993).

In the next section I will address some of the ways in which the women’s change in status affected their lives.

“I had no place to go”

Although most of the women claimed that the change in status had little or no effect on their lives, others talked about the emotional impact that the change in status had in their lives. For example, Sandra said she faced uncertainty when she separated from her non-status husband after 15 years of marriage:

So when we separated in '80, [I thought] *I'm not nobody now*. I'm not a White person and I'm not an Indian. I'm just somebody lost out there in the society. I can't come to the Reserve. They're not gonna do anything for me.

Similarly, Millie said her change of status had an immediate detrimental effect on her life. She was rejected by members of her birth community and people outside of the community alike:

I was tryin' to get used to non-Native society; we were like out there and being rejected all the time. And I thought well at least if I know I can go back to my community and lick my wounds once in a while I'd be alright. I come back here and *they tried to kill me instead! There was no safe place for me to go*. You know how when a child is hurt and they come to you and you cuddle them? I had nobody to turn to for that, and that was the hardest part. *I had no place to go to and hide [...]* and just have someone comfort me. I looked everywhere [...]

On the other hand, the majority of the women said they did not experience negative reactions from family and community members to their change of status but this was largely because they seldom returned to the Reserve after marriage. Joan said her family did not reject her and she did not experience any adverse reaction from community members because she “wasn't associating with them.” Sandra described the way her siblings joked with her:

We're all brothers and sisters and that was alright [...] And even my brother [who] was the best man at our wedding – anyways he would once in a while, you know when you're talkin' just the two of you sittin' about [say] 'Gee, San, did you know that you were gonna lose your status?' I said I heard about it before but it was never – I never had heard of havin' anybody that I know lose their status [...] And he'd say, 'Well what do you feel now that you're not gonna get anything like the rest of us?' And again I said well I have my husband so it's no great loss [...]

Smith (1990a) asserts that women's experiences are embedded in “economic and social relations” (p. 207) that organize and determine such experiences. Additionally, Smith (1990a) describes how members of society develop the “standards under which

we are judged and read, and with which we judge and read others” (p. 206) based on texts such as the *Indian Act*

Although Sandra said it did not have a tremendous impact on her life her when the Registrar revoked her status, Millie said she experienced adverse reactions to her change of status from family and community members alike. She did not talk about her siblings’ reactions but her parents blamed Millie for her change in status while community members displayed a lack of empathy and indeed rejected her:

My mom and dad [...] said I lost my status, that’s my own fault and stuff like that. So therefore they wouldn’t comfort me. The community was rejecting me. I couldn’t get comfort there. I was so lost. *I was so angry!* There was nobody to turn to at all. I could of handled it on the outside, putting up with all this bullshit, knowin’ that I could come back to the comfort – even if they didn’t say a word to me. That’s fine. That itself I could have accepted. Just ignore me. It’s just those hateful things that people used to say to me. Especially, it seemed like when I was down the lowest that was when it turned up, no matter whether I was in town or anywhere. No matter where I saw them, even people I would have least expected – *bang!* They knocked me down again.

When the women talked about the emotional impact of their change in status, some of them were blamed for their own change in status. Additionally, since the women did not feel they “belonged” – either on-Reserve or off-Reserve – they worked to distance themselves from others to avoid further rejection.

Mihesuah (2003) and Monture-Angus (1999) address the inability of reinstated women to truly belong to their communities once they regain Indian status. Mihesuah (2003) asserts that women who marry outside the Band or “who are out of favor with the current political tribal standards” may find it necessary to “completely distance themselves” (p. 105) from the Band. Monture-Angus (1999) asserts that it is necessary for less powerful individuals – such as reinstated women – to distance

themselves from the community when leaders mimic their oppressors and “turn the colonial skills and images they learned against others who are less powerful in their communities” (p. 11).

In the next section the women discuss their thoughts about being recognized as Indian.

“I am who I am”

I assert in this thesis that Bill C-31 is not primarily an issue of “identity loss.” While it is important to address issues of gender and identity, I suggest that using a political-economy perspective looks beyond these issues to an analysis that addresses the social, cultural, political, and historical realities of status Indian women’s lives. However, since some of the academic and popular literature ties Bill C-31 to the issue of identity, I felt it was essential to ask the women whether they experienced any confusion about their identity after having their Indianness denied. Three of the women that I spoke with said they did not experience doubts about their identity when they learned of their change in status while others experienced some uncertainty.

Indian #2 said she “always considered [her]self Indian” while Joan said she felt like a “castaway.” Lillian denied feeling any confusion about her identity since she “always felt [she] was Indian and [she] was proud of it. But when you find out you’re not Indian anymore it’s a disappointment, but there was nothing you could do about it.” Smith (1987) asserts that women’s experiences are organized by processes – the ruling apparatus – that are “external to, and beyond, [their] everyday world” (p.

65). Women are not only “located outside these structures” but also they are “excluded from participation” (p. 65) in them. Monture-Angus (1999) identifies the Canadian law as part of the ruling apparatus that “remains a central tool in delivering oppression and colonialism to First Nations” (p. 52).

Some of the other women described feeling cheated and unsure about who they were after learning they were no longer considered Indian. Sandra recalled feeling “pleased” when she found out she could have her status reinstated and explained:

[...] at that time I felt like I wasn't an Indian – like I'd lost my status – that meant that I'm not an Indian. They tell you that you're not a status person anymore. And then I'm not a White person either. So like, who am I? But yet a non-Native woman [...] could come and marry a Native man and she became a Native, with no blood in her – you know? And *it did seem unfair* [...] because I knew both of my parents were Native, and my grandparents, and my great grandparents. So I sort of felt cheated.

Millie said she experienced some misgivings about her identity before she came to understand the innateness of her Aboriginality:

[...] it took me a while to realize I'm still an Aboriginal woman. Nobody can take that away from me. *I am who I am*, and I don't need a goddamned card from the government sayin' who I am. *I know who I am already*. But back then I thought that status meant I'm losin' myself as an Aboriginal woman. That's the part that I had to fight and finally get back in the community and so on. Do you realize all those years I've wasted? [...] But not understanding the difference between the *Indian Act* and section 35(1) – I didn't understand the two myself. So how could it sink into my heart?

Millie resisted the control that the Canadian government imposes on status Indians in the *Indian Act* as have members of communities such as Kahnawake. The Mohawk Council of Kahnawake has determined their own membership because community leaders deny the legitimacy and reject the authority of such “laws and principles” (Alfred, 1995, p. 88) as the *Indian Act*. While some Aboriginal peoples totally reject

Canadian laws, Millie says attending law school helped her develop a better appreciation for her identity and Indian status:

I realize now, after all these years, there's nothing to this status thing – but everybody was making such a – all I know is what I heard [...] It made me so – it's gonna either lift me up to where I was before – or I'm gonna die. *I'll die without it!* That was the attitude. I'll die without it. *Hey, I lived all those years without it* [...] The last time I got my status card is when I got reinstated. I went and got one status card – and I lost it. I don't know what happened to it. What good does it do me livin' off the Reserve? But everybody made such a big thing of status cards. In other words, it took my identity away and stuff like that. I realized that – well having a legal background – that made a difference now, too. But I realized *it's just a friggin' card* and a Band number. It took me many years to figure out who in the hell I was anyway. I thought I knew myself. *I thought I knew who I was.* I had no problems with my identity until I lost my status [...]

This section presented the women's experiences of the Registrar's exercise of the authority to tell them that they were no longer considered Indian. The impact on these women is important to consider since it demonstrates a disjuncture between their experiences of being Indian and how the *Indian Act* represents being status Indians. The ideological organization of the *Indian Act* is such that it “subdue[s] and displace[s] the perspectives of particular subjects” (Smith, 1990b, p. 97). When such a disjuncture occurs, organizations such as Indian and Northern Affairs Canada enforce “terms and procedures [...] in terms relevant to organizational policies and procedures” (p. 97).

The next section examines some of the reasons the women provided for wanting to once again have others recognize them as Indians.

“So that I can be an Indian again”

While all the women wanted to acknowledge their heritage, some of them wanted to obtain the entitlements that accompany Indian status for themselves and their children. Georgina says the reason she applied to have her status restored was concern for her children. “I have five children and things were changing about the time that I was gettin’ really concerned about sending them to college or university.” Indian #1 said she thought maybe having her status restored would give her “an ace in the hole” because of the entitlements that accompany Indian status. Lillian said she “had no intentions of moving” to the Reserve but when she and her husband became sick they felt they “really had to make the move” in order to be able to survive financially. Lillian is the only one of the women who was still with her non-status husband at the time of the interviews. Since then he has passed away. Indian #2 believed it was important to come back because she did not want to “burden [her] children” as she got older. But she points to gender and “ethnicity” as sources of “inequality” and “subordination” (Marchak, 1985, p. 673) when she further explains:

It was discrimination plain and simple that caused us to lose our status but I felt it was important to come back [...] I felt Indian and I wanted that card for myself and my children. I have six children so I wanted them to find out about their heritage.

Joan, Millie and Sandra were also looking more for recognition of their heritage than the economic entitlements of Indian status. Joan explained:

I guess it’s only because you’re an Indian and you want to live that way. You wanna prove that you are a person and you have to be identified as who you are. *You can’t just sink away into nothing and not be identified!*

Sandra said she felt it was important to get her status back so that she could “be an Indian again.” She wanted to “be somebody” since before she had “felt kinda lost.”

Millie wanted to “once again belong” to her birth community, to have community members recognize her as someone who belonged. She explained:

I wasn't plannin' on movin' back [...] All I wanted was for them to say, 'Look you're still one of us.' That's all I wanted to hear. 'You're still part of this community. You're still our family.' You know?

This section examined the women's reasons for wanting to reverse the Canadian government's efforts to integrate them into White society. Some of the women acknowledged the importance of obtaining the entitlements that accompany Indian status for themselves or their children, while all of the women wanted to reclaim their heritage.

Comments such as these illustrate how *Indian Act* definitions of Indians have divided families, communities, and Aboriginal peoples. This is one of the reasons that authors such as Coates (1999), Daniels (n.d.), and Mercredi and Turpel (1994) assert that it is wrong for the Canadian government to intrude in First Nations cultural and social affairs. Whether it is considered Abocide, genocide³⁵ or, assimilation, the *Indian Act* definition of Indian is “a modern attempt at the extermination of the Status Indian population” (Daniels, n.d., p. 3).

The next section describes the women's experiences as they try to obtain Band membership entitlements.

“You gotta get on the list”

The women who participated in this research have not all been able to obtain access to Band resources. But then their circumstances are not all the same either. There may be less competition for scarce resources in small Bands than there is in

³⁵ For more information on this topic see United Nations (1948a) and Lemkin (1973).

larger Bands or some women may be more assertive than others when seeking access to Band resources. No matter what the reason, not all of the women and their children have been able to obtain access to Band resources.

One of the most important entitlements to the women is also highly contentious: on-Reserve housing. Each of the three Maliseet women has a new house on the Reserve. Indian #1 though expressed some ambivalence when she said that she has a nice house on the Reserve but there is a “price you pay for having a house on a Reserve [...] You’re stuck here because you can’t afford a car and the bus doesn’t come here. It used to [...] but I guess there weren’t enough people riding it.” Indian #2 said she had returned to the Reserve more than once after having her status reinstated, but she did not return to stay until she “got [a] house.”

Only one of the four Mi’kmaq women had a house built on the Reserve.

Sandra said she obtained a house because she lobbied hard to get one:

I went chasin’ after everybody, ‘who’s this – is he a councillor? No? How about that one over there? Yeah? Okay, wait a minute. Come here.’ Then I just went after them and I told them I was Bill C-31. I had my status back. I had a status card. ‘And now I demand to have a house. I’m entitled to have a house. And I wanna live on the Reserve.’

In spite of apparently having legal status similar to “charter” members, reinstated individuals are commonly called “C-31s.” Some reinstated individuals identify themselves as “Bill C-31” while others – such as Mercredi – refuse to define themselves “in that humiliating way” (Mercredi & Turpel, 1994, p. 87). Is it a coincidence that individuals who accept the “Bill C-31” label – such as Sandra – have seen more economic benefits from their reinstated status than those who are unwilling to accept that label?

Sandra moved into her house in 1991 but said that repairs are not handled the same for C-31s as they are for other Band members. She explained “I have never ever seen anything from the Band office sayin’ that there is [...] certain things that has to be taken care of – yearly or whatever. Nothing. No major repairs have ever been done to my home.” Sandra pointed out that some of her neighbours – with houses that are newer than hers – have had “three or four major repairs” to their homes.

Frideres and Gadacz (2001) assert that reinstating individuals under Bill C-31 has produced significant social and political problems for on-Reserve Indians as well as economic problems for the Canadian government. Consequently, there is a severe split between status Indians who have maintained their roots on the Reserve and those who are returning after they were forced to leave the Reserve. In some communities, the return of urban Indians to the Reserves has caused “bitterness, jealousy, and factions within the reserve community” (p. 34).

Lillian said that although she received written notification that she was entitled to certain entitlements after she was reinstated, she has since realized that she will probably never have a house of her own:

No matter how many times I wrote in for a house and stuff like that, it was always, ‘You gotta get on the list’ [...] and, ‘It would be political suicide if I gave you a house.’ I was told that many, many times by the [former] chief and by the councillors. Even though I was sent a letter stating that I was entitled to housing, education and stuff like that.

Additionally, Lillian recounted some of the horrors that she and her husband endured when they were told they had to move out of one of the on-Reserve houses that the Band rented for her and her husband:

[They] called us up and told me I had to get a motel and be out of there by 12:00 and store our stuff in that house [...] Once I moved out of that house, you know five minutes later down the line someone is gonna break into that house and take everything. So I was in between – what am I going to do with – It was a big house and it was loaded with everything. What am I going to do with all this stuff? What am I gonna do with my animals who have never been out? Who's going to let me take them into a motel? It was just an awful, awful situation. No help from nobody. Everybody told me to set there; they have to get you a place. *Yeah they had to get us a place!* That place that they showed us was so bad, it woulda taken them I don't know how long, to get it even to live in – And when we had to go up against the council, the landlord said, 'Well we offered them a place. They wouldn't take it. They refused it.' Like we were the bad people! It was just horrific – *and nobody would help us!*

The *Report of the Royal Commission on Aboriginal Peoples* (1996b) provides one possible explanation for Lillian's experiences. Policies that create distinctions among group members can ultimately divide that group. Therefore, Bill C-31 has created the potential for conflict by enacting a series of distinctions such as subsection 6(1) versus subsection 6(2), members versus non-members, and status Indian versus non-status Indian. Scarce resources may worsen divisions in the group and heighten tensions.

Millie has not tried to get on-Reserve housing since at the time of the interviews she had nearly paid off the off-Reserve house she bought after her divorce from her non-status husband. Joan did not receive a new house but she eventually moved into a 50-year-old house that had been relocated to the Reserve and put on her parents' lot:

I had been living in an apartment [...] and – uh – we were nearly burnt one night cause some drunk lady came home and made – uh – Indian bread on the stove and fell asleep. So [...] anyway I said to my parents 'I guess I'm gonna hafta to move into that house because I didn't want a drunk to burn me alive' [...] So I moved into their house and – uh – I still have that. So that's the only thing that I ever benefited from.

Joan she does not believe that she will ever get a new house because she is “from the wrong side of the [...] politics.”

This section showed that although the women have regained Indian status and Band membership, they are not necessarily able to access entitlements associated with Band membership. However, there are larger issues such as who has the right to determine Band membership (Furi & Wherrett, 1996/2003) and the Canadian government’s failure to allocate resources that are sufficient to accommodate reinstated individuals (Moss, 1990; Paul, 1990; Joseph, 1991).

In the next section I address the women’s reactions to their children’s and grandchildren’s attempts to obtain Band membership entitlements.

“He couldn’t get nothin”

Although some of the women have been able to obtain membership entitlements, gender continues to be a “source of inequality” (Marchak, 1985, p. 673) for the women, their children, and their grandchildren. All of the women except Indian #1 have children and some had grandchildren at the time of the interviews, but not all of them talked about how reinstatement has affected their children and grandchildren. Georgina summed up how obtaining housing and other elements of the reinstatement process have worked for her and her family. She said, “I have a house [and] [a]ll five of my children got status but of course there’s no status for my grandchildren.” Denying the women’s grandchildren status because of the second-generation cut-off is one way that the *Indian Act* is “a threat to the survival” (Marchak, 1985, p. 675) of the status Indian population. Georgina added, “Two of

my girls went to business school but by the time that my son wanted to go [the Band] had run out of money.”

Although Georgina’s Band claimed that there was no funding available for post-secondary education, this is another example of the continued gender inequality (Marchak, 1985) in the 1985 amendments to the *Indian Act* since it seems that the funding shortage does not apply to all Band members. Joan’s children have been mostly successful when it comes to obtaining post-secondary education funding:

I had four children so I filled out applications for them [...] Now we all got cards. By this time they needed their university [...] So one day the youngest one – graduated from high school [...] and she went and applied at York University and she got accepted and so the other two girls decided, if [she] can do it so can we. So they applied and they got accepted. So today they all have – well one she has her Master’s in business administration. The other one has – she’s a programmer, computer programmer. And the other one is working on her Master’s, I think in communication [...]

Unlike his sisters, Joan’s son did not attend university though he finished Grade 10 and he became a welder. However, Joan’s grandchildren have not fared as well as her children did in obtaining post-secondary education funding. Only two of her grandsons have Indian status and they have so far been unable to receive education funding; the Band has told them that there is no money.

Much as Sandra asserted that the Band has different policies for funding major home repairs, Lillian explained that some Band members receive furniture deliveries while others do not. At least one of Lillian’s children has not been successful obtaining this type of membership entitlement:

As a matter of fact my son got an apartment and he went down there eight times just to try to get furniture for it, just to get a bed, and *he couldn’t get nothin’*. Oh there was no money and all this and that. We have so many houses and all this and that. *Eight times he went down there – and he couldn’t*

get a bed or a chair! So he's been there in that house over two and a half years without a kitchen table, a bed or anything.

However, this lack of funding does not apply to all Band members. "You see the [furniture delivery] truck every day around here; you see the truck coming with furniture," Lillian said. "They all haven't got jobs, not in the apartment houses – but they're getting stuff!"

Although I did not ask women about their ability to receive medical care, most of them mentioned receiving health coverage. Eligibility for social assistance from their Bands was not an issue for the women at the time of the interviews since they were either employed or receiving a pension. However, Lillian mentioned that when she was on social assistance before becoming eligible for a pension, she sometimes received reduced payments for herself and her husband. She told about times – such as when clothing orders were being issued – when the then chief told her, "There's two of you and you're in need so I am going to give you \$50 apiece instead of \$75."

This section showed that although the women have regained Indian status and Band membership, they do not have the same access to Band membership entitlements as other status Indians. Band resources continue to be easier to obtain for some Band members than others. It appears that Bands are finding ways to resist the Canadian government's decision to restore Indian status to thousands of individuals after enacting Bill C-31, including not accepting reinstated individuals (Turner, 1991b). Some Bands are unwilling to accept reinstated individuals because they lack the resources to accommodate them (Paul, 1990; Joseph, 1991). Others are unwilling to accept them because they find objectionable the limited control over

Band membership that the Canadian government has delegated to Bands (Mercredi & Turpel, 1994).

The next section describes how the community responded to the reinstated women.

“Reinstatement of what?”

Several of the women I spoke with demonstrated how the *Indian Act* has affected the *social and cultural life* (Clement & Williams, 1989, p. 6) of Indian bands when they talked about one of the primary residual effects of their loss of status – isolation. Lillian and Indian #1 said they believe that the community continues to segregate “Bill C-31s” while Sandra and Millie isolate themselves from the community.

Indeed, Reserve communities have expressed some aversion toward accepting individuals who had their status restored under the provisions of Bill C-31. Some communities assert that reinstated individuals may have been “co-opted by white society” (Isaac & Maloughney, 1992, p. 464) while others have expressed concerns that reinstated individuals could endanger their culture (Miskimmin, 1997). No matter the rationale that Reserve communities provide for their behaviour, the reality is that the *Indian Act* is still dividing status Indian peoples (Douglas, 1986; Doyle, 1988).

Lillian talked about the “closed doors” she has encountered after having her status reinstated under Bill C-31. “And here they send you a letter – to get these C-31s to come back. You can have this; you can have that. But when you get here,

there's closed doors all around." As mentioned earlier in this chapter Lillian and her husband received no assistance after being told they needed to move out of their rented house immediately, illustrating the degree of isolation reinstated women often face on Indian Reserves. Indian #1 also talked about how isolated reinstated women are, explaining she has not exactly been overwhelmed by a sense of community:

There's a coldness here toward those of us who have returned – nobody ever knocks at the door. I was born here [...] and] [e]ven though I have plenty of relations here, nobody ever calls or stops by and asks me if I want to go with them or if they can pick up anything for me [...] I am a Catholic but I don't go to Church very often. There's only one Catholic Church and only the early mass is done in English. Nobody has ever offered to take me to church. I could take a taxi but I take taxis for everything else and *you have to draw the line somewhere!*

Monture-Angus (1995) explains the contradictory nature of statutory provisions that define status Indians and divide Reserve communities. Monture-Angus asserts "[t]he idea of Indian experience defined by the four corners of a piece of land called an Indian reserve, a fraction of our original territories, is of central importance" (p. 179). Its significance arises from the way in which on-Reserve Indian experiences are constructed as more authentic than off-Reserve Indian experiences. Monture-Angus asserts that erroneously conclude that:

Non-reserve residency is seen by the mainstream as less real or less legitimate Aboriginal experience. Unfortunately, some [Aboriginal peoples] have embraced this false dichotomy (p. 180).

Members of the Reserve community are not the only ones who subscribe to this way of thinking. Sandra showed how this type of language has crept into her vocabulary when she described how she has been taking her mother to Mass on the Reserve but, aside from Church, she seldom sees other community members. In fact, she feels "othered" in her own community:

I don't associate with too many people other than my family because when I talk I'm not part of them in a sort of sense. Because I don't realize it, but later – like a few seconds later – I realize 'you people,' like all the time I say that and then sometimes somebody will get mad at me and argue back and say, 'And who are you?' Well one of you, you know?

Not only does Sandra not seek out other community members, but they also rarely visit her. She explained “The only time that anybody will come [to my house] is if they see a vehicle sittin' in the yard. And they wonder what's goin' on – who's Sandra with?” One factor that is dividing Reserve communities is disagreement between Band leaders and Aboriginal women's groups about whether or not Band membership rights should be restored automatically to reinstated individuals (Douglas, 1986). Additionally, lack of additional funding to accommodate reinstated individuals makes Band councils “look bad and creates dissension” (Doyle, 1988, p. 3).

Millie explains that she has chosen not to participate in the community socially since the community rejected her. One measure of “social change and transformation” (Drache & Clement, 1985, p. 10) is the way that scarce resources often pit people against each other:

[...] I stay to myself and I'm very picky in regards to who I will associate with. [It's] not because I don't want to hang around with them, but because that mistrust is there – that they're going to say somethin' hateful [...] Any time a group gets together here, I dread going to those places – anything that goes on. I'd rather not go. And 99.9 percent of the time I don't go. I don't participate in any social stuff around here at all [...] I've been burnt too many times that I no longer feel comfortable. *Why expose myself to more pain?*

It may not be possible to reverse more than 100 years of the Canadian government's control over Band membership and Indian status with the stroke of a pen. The women's continued isolation from their communities makes it clear that the

government's remedial legislation has not been successful. This is partly because reinstatement is more than a process that provides access to Indian status and Band membership entitlements. Millie summarized the situation poignantly:

How well the reinstatement process works? *That's a joke! It hasn't worked.* It's the same attitude. It's just now some of them can go back to the Reserve. And unfortunately you'll find that the Council, a lot of the time, they fight you like crazy on it [...] But the reinstatement office – (humph) – reinstatement of what? *Just to get your number back?* How are they going to reinstate back your dignity and all those years lost, of bein' degraded and treated like shit and everythin' else? Are they gonna be able to give that back to you because they give you back a status card, a number and say 'Yeah, you're entitled to a status card'? What about all that what you've lost? Are they going to be able to put – you know – bring that back to you?

Examining the women's experiences illustrates some of the difficulties of the Canadian government erasing the effects of external controls on Indian status and membership in an Indian Band. Although the women and their children were able to obtain Indian status and Band membership, *Indian Act* control over Indian status remains problematic. Boldt (1993) asserts that by separating responsibilities for determining Indian status and Band membership, the Canadian government furthered the "split between cultural obligations and the benefits of band / tribal membership derive[d] from Euro-Western conventions and jurisprudence regarding 'patrimony'" (p. 211). Uncoupling membership entitlements from cultural obligations has not only contributed to cultural transformation within Reserve communities but also it "poses a serious jeopardy for Indian cultural survival" (p. 211).

Summary

In this chapter I examined some of the issues that emerged from interviews with seven Indian women who had their status restored under the 1985 amendments

to the *Indian Act*. I organized the women's responses around several themes. "She's more Indian than me" describes the experiences of reinstated women after the Registrar told them that they were no longer Indian. Although some of the women asserted that this change in status did not really affect them, it seems ironic that at the same time they said that they also said they felt *there was nothing they could do about it*. "I had no place to go" describes the women's experiences of being excluded from both the Indian Reserve and the White communities where they lived. Some of the women truly had no place to go when they were exiled from their birth communities. "I am who I am" describes the women's thoughts about their Indianness after being told they were no longer considered Indian. Some of the women faced less uncertainty than others about their identity after having their Indian status revoked.

"So that I can be an Indian again" shows why the reinstated women felt it was important to once again be recognized as Indian. Some of the women were seeking specific entitlements that accompany Indian status while others were primarily looking for recognition. "You gotta get on the list" addresses the women's attempts to obtain membership entitlements after having their status reinstated. Not only have some of the women been more successful in obtaining membership entitlements than others but also there is quite a disparity in how the reinstatement process has worked for the women's children and grandchildren.

"He couldn't get nothin'," encompasses the women's reactions to their children's and grandchildren's attempts to obtain membership entitlements. The women's grandchildren do not have status. Additionally, though the women's children have status they have not been able to obtain entitlements such as on-Reserve

housing and post-secondary education funding. “Reinstatement of what?” describes the women’s experiences with having their status reinstated and returning to their First Nations communities. Several of the women who shared their stories described isolation as one of the primary residual effects of having their status taken away. In the final chapter I will discuss how Parliament defines Indians and the impacts on women’s lives.

Chapter 6

SUMMARY AND CONCLUSIONS

The research for this thesis emerged from my experiences of growing up a non-status Indian in a small town where my family was part of “the Indian family” in town. While I was growing up, I argued with myself and others about my right to claim my Indian ancestry, and I contemplated what it means to be Indian and who determines the rightfulness of one’s claim to Indianness.

I realized a number of years after Bill C-31 became law in 1985 that thousands of Indian women and their children were in a situation similar to mine before they became eligible to apply for reinstated or first-time Indian status. When Parliament revised the *Indian Act* in 1985 I was still denying my heritage. I had denied my ancestry in an effort to fit in first with my White schoolmates and then with my mostly White colleagues in the U.S. military. The Canadian government denied status to my siblings and me because we could not provide the paperwork to support our claim. I left the U.S. military in 1990 but it was not until 1996 that the Registrar granted status to us. I began the research for this thesis after I received a Bachelor of Arts degree in 2003 so I could appreciate other peoples’ experiences of having their Indianness denied in an effort to better understand my own experiences. I also believe that sharing the women’s stories is an essential part of the process of changing policies such as those examine in this thesis.

My interviews with Mi'kmaq and Maliseet women who have been reinstated under the terms of Bill C-31 are the foundation for the political-economy analysis of the impact of Indian policy on women in this thesis. I used a political-economy approach to examine issues of Indian status and Band membership as they have evolved since the British government and then the Canadian government took autonomy and control over these matters away from Indian Bands. Specifically, I study the cultural and social embodiment of the historical development of power relationships in Canada in the *Indian Act*. I also use a political-economy analysis of the *Indian Act* and earlier "Indian legislation" and study legal challenges to Bill C-31 to examine how these statutes have treated Indian women and their descendants differently than Indian men and their descendants.

In this thesis I looked at how Parliamentarians added gender to race as a source of inequality and subordination in the *Indian Act*. I also looked at the choices and decisions status Indians made when they reacted to the *Indian Act* after Parliament implemented it then revised the Act in a way that affected the social and cultural life of status Indians. Although the Parliamentarians' appropriating from Indian Bands the power to determine Indianness has historically had a huge impact on other people's lives, Indians' individual and collective actions have also had a tremendous impact on other people's lives. Beginning in the 1960s, women such as Mary Two-Axe Earley, Jeanette Lavell, Yvonne Bedard, and Sandra Lovelace struggled against the dictates of legislation purporting to govern who does and does not have Indian status and to draw attention to the race and gender-based inequality and subordination that existed for more than a century in the *Indian Act*. In this thesis

I also explored and built on the early work of such women by examining “relations and apparatuses of ruling” (Smith, 1990b, p. 83) that are “external to, and beyond, [their] everyday world” (Smith, 1987, p. 65).

In the rest of this chapter I return to the questions that I posed in the first chapter of the thesis: Did the revised *Indian Act* achieve the goals outlined for the statute when it became law? It would seem that the statute was a victory for both Indian women and Indian Bands; but was it? Did it make a difference for Indian women and Indian Bands, and what kind of difference? I will answer these questions by summarizing some of the findings that I present in this thesis. I conclude with some outstanding questions that emerge from this research and require further examination.

Did Bill C-31 Achieve its Goals?

When Bill C-31 was implemented, David Crombie, then Minister of Indian and Northern Affairs, outlined the goals for the statute, including removing the sexual discrimination from the *Indian Act*, restoring Indian status and Band membership entitlements to eligible individuals, and recognizing Band control over membership (Joseph, 1991). Did the revised *Indian Act* achieve the goals outlined for the statute when it became law?

The literature shows that Bill C-31 did remove sexually discriminatory sections such as 12(1)(b) from the *Indian Act* so that individuals who had had their status taken away could have it restored and those with at least one status Indian parent became eligible for status. As a result of this revision, the reinstated women’s

first-generation children became eligible for first-time status (Royal Commission on Aboriginal Peoples, 1996b). However, the reinstated women's children received half status as the children of one status Indian rather than the full status granted to children born of pre-1985 marriages between White women and status Indian men who were considered the offspring of two status Indians. The literature shows that Parliament has rescinded the double-mother clause and no longer involuntarily enfranchises Indian women who married non-status men. However, the *Indian Act* leaves the ability to determine Indian ancestry in the Registrar's hands and other clauses of the statute continue the inequality and subordination of reinstated women and their descendants. Additionally, under the second-generation cut-off, the Canadian government will begin refusing to recognize descendants of status Indian women – and men – after two generations of parenting with non-status individuals (Furi & Wherrett, 1996/2003). The reinstated women I spoke with have already felt the impacts of this provision since the Registrar has denied status to their grandchildren under the revised *Indian Act*. For example, one woman's grandchildren have already been denied status.

Sharon McIvor, a member of the Lower Nicola Valley Band in British Columbia, is one of the individuals who have used Canadian law and the courts or “the master's tools” (Lorde, 1984) to challenge the second-generation cut-off in the *Indian Act* in the Courts of British Columbia. In April 2009, the British Columbia Court of Appeal³⁶ determined that the *Indian Act* violates the equality provisions of the *Charter of Rights* since McIvor's grandchildren would have Indian status if they

³⁶ *McIvor v. Canada (Registrar of Indian and Northern Affairs)* [2009] 2 C.N.L.R. 236 (B.C.C.A.).

were descended from a status Indian *man* rather than a status Indian *woman*. The decision in the McIvor case appears to address one consequence of the Registrar's control over Indian status, but it does not challenge the larger issue. This policy violates assertions of sovereignty by Aboriginal leaders such as Anishinabek Nation Grand Council Chief Patrick Madahbee and Assembly of First Nations National Chief Shawn A-in-chut Atleo. Chief Madahbee (Anonymous, 2009a, p. 1) explains, "We've always maintained – as does the United Nations – that no nation has the right to determine citizenship criteria for another nation." Chief Atleo (Anonymous, 2009b) says:

Status provisions of the Indian Act have created problems for First Nations and our citizens, and continue to divide our communities. It is time for the federal government to get out of the business of controlling First Nations citizenship and make way for First Nations to exercise our own laws, that will redress discrimination and damage caused by the Indian Act. (p. 1)

Chief Atleo and Assembly of First Nations Women's Council Chair Kathleen McHugh vow that First Nations will continue to urge the Canadian government to restore the inherent rights of First Nations to determine their own citizenship.

Another of Bill C-31's weaknesses is that it did not guarantee that reinstated women and their children would receive membership entitlements (Weaver, 1993). For example, unlike other Band members not all of the reinstated women's children have been able to secure education funding and another woman's son obtained an apartment but could not get furniture. Additionally, only four of the seven women I spoke with have been able to obtain a new house on the Reserve. This is consistent with other literature: Desjarlais (2001) showed that five of 12 individuals with status reinstated under Bill C-31 applied for on-Reserve housing and only three received it.

As I indicated earlier, inability to obtain Reserve residency has been used to deny reinstated individuals the right to vote in Band elections. Consequently, reinstated individuals such as John Corbiere have taken the matter to court in a case that the Supreme Court of Canada heard in 1999.³⁷ However, a former president of the Native Council of Canada (Barnsley, 1999), described this way of working things out as problematic. Jim Sinclair said:

It's an embarrassment for people [...] who've struggled for so long for basic fundamental rights for our people, where many chiefs and councils over the past number of years have isolated themselves into reserves and forgot about the treaty areas our forefathers signed for and have limited our rights mostly to reservations. This is a sad state for us when the white man and the white court of Canada has to re-recognize those rights for us and has to re-recognize the treaty areas and put it into perspective that we have the right to vote in those areas and we have the right to full participation regardless of where we live.
(p. 1)

Another former president of the Native Council of Canada predicted a different outcome from the Corbiere decision. Doris Ronnenberg predicted it would be “the beginning of the end of the divide and conquer tactics used by the [Canadian] government against Aboriginal people” (Barnsley, 1999, p. 1).

Another way that the reinstated women I spoke with are still being penalized for their choice of husbands is that they are unable to obtain major repairs for on-Reserve housing. Specifically, Sandra said that some of her neighbours – with houses that are newer than hers – have had “three or four major repairs” to their homes while she has not had any. I also showed that reinstated women are being further punished by the section of the *Indian Act* that forces the women to repay the amount of Band funds that they received when they were enfranchised. Although it may be objectionable for status Indians to use the courts to obtain status or its entitlements,

³⁷ *Corbiere v. Canada (Minister of Indian and Northern Affairs)* [1999]

reinstated individuals such as Caroline Barry³⁸ have successfully challenged the policy in court. The Ontario Court of Appeals found that Barry and the other women in the challenge had been treated unfairly under Canadian law and they were entitled to equal shares of the land claim settlement without deductions after hearing their case in 1997. However, as Kirkness (1986-88) explains, using Euro-Canadian sex equality law is not a victory for First Nations people – no matter the outcome of the case – since it “helps make even more invisible the sex equality of women in traditional Native culture” (p. 413). Historically, all people were treated equally in First Nations communities (Kirkness, 1986-88).

Scholars argue that even though the Canadian government has begun to share with Bands the responsibility for controlling Band membership since Parliament amended the *Indian Act* in 1985 there is still dissension (Furi & Wherrett, 1996/2003). This conflict arises from disagreement between the Canadian government and Indian Bands about how and by whom Indian status should be defined, the amount of authority that Bands should have to determine Band membership, and access to status and membership entitlements (Furi & Wherrett, 1996/2003). Paul (1990) asserts that by imposing Bill C-31 on First Nations in 1985, the Canadian government:

introduced and implemented a bill which did not abolish discrimination but introduced internal conflict, [and] competition for scarce resources [...] in some cases Bill C-31 has increased the tensions and discrimination that was already prevalent on reserves prior to 1985. (p. 103, emphasis added)

The women who I spoke with confirmed Paul’s argument when they said the community segregates “Bill C-31s”. For example, two women said that no one ever

³⁸ Barry v. Garden River Band of Ojibways [1997]

visits them, while another woman said she avoids social gatherings in her community. Boldt (1993) asserts it is not surprising that reinstating status for thousands of Indian women and granting status to their children created conflict “over who would be admitted to residence on the reserve” (p. 209). Boldt explains that when the Canadian government devolved authority to determine Band membership to Bands, it put Bands in a position to “take the heat for accepting or denying reserve residence” (p. 209). Otherwise the Canadian government would have granted Indian Bands the authority to determine “Indian status-determining criteria” (p. 209) in addition to control over Band membership.

First Nations assert that they should be able to determine Indian status and Band membership. At the same time, Sanders (1975) argues they do not wish to endure further externally imposed changes to “externally determined rules” that they have “internalized” (p. 671). By adopting the dominant society’s rules in the *Indian Act*, First Nations are participating in and performing the “governing processes” that organize Canadian society (Smith, 1990b, p. 15). Unfortunately when they take part in Canadian society’s governing processes, First Nations are becoming partners in what Bourgeault (1991) identifies as the “domination and destruction of Indian communal society” and the “domination of Indian women” while destroying the women’s “role in that society” (p. 137). Contrary to claims by some First Nations that the *Indian Act* safeguards their rights as status Indians, the statute is “race legislation developed to subjugate a free people” (p. 150). Therefore, Kirkness asserts the challenge is “What can the dominant society learn from our ways and traditional teachings?” (1986-88, p. 415).

Was Bill C-31 a Victory? For Whom?

Looking at the objectives for the revised *Indian Act* outlined in the previous section, it might seem that Bill C-31 was a victory for both Indian women and Indian Bands. But was it? McIvor (2004) and Turpel-Lafond (1997) assert that *it is not a victory* for Indian women or their communities when they and their descendants use Canadian law and the courts or “the master’s tools” (Lorde, 1984) to obtain Indian status and its entitlements. McIvor states these approaches are “foreign to the Aboriginal theory of harmony in family and community relations” (p. 109). Turpel-Lafond argues that, although reinstated Indian women *have* obtained Indian status and its entitlements by using the courts *there are still underlying problems* such as the Canadian government’s failure to treat sovereign Indian peoples “with honour and respect” (p. 78). McIvor explains that women who go to court seeking equality are seen as “struggl[ing] against societal and Aboriginal patriarchy” and as “detract[ing] from the drive for self-determination and self-government” (p. 109). By continuing to exercise this type of power over First Nations, the Canadian government is failing to address the Aboriginal right to “sovereignty and self-determination” and setting the stage for “cultural genocide” (Grande, 2000, p. 344).

The fact that the Canadian government – specifically the Registrar – still uses “relations and apparatuses of ruling” (Smith, 1990b, p. 83) to control Indian status is one way in which the Act is not a victory for status Indians. This fact is dividing status and non-status Indians. The 1985 *Indian Act* retained the earlier provision for “an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act” (p. 9). Additionally, section 9(1)

stated that when Bands took control over their membership they would receive Band Lists that included names that were on the Indian Register as of April 17, 1985. After that date, the Registrar – not the Band – had the authority to “at any time add to or delete from the Indian Register the name of any person who [...] is entitled or not entitled, as the case may be, to have his name included in the Indian Register” (p. 11). Since Indians historically exercised exclusive control over matters such as their population (Milloy, 1983), status Indians find it problematic that the Registrar still holds this type of power under the 1985 amendments to the *Indian Act*. For example, some of the women I interviewed found the type of authority that the Registrar has over Indian status objectionable. While Sandra and Georgina both labelled this policy unfair, scholars such as Daniels (n.d.), Mercredi and Turpel (1994), and Churchill (1999b) are among those who question the Canadian government’s “right” to define status Indians. Mercredi and Turpel assert that Aboriginal peoples – not federal bureaucrats – must determine “who is or is not a member of our community, based on criteria accepted by our people” (p. 88). Daniels argues that there should be a way developed to:

permit reserve communities to control their own affairs without jeopardizing the Aboriginal and Treaty rights of Indians who trace their ancestry to that particular community or reserve but who no longer live there. (p. 10)

Churchill identifies the right of Aboriginal peoples to define themselves as the “bedrock expression of self-determination by any nation or people” and “a vital measure of its sovereign standing” (pp. 39-40).

Coates (1999) asserts that First Nations communities wish to “correct an historical wrong” by welcoming “individuals who have been excluded from

membership by federal legislation” (p. 32). But this is not always possible with the limited control over Band membership – *not* Indian status – that the *Indian Act* delegates to Indian Bands. Additionally, Coates contends that First Nations want to include individuals who are “culturally, socially, economically and spiritually aboriginal” (p. 32) even if they do not meet “some narrow legal definition of Indian” (p. 32). Consequently, it is troublesome to First Nations that the Registrar is exercising the power to define status Indians since the effect of the *Indian Act* definition of Indian is the same as genocide³⁹ or what Daniels calls Abocide – an attempt to exterminate the status Indian population.

Additionally, reinstating status is a source of conflict amongst status Indians. Issues among Band members and Band leaders alike include: providing automatic status to some individuals under Bill C-31, concerns about reinstated individuals straining inadequate Band resources, endangering culture, and bringing mixed-race offspring onto the Reserve (Miskimmin, 1997; Joseph, 1991). My research illustrates some of the effects of the continued external control over Indian status, such as the lack of access to on-Reserve housing and other entitlements for reinstated individuals. Specifically, one of the women I spoke with mentioned receiving a smaller clothing allowance than other members, while others said they had not been able to get major repairs to their homes.

The case of Trudy and Peter Jacobs also illustrates the divisive nature of Band membership claims (*Jacobs vs. Mohawk Council of Kahnawake* (C.H.R. Trib.)

³⁹ See the United Nations’ *Convention on the prevention and punishment of the crime of genocide* (United Nations, 1948a). In 2007, Canada voted against the *United Nations declaration on the rights of Indigenous peoples*, as did Australia, New Zealand, and the United States (United Nations, 2007).

[1998]. In this case, the Jacobs's were seeking Band membership entitlements and they wanted their community to acknowledge them as Mohawks while the Mohawk Council of Kahnawake argued it should have full control over membership and membership entitlements. Some of the women that I spoke with – such as Millie – also wanted Band members to acknowledge that they belonged to the community. That this has not taken place illustrates the “social change and transformation” (Clement & Williams, 1989, p. 10) that has already occurred in First Nations communities. Reinstated individual's experiences continue to be organized by processes found in the *Indian Act* – the ruling apparatus – that are “external to, and beyond, [their] everyday world” (Smith, 1987, p. 65).

Did Bill C-31 Make a Difference?

Did Bill C-31 make a difference for Indian women and Indian Bands, and what kind of difference? Bill C-31 has certainly had an impact on Indian women and Indian Bands alike but it is difficult to explain the repercussions of the *Indian Act*. Bill C-31 *has* restored status to many women who had it revoked, and provided first-time status to their children – but seldom to their grandchildren. At the same time that the Act has reinstated status it has implemented the second-generation cut-off policy that will reduce the status Indian population unless status Indians parent exclusively with other status Indians. Additionally, Bill C-31 has created “Ghost people” – individuals who are not counted as status Indians or with the rest of the Canadian population – among descendants of reinstated individuals. The *Indian Act* also continues to transform the “structures of aboriginal societies” (Paul, 1990, p.

103). For example, the women who I spoke with demonstrated how their communities had changed by talking about their inability to receive membership entitlements or “belong” once again to their birth communities. Turpel-Lafond (1997) explains that because *Indian Act* policies affect the women such as those who shared their experiences with me, these clauses have the power to shape and ultimately control the social and cultural life of all status Indians:

[...] the future of our nations depends upon the strength of our women. We know that, as the proverb suggests, a nation is not conquered until the hearts of its women are on the ground. First Nations women have always been the hearts of our communities [...] Women are at the centre. We are the keepers of the culture, the educators, the ones who must instruct the children to respect the Earth, and the ones who ensure that our leaders are remembering and ‘walking’ with their responsibilities demonstrably in mind. (p. 69)

Wasacase (2003) explains that the *Indian Act* has far-reaching consequences for status Indians:

The power to define is the power to destroy. Defining [...] First Nations has always been a method used by the Canadian government as a means to seize power and control over First Nations peoples. In fact the Canadian government has long had a blueprint for Aboriginal identity, and uses this blueprint to undermine First Nations forms of life. (p. 7)

As the women who I interviewed articulated, Bill C-31 – like earlier versions of the statute – divides families, homes, and communities.

The Canadian government has used the externally imposed definitions of Indianness in the *Indian Act* to divide Aboriginal peoples and substitute Euro-Canadian values for their “traditional values of generosity, inclusion, sharing and love” (Cardinal, cited in Barnsley, 1999, p. 1). This is one way that the *Indian Act* has contributed to “social change and transformation” (Clement & Williams, 1989, p. 10) among First Nations peoples. Therefore, the inability of women with reinstated

Indian status to return to their Bands *and* become part of the community may be considered one consequence of the impact the *Indian Act* has on the “social and cultural life of [First Nations] societies” (Clement & Williams, 1989, p. 6). In my interviews with women with reinstated status, I showed that some reinstated individuals do not feel they are part of their community or get involved in community activities. Although by amending the *Indian Act* Parliament has reversed some discriminatory policies, it has added others supporting the assertions of scholars such as Monture (2002) and Mercredi and Turpel (1994) that the *Indian Act* remains a “colonial relic” that should disappear. As Mercredi and Turpel argue, revising specific clauses of the Act will not secure “real change for First Nations governments and their citizens” (Monture, p. 21).

The Canadian government’s refusal to do more than revise individual clauses of the *Indian Act* means that the Act will continue to operate as “a threat to human survival” (Marchak, 1985, p. 675). The *Indian Act* will function as a weapon of genocide “with intent to destroy, in whole or in part, a national, [...] racial or religious group” (United Nations, 1948a, p. 3).

Conclusions

This chapter outlined some of the ways in which the revised *Indian Act* remains a race and gender-based source of inequality and subordination. My research shows that Bill C-31 has partially achieved the goals outlined for the statute when it became law while it has failed to remedy others, and created additional problems. Further, this chapter outlines how Bill C-31, as the cultural and social embodiment of

power relationships between the Canadian government and the Indians, has not been a victory for Indian women or Indian Bands. Finally, the chapter outlined some of the ways in which the revised *Indian Act* has made a difference by transforming the “social and cultural life” of Indian women and Indian Bands (Clement & Williams, 1989, p. 6).

In this thesis I have demonstrated that the type of change that needs to occur with the *Indian Act* cannot be accomplished through legal challenges or legislative amendments. Removing the sexual discrimination from the *Indian Act* was one of the goals outlined for Bill C-31, but one way that the statute has failed is by replacing discrimination against Indian women with discrimination against their children and grandchildren. Reinstated Indian women do not yet have the same ability to transmit Indian status to their children and grandchildren as status Indian men who married non-status women before 1985.

As mentioned earlier, the women I spoke with are not equally able to transmit Indian status to their grandchildren. This is because the *Indian Act* – what Smith (1990b) names the “relations and apparatuses of ruling – state administrative apparatuses” – continues to define status Indians. First Nations did not develop or agree to abide by the definitions that the *Indian Act* imposed. Consequently, when people of Aboriginal descent are unable to obtain Indian status, Band membership or membership entitlements they are left with little recourse. Therefore, they use Canadian law and the courts to challenge the denial of their Aboriginal rights. While they may succeed in the short term, they ultimately lose because such legal challenges frequently cause further discord within First Nations communities.

To conclude this thesis, I pose more questions that emerge from this thesis for future research. How does the experience of status Indian men transmitting Indian status to their White wives, children and grandchildren compare with Indian women's experiences? What impact has Indian women's inability to transmit Indian status had on their children and grandchildren? How do Band members and leaders view the reinstated women? Why did the women barely mention the White men they married? How will future revisions to the *Indian Act* in the wake of the *Mclvor* decision affect status Indians? How are Ghost People dealing with their lack of Indian status and what is the impact on their Bands? What were the experiences of Indian women who regained Indian status when they married status Indian men? Wela'lioq.

BIBLIOGRAPHY

- Abele, F., & Stasiulis, D. (1989). Canada as a White settler colony: What about Natives and immigrants? In W. Clement & G. Williams (Eds.), *The new Canadian political economy* (pp. 240-277). Kingston, ON: McGill-Queen's University Press.
- Alfred, G. R. (1995). *Heeding the voices of our ancestors: Kahnawake Mohawk politics and the rise of Native nationalism*. Don Mills, ON: Oxford University Press.
- Alfred, (G. R.) T. (1999). *Peace, power, righteousness: An Indigenous manifesto*. Toronto: Carswell.
- Allen, P. G. (1986). Who is your mother: Red roots of White feminism. In *The sacred hoop: Recovering the feminine in American Indian traditions* (pp. 209-221). Boston: Beacon Press.
- An act for the better protection of the lands and property of the Indians in Lower Canada*, P.S.C. 1850, c. 42.
- An act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, chapter 42*, S.C. 1869, c. 6.
- An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury*, P.S.C. 1850, c. 74.
- An Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and ordnance Lands*, S.C. 1868, c.42.
- An Act to amend the Indian Act*, S.C. 1880, c. 28.
- An Act to amend the Indian Act*, S.C. 1918, c. 26.
- An Act to amend the Indian Act*, S.C. 1920, c. 50.
- An Act to amend the Indian Act*, S.C. 1956, c. 40.
- An Act to encourage the gradual civilization of the Indian tribes in this province and to amend the laws respecting Indians*, P.S.C. 1857, c. 26.

- An Act to repeal in part and to amend an act, intituled, An act for the better protection of the lands and property of the Indians in Lower Canada, P.S.C. 1851, c. 59.*
- Anderson, K. (2000). *A Recognition of being: Reconstructing Native womanhood*. Toronto: Second Story Press.
- Anonymous (1985, August). Indian women to monitor implementing of act changes. *Agenutemagen*, p. 4.
- Anonymous (2009a, Nov. 9). Status issue symptom of gender discrimination: Madahbee. *Canadian newswire*, p. 1. Retrieved from <http://www.newswire.ca>
- Anonymous (2009b, Nov. 5). Assembly of First Nations says citizenship issue does not end with McIvor case. *Canadian business*. Retrieved from <http://www.canadianbusiness.com/>
- Anonymous (2009c, Nov. 5). Sharon McIvor's case turned away by Supreme Court of Canada. *Canadian Aboriginal news*. Retrieved from <http://www.canadianaboriginal.ca>
- Asch, M. (1989). Native peoples. In D. Drache & W. Clement (Eds.), *The new practical guide to Canadian political economy* (pp. 152-161). Toronto: James Lorimer & Company.
- Assembly of First Nations (2005). Bill C-31 twenty years later: AFN National Chief calls for First Nations control of First Nations citizenship. News release. Retrieved from <http://www.afn.ca>
- Attorney-General of Canada v. Lavell; Isaac v. Bedard* (1973), 38 D.L.R. (3d) 481 (S.C.C.) 7 CNLC 236.
- Barker, J. M. (2000). *"Indian-made": Sovereignty and the work of identification* (Doctoral Dissertation). Retrieved from ProQuest Dissertations & Theses Database.
- Barnsley, P. (1999, June). Indian Act section contrary to Charter. *Windspeaker*, 17(2), p. 1.
- Barrera, J. (2005, September 22). Aboriginal women's advocate appointed to Senate. (Moncton, NB) *Times & transcript*, p. A11.
- Barry v. Garden River Band of Ojibways* [1997] 4 C.N.L.R. 28 (Ont. C.A.).
- Batchewana Indian Band (Non-resident members) v. Batchewana Indian Band* [1994] 1 C.N.L.R. 71.

- Battiste, M., & Henderson, J. (S.) Y. (2000). *Protecting Indigenous knowledge and Heritage: A global challenge*. Saskatoon: Purich.
- Bayefsky, A. F. (1982). The Human Rights Committee and the case of Sandra Lovelace. *Canadian Yearbook of International Law*, 20, 244-266.
- Bazilli, S. (2000). A brief guide to international human rights law for Canadian advocates. *Canadian woman studies*, 20(3), 64-71.
- Bear, S. with the Tobique Women's Group (1991). You can't change the Indian Act? In J. D. Wine & J. L. Ristock (Eds.), *Women and social change: Feminist activism in Canada* (pp. 198-220). Toronto: James Lorimer and Company.
- Bear Nicholas, A. (1994). Colonialism and the struggle for liberation: The experience of Maliseet women. *University of New Brunswick law journal*, 43, 223-239.
- Bedard v. Isaac* [1971], 25 D.L.R. (3d) 551 (Ont. H.C.) 7 CNLC 9.
- Berger, P. L., & Luckmann, T. (1990). *The social construction of reality: A treatise in the sociology of knowledge*. New York: Doubleday.
- Blair, P. J. (2005). Rights of Aboriginal women on- and off-Reserve. Fact sheet. Retrieved from <http://www.scowinstitute.ca>
- Blaney, F. (1998, October). Bill C-31 still discriminates: Aboriginal women in Canada. *Kinesis*, p. 5.
- Blaney, F. (2003). Aboriginal Women's Action Network. In K. Anderson & B. Lawrence (Eds.), *Strong women stories: Native vision and community survival* (pp. 156-170). Toronto: Sumach Press.
- Blu, K. I. (1980). *The Lumbee problem: The making of an American Indian people*. New York: Cambridge University Press.
- Boldt, M. (1993). *Surviving as Indians: The challenge of self-government*. Toronto: University of Toronto Press.
- Bourgeault, R. (1983). The Indian, the Métis and the fur trade: Class, sexism and racism in the transition from 'communism' to capitalism. *Studies in political economy*, 12, 45-80.
- Bourgeault, R. (1991). Race, class and gender: Colonial domination of Indian women. In O. McKague (Ed.), *Racism in Canada* (pp. 129-150). Saskatoon: Fifth House Publishers.

- Brodribb, S. (1984). Traditional roles of Native women in Canada and the impact of colonization. *Canadian journal of Native studies*, 4, 85-103.
- Brown, W. (2003, November). Mary Two-Axe Earley: Crusader for equal rights for Aboriginal women. *Electoral insight*. Retrieved from <http://www.elections.ca>
- Buehler, C. (2007, March). Alberta Bands continue court battle challenging Bill C-31. *First Nations drum*. Retrieved from <http://www.firstnationsdrum.com>
- Buffalo v. Canada (Minister of Indian Affairs and Northern Development)* [2002] 1 C.N.L.R. 1 (F.C.T.D.).
- Cairns, A. C. (2000). *Citizens plus: Aboriginal peoples and the Canadian state*. Vancouver: UBC Press.
- Canada, Indian Affairs Branch (1969). *Statement of the government of Canada on Indian policy, 1969*. Ottawa: Author. Retrieved from http://www.fcpp.org/worthalook/statement_indian_policy.html
- Canada NewsWire (2005, June 28). Bill C-31 twenty years later: AFN National Chief calls for First Nations control of First Nations citizenship. *Canada NewsWire*. Retrieved from <http://www.afn.ca>
- Canadian Press (1985, April 4). Give all children status, Senate urged. *The globe and mail*, p. P4.
- Canadian Press (1989, February 14). 'Racist' officials control Natives, Chief says. *The globe and mail*, p. N9.
- Canadian Press (1997, June 6). Court throws out Indian-status ruling: New trial ordered with different judge. *The globe and Mail*, p. A2.
- Cannon, M. J. (2005). Bill C-31 – An Act to Amend the Indian Act: Notes toward a qualitative analysis of legislated injustice. *The Canadian journal of Native studies*, 25, 153-167.
- Cardinal, H. (1969). *The unjust society: The tragedy of Canada's Indians*. Edmonton: M. G. Hurtig.
- Carter, S. (1996). First Nations women of Prairie Canada in the early Reserves, the 1870s to the 1920s: A preliminary inquiry. In C. Miller & P. Chuchryck (Eds.), *Women of the First Nations: Power, wisdom, and strength* (pp. 135-148). Winnipeg: University of Manitoba Press.

- Chamberlin, J. E. (1975). *The harrowing of Eden: White attitudes toward Native Americans*. New York: The Seabury Press.
- Christoferrson, C. (1991). Tribal courts' failure to protect Native American women: A reevaluation of the Indian Civil Rights Act. *The Yale law journal*, 101, 205-221.
- Churchill, W. (1994). *Indians are us? Culture and genocide in Native North America*. Monroe, ME: Common Courage Press.
- Churchill, W. (1999a). *Struggle for the land: Native North American resistance to genocide, ecocide, and colonization*. Winnipeg: Arbeiter Ring Publishing.
- Churchill, W. (1999b). The crucible of American Indian identity: Native tradition versus colonial imposition in postconquest North America. *American Indian culture and research journal*, 23(1), 39-67.
- Clark, C. (2005, September 22). Canada's newest Senator led end to discriminatory law. *The globe and mail*, p. A7.
- Clement, W., & Williams, G. (1989). Introduction. In *The new Canadian political economy*. Kingston, ON: McGill-Queen's University Press.
- Coates, K. (1999). Being Aboriginal: The cultural politics of identity, membership and belonging among First Nations in Canada. *Canadian Issues*, 21, 23-41.
- Corbiere v. Canada (Minister of Indian and Northern Affairs)* [1999] 3 C.N.L.R. 19 (S.C.C.).
- Courtois v. Canada* [1991] 1 C.N.L.R. 40 (Can. H.R.T.).
- Daniels, H. W. (n.d.). *Bill C-31: The abocide bill*. Congress of Aboriginal Peoples. Retrieved from <http://www.abo-peoples.org>
- Davis Jackson, D. (2001). *Our elders lived it: American Indian identity in the city*. Chicago: Northern Illinois University Press.
- Denis, C. (1997). *We are not you: First Nations and Canadian modernity*. Peterborough, ON: Broadview Press.
- Desjarlais, C. (2001). *From the past (1876) to the present (2000): An analysis of Band membership among the Plains Cree of Saskatchewan* (Master's Thesis). Retrieved from ProQuest Dissertations & Theses Database.
- Department of Indian Affairs and Northern Development (1982). *The elimination of sex discrimination from the Indian Act*. Ottawa: Author.

- Department of Indian Affairs and Northern Development (1990). *Impacts of the 1985 amendments to the Indian Act, Bill C-31: Information about government programs and statistics*. Ottawa: Author.
- Department of Indian Affairs and Northern Development (1999). *You wanted to know: federal programs and services for registered Indians*. Retrieved from <http://www.ainc-inac.gc.ca>
- Dickson-Gilmore, E. J. (1999). More Mohawk than my blood: Citizenship, membership and the struggle over identity in Kahnawake. *Canadian issues*, 21, 44-62.
- Douglas, B. (1985, June). Discrimination under the Act. *Micmac news*, 14(6), pp. 1, 4.
- Douglas, B. (1986, April). Native families still divided over Bill C-31: Ottawa still dictating Indian status. *Micmac news*, 16(4), p. 7.
- Doyle, M. (1988, February 18). Bill C-31 'Another divide and conquer policy'. (Halifax) *Chronicle-herald*, 3.
- Drache, D., & Clement, W. (1985). Introduction: The coming of age of Canadian political economy. In D. Drache & W. Clement (Eds.), *The new practical guide to Canadian political economy* (pp. ix-xxiv). Toronto: James Lorimer & Company.
- Dunkley, K. (1992). *Indian women and the Indian Act*. Ottawa: Library of Parliament.
- Dyck, N. (1991). *What is the Indian "problem"?* St. John's, NF: Institute of Social and Economic Research.
- Fiske, J. (1995). Political status of Native Indian women: Contradictory implications of Canadian state policy. *American Indian culture and research journal*, 19(2), 1-30.
- Fiske, J. (1996). The womb is to the nation as the heart is to the body: Discourses of the Canadian Indigenous women's movement. *Studies in political economy*, 51, 65-95.
- Fiske, J., & George, E. (2006). *Seeking alternatives to Bill C-31: From cultural trauma through customary law*. Status of Women Canada. Retrieved from <http://www.swc-cfc.gc.ca>
- Fixico, D. L. (2000). *The urban Indian experience in America*. Albuquerque: University of New Mexico Press.

- Fogelson, R. D. (1998). Perspectives on Native American identity. In R. Thornton (Ed.), *Studying Native America: Problems and perspectives* (pp. 40-59). Madison: University of Wisconsin Press.
- Francis, D. (1992). *The imaginary Indian: The image of the Indian in Canadian culture*. Vancouver: Arsenal Pulp Press.
- Frideres, J. S., & Gadacz, R. R. (2001). *Aboriginal Peoples in Canada: Contemporary Conflicts, 6th ed.* Toronto: Prentice Hall.
- Furi, M., & Wherrett, J. (1996/2003). *Indian status and Band membership issues*. Ottawa: Library of Parliament. Retrieved from <http://www.parl.gc.ca>
- Gehl, L. (2000). The Queen and I: Discrimination against women in the *Indian Act* continues. *Canadian Woman Studies*, 20(2), 64-69.
- Gilbert, L. (1996). *Entitlement to Indian status and membership codes in Canada*. Scarborough, ON: Carswell.
- Gonzales, A. A. (2002). *American Indian identity matters: The political economy of identity and ethnic group boundaries* (Doctoral Dissertation). Retrieved from ProQuest Dissertations & Theses Database.
- Grande, S. (2000). American Indian Identity and Intellectualism: The Quest for a New Red Pedagogy. *International journal of qualitative studies in education*, 13(4), 343–359. Retrieved from Academic Search Premier Database.
- Green, J. (1985). Sexual equality and Indian government: An analysis of Bill C-31 amendments to the *Indian Act*. *Native studies review*, 1(2), 81-95.
- Green, J. A. (1997). *Exploring identity and citizenship: Aboriginal women, Bill C-31 and the Sawridge case* (Doctoral Dissertation). Retrieved from ProQuest Dissertations & Theses Database.
- Green, J. (2001). Canaries in the mines of citizenship: Indian women in Canada. *Canadian journal of political science*, 34(4), 715-738.
- Green, K. (1999, February). Status and membership provisions of the *Indian Act*: Legislated extinction? *Assembly of First Nations bulletin*, 1(2), p. 7.
- Green, S. J. (1997, November). Bill C-31 court challenge is only perpetuating divisions. *The first perspective*, 6(9), p. 4. Retrieved from LegalTrac Database.
- Groves, R., & Morse, B. (1986). *Bill C-31 & the new Indian Act: Guidebook #2, protecting your rights*. Ottawa: Bonanza Press Ltd.

- Hamill, J. F. (2003). Show me your CDIB: Blood quantum and Indian identity among Indian people of Oklahoma. *American behavioral scientist*, 47(3), 267-282.
- Hayes, R. J. (2000). Woman of vision: Mary Two-Axe Earley. *Windspeaker*.
- Hodgson v. Ermineskin Indian Band*. 1997 CanLII 4909 (F.C.). Retrieved from <http://www.canlii.org/ca/cas/fct/1997/1997fct10174.html>
- Holmes, J. (1987). *Background paper: Bill C-31, equality or disparity? The effects of the new Indian Act on Native women*. Ottawa: Canadian Advisory Council on the Status of Women.
- Horseman v. Horse Lake First Nation*, 2002 ABQB 765 (CanLII). Retrieved from <http://www.canlii.org/en/ab/abqb/doc/2002/2002abqb765/2002abqb765.html>
- Horseman v. Horse Lake First Nation* [2005] 1 C.N.L.R. 96 (Alta. C.A.).
- Hossie, L. (1984, December 15). Defiant Band reinstates non-status Indians. *The globe and mail*, p. M1.
- Huntley, A. (1998, December). Aboriginal women and Bill C-31: Research in action. *Kinesis*, p. 6.
- Huntley, A. (1999a, January). Aboriginal women and Bill C-31: Research in action. *Kahtou news*, 8(1), p. 18.
- Huntley, A. (1999b, April). Aboriginal women and Bill C-31: Research in action. *Windspeaker*, 16(12), p. 33.
- Huntley, A. (1999c, December). Bill C-31: Its impact, implications and recommendations for change in British Columbia — approaches to research. *Kinesis*, pp. 7-8.
- Hutchison, J. L. (1999, October/November). A paper tiger for Aboriginal women's rights. [Bill C-31]. *Law Now*, 24(2), p. 14. Retrieved from Canadian Business and Current Affairs (CBCA) Reference Database.
- Huzar v. Canada*, 1997 CanLII 5779 (F.C.). Retrieved from <http://www.canlii.org/ca/cas/fct/1997/1997fct10910.html>
- Imai, S., Logan, K., & Stein, G. (1999). Indian Act registration, Band membership and First Nation citizenship. In *Aboriginal law handbook*, 2nd ed. (pp. 155-163). Scarborough, ON: Carswell.
- Indian Act*, R.S.C. 1970, c. I-6.

Indian Act, R.S.C. 1985, c. I-5.

Indian Act, S.C. 1876, c. 18.

Indian Act, S.C. 1951, c. 29.

Isaac, T. (1994). Case commentary: *Corbiere v. Canada*. *Canadian Native law reporter*, 1, 55.

Isaac, T. (1995). Case commentary: Self-government, Indian women and their rights of reinstatement under the *Indian Act*, a comment on *Sawridge Band v. Canada*. *Canadian Native law reporter*, 4, 1-13.

Isaac, T. (2004). Aboriginal women. In *Aboriginal law: Cases, materials and commentary* (pp. 504-553), 3rd ed. Saskatoon: Purich Publishing.

Isaac, T., & Maloughney, M. S. (1992). Dually disadvantaged and historically forgotten? Aboriginal women and the inherent right to self-government. *Manitoba law journal*, 21, 453-475.

Isfeld, H. K. (1997). *Who and what is a Canadian Indian? The impact of Bill C-31 upon demographic and epidemiologic measures of the registered Indian population of Manitoba* (Master's Thesis). Retrieved from ProQuest Dissertations & Theses Database.

Jacobs, B. (2005). Gender discrimination under the Indian Act: Bill C-31 and First Nations women. In G. MacDonald, R. L. Osborne, & C. S. Smith (Eds.), *Feminism, law, inclusion: intersectionality in action* (pp. 175-199). Toronto: Sumach Press.

Jacobs vs. Mohawk Council of Kahnawake (C.H.R. Trib.) [1998] 3 C.N.L.R. 68.

Jaimieson, M. A. with T. Halsey (1997). American Indian women: At the center of Indigenous resistance in contemporary North America. In A. McClintock, A. Mufti & E. Shohat (Eds.), *Dangerous liaisons: Gender, nation and postcolonial perspectives* (pp. 298-329). Minneapolis: University of Minnesota Press.

Jamieson, K. (1978). *Indian women and the law in Canada: Citizens minus*. Ottawa: Canadian Advisory Council on the Status of Women.

Jamieson, K. (1986). Sex discrimination and the *Indian Act*. In J. R. Ponting (Ed.), *Arduous journey: Canadian Indians and decolonization* (pp. 112-136). Toronto: McClelland and Stewart.

- Jones, A. (2006). *Genocide: A comprehensive introduction*. London & New York: Routledge.
- Jones, C. (1985). Towards equal rights and amendment of section 12(1)(b) of the *Indian Act*: A post-script to *Lovelace v. Canada*. *Harvard women's law journal*, 8, 195-213.
- Jones, M. J. B. (1984). Sexual equality, the Constitution and Indian status: A comment on s. 12(1)(b) of the *Indian Act*. *Windsor yearbook of access to justice*, 4: 48-72.
- Jordan, D. (1984). The social construction of identity: The Aboriginal problem. *Australian journal of education*, 28(3), 274-290.
- Jordan, E. (1995). Residual sex discrimination in the *Indian Act*: Constitutional remedies. *Journal of law and social policy*, 11, 213-240.
- Jorgeson, L. (1985, September-October). Equality activist focuses on membership. *Kahtou*, 3(14), pp. 15-16.
- Joseph, S. (1991). Assimilation tools: Then and now. *BC studies*, 89, 65-79.
- Kirby, P. (1985). Marrying out and loss of status: The Charter and the new Indian Act legislation. *Journal of law and social policy*, 11, 77-95.
- Kirkness, V. (1986-88). Emerging Native women. *Canadian journal of women and the law*, 2, 408-415.
- Krosenbrink-Gelissen, L. (1991). *Sexual equality as an Aboriginal right: The Native Women's Association of Canada and the Constitutional process on Aboriginal matters, 1982-1987*. Saarbrücken: Verlag Breitenbach.
- Krouse, S. A. (1999). Kinship and identity: Mixed bloods in urban Indian communities. *American Indian culture and research journal*, 23(2), 73-89.
- Laslo v. Gordon Band Council*, 1996 CanLII 455 (C.H.R.T.).
- Lawrence, B. E. (1999). "Real" Indians and others: Mixed-race urban Native people, the Indian Act, and the rebuilding of Indigenous nations (Doctoral Dissertation). Retrieved from ProQuest Dissertations & Theses Database.
- Lawrence, B. (2003). Gender, race, and the regulation of Native identity in Canada and the United States: An overview. *Hypatia* 18(2), 3-31. Retrieved from Academic Search Premier Database.

- Leacock, E. B. (1981). Women's status in egalitarian society: Implications for social evolution. In *Myths of male dominance: Collected articles* (pp. 167-186). New York: Monthly Review Press.
- Leavitt, R. M. (1995). *Maliseet and Micmac: First Nations of the Maritimes*. Fredericton, NB: New Ireland Press.
- Lemkin, R. (1973). *Axis rule in occupied Europe: Laws of occupation, analysis of government, proposals for redress*. New York: Howard Fertig.
- Leslie, J. & Maguire, R. (1978). *The historical development of the Indian Act*, 2nd ed. Treaties and Historical Research Centre, Research Branch, Corporate Policy, Indian and Northern Affairs Canada.
- Littlefield, L. (1987). Women traders in the Maritime fur trade. In B. A. Cox (Ed.), *Native people, Native lands: Canadian Indians, Inuit and Métis* (pp. 173-185). Ottawa: Carleton University Press.
- Lorde, A. (1984). *Sister outsider: Essays and speeches*. Santa Cruz, CA: The Crossing Press.
- Lovelace v. Canada* (1983) 1 C.H.R.Y. 305-314 (U.N.H.R.C.).
- Mahon, R. (1977). Canadian public policy: The unequal structure of representation. In L. Panitch (Ed.), *The Canadian state: Political economy and political power* (pp. 165-198). Toronto: University of Toronto Press.
- Mann, M. M. (2005). *Indian registration: Unrecognized and unstated paternity*. Ottawa: Status of Women Canada.
- Manuel, G. & Posluns, M. (1974). *The fourth world: An Indian reality*. Don Mills, ON: Collier-Macmillan Canada.
- Manyfingers, M., Jr., (1986). Determination of Indian Band membership: An examination of political will. *Canadian journal of Native studies*, 6(1), 63-75.
- Marchak, P. (1985). Canadian political economy. *The Canadian review of sociology and anthropology*, 22(5), 673-709.
- Martel v. Samson Indian Band*, 1998 CanLII 8401 (F.C.). Retrieved from <http://www.canlii.org/en/ca/fct/doc/1998/1998canlii8401/1998canlii8401.html>
- Martin, R. (1986, September). Legislation discriminates: Native women lodge protest. *Micmac news*, 16(9), p. 12.

- McCorquodale, R. (1994). Self-determination: A human rights approach. *International and comparative law quarterly*, 43(4), 857-885.
- McDonald, M. (1987). Indian status: Colonialism or sexism? *Canadian community law journal*, 9, 23-48.
- McIvor, D. (1994). The Indian Act as patriarchal control of women. *Aboriginal women's law journal*, 1, 34-38.
- McIvor, S. D. (1999). Self-government and Aboriginal women. In E. Dua & A. Robertson (Eds.), *Scratching the surface: Canadian anti-racist feminist thought* (pp. 167-186). Toronto: Women's Press.
- McIvor, S. D. (2004). Aboriginal women unmasked: Using equality litigation to advance women's rights. *Canadian journal of women & the law*, 16(1), 106-136.
- McIvor v. Canada (Registrar of Indian and Northern Affairs)* [2009] 2 C.N.L.R. 236 (B.C.C.A.).
- McKinley, R. (1997a, July). C-31 appeal decision overturned: Bands gear up. *Windspeaker*, 15(3), pp. 1, 4.
- McKinley, R. (1997b, July). Twinn upset with media focus. *Windspeaker*, 15(3), p. 4.
- Meagher, D. (1985, December 11). Indian assembly told feds have failed to provide added funds. (Saint John, NB) *Telegraph-journal*, p. 4.
- Medicine, B. (1993). North American women and cultural domination. *American Indian culture and research journal*, 4(2), 121-129.
- Mercredi, O. & Turpel, M. E. (1994). *In the rapids: Navigating the future of First Nations*. Toronto: Viking.
- Mihesuah, D. A. (1998). American Indian identities: Issues of individual choices and development. *American Indian culture and research journal*, 22(2), 193-226.
- Mihesuah, D. A. (2003). *Indigenous American women: Decolonization, empowerment, activism*. Lincoln: University of Nebraska Press.
- Miller, J. R. (1989). *Skyscrapers hide the heavens: A history of Indian-White relations in Canada*. Toronto: University of Toronto Press.
- Milloy, J. S. (1983). The early Indian Acts: Developmental strategy and Constitutional change. In I. A. L. Getty & A. S. Lussier (Eds.), *As long as the*

sun shines and the water flows: A reader in Canadian Native studies (pp. 56-64). Vancouver: University of British Columbia Press.

Minister of Indian Affairs and Northern Development (1990). *Correcting historic wrongs? Report of the national Aboriginal inquiry on the impacts of Bill C-31*. Ottawa: Author.

Minister of Indian Affairs and Northern Development (2005). *A select and annotated bibliography regarding Bill C-31, Indian registration and Band membership, Aboriginal identity, women and gender issues*. Ottawa: Author.

Minister of Indian Affairs and Northern Development (2009). *Backgrounder – McIvor: an overview*. Retrieved from <http://www.ainc-inac.gc.ca>

Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians (2009). *Discussion paper: Changes to the Indian Act affecting Indian registration and Band membership – McIvor v. Canada*. Retrieved from <http://www.ainc-inac.gc.ca>

Miskimmin, S. E. (1997). *“Nobody took the Indian blood out of me”: An analysis of Algonquian and Iroquoian discourse concerning Bill C-31 (Ontario)* (Master’s Thesis). Retrieved from ProQuest Dissertations & Theses Database.

Monture, P. (2002, Spring). Tinkering with the *Indian Act* won’t solve our problems: Why we must end colonialism. *Herizons*, 8-21.

Monture, P. A. (1993). I know my name: A First Nations woman speaks. In G. Finn (Ed.), *Limited edition: Voices of women, voices of feminism* (pp. 329-344). Halifax: Fernwood.

Monture-Angus, P. (1995). *Thunder in my soul: A Mohawk woman speaks*. Halifax: Fernwood Publishing.

Monture-Angus, P. (1999). *Journeying forward: Dreaming First Nations’ independence*. Halifax: Fernwood Publishing.

Moss, W. (1990). Indigenous self-government in Canada and sexual equality under the *Indian Act*: Resolving conflicts between collective and individual rights. *Queen’s law journal*, 15, 279-305.

Moss, W. (1997). The Canadian state and Indian women: The struggle for sex equality under the *Indian Act*. In C. Andrew & S. Rodgers (Eds.), *Women and the Canadian state* (pp. 79-88). Montreal: McGill-Queen’s University Press.

- Mothers of Red Nations Women's Council of Manitoba (2006). *Bill C-31 has created 'a different class of citizen': 21 years and two distinct classes of 'Indians' emerge*. Retrieved from http://morn.cimnet.ca/cim/dbf/Final_version_Press_Release_Bill_C-31_2006.doc?im_id=4948&si_id=92
- Nahanee, T. A. (1997). Indian women, sex equality and the *Charter*. In C. Andrew & S. Rodgers (Eds.), *Women and the Canadian state* (pp. 89-103). Montreal: McGill-Queen's University Press.
- Napoleon, V. (2001). Extinction by number: Colonialism made easy. *Canadian journal of law and society*, 16(1), 113-145.
- Native Women's Association of Canada (1986). *Guide to Bill C-31: An explanation of the 1985 amendments to the Indian Act*. Guide. Retrieved from <http://www.nwac-hq.org>
- Native Women's Association of Canada (1988). The impact of state policy: Women's response to state action: The implementation of Bill C-31. *Resources for feminist research*, 17(3), 125-128.
- Native Women's Association of Canada (1991). *Aboriginal women & the implementation of Bill C-31*. Presentation. Retrieved from <http://www.nwac-hq.org>
- Native Women's Association of Canada (1992). Aboriginal women and the Constitutional debates: Continuing discrimination. *Canadian Woman Studies*, 12(3), 14-17.
- Native Women's Association of Canada (2005). *Bill C-31: The discrimination continues 20 years later*. Press release. Retrieved from <http://www.nwac-hq.org>
- Neu, D. & Therrien, R. (2003). *Accounting for genocide: Canada's bureaucratic assault on Aboriginal people*. Black Point, NS: Fernwood.
- Norris, M. J. (2000). Aboriginal peoples in Canada: Demographic and linguistic perspectives. In D. Long & O. P. Dickason (Eds.), *Visions of the heart: Canadian Aboriginal issues*, 2nd ed. (pp. 167-236). Toronto: Harcourt.
- Nova Scotia Native Women's Association (1986, May). Bill C-31, position paper. *Micmac news*, 16(3), p. 32.
- Opekokew, D. (1986). Self-identification and cultural preservation: A commentary of recent *Indian Act* amendments. *Canadian Native law reporter*, 2, 1-25.

- Osenntonion & Skonaganleh:rá (1989). Our world. *Canadian woman studies*, 10(2&3), 6-19.
- Panitch, L. (1977). The role and nature of the Canadian state. In *The Canadian state: Political economy and political power* (pp. 3-27). Toronto: University of Toronto Press.
- Paul, D. N. (1992, January). An open letter to members of First Nations. *Micmac-Maliseet Nations news*, 3(1), p. 3.
- Paul, D. N. (2000). *We were not the savages: A Mi'kmaq perspective on the collision between European and Native American civilizations*. Halifax: Fernwood Publishing.
- Paul, P. M. (1990). *Bill C-31: The Trojan horse: An analysis of the social, economic and political reaction of First Nations people as a result of Bill C-31 (Canada)* (Unpublished Master's Thesis). University of New Brunswick, Fredericton.
- Paul, P. (1999). *The politics of legislated identity: The effect of section 6(2) of the Indian Act in the Atlantic Provinces*. Report prepared for the Atlantic Policy Congress of First Nation Chiefs. Retrieved from <http://www.apcfn.ca>
- Pentney, W. (1988). The rights of the Aboriginal peoples of Canada in the *Constitution Act, 1982*. *University of British Columbia Law Review*, 22, 21-59.
- Platiel, R. (1986, December 15). Office swamped with applications: Native Women's redress assailed. *The globe and mail*, p. A14.
- Platiel, R. (1987, November 27). Native Women predict long battles ahead for their rights. *The globe and mail*, p. A13.
- Poitras v. Sawridge Band*, 1999 CanLII 7782 (F.C.). Retrieved from <http://www.canlii.org/en/ca/fct/doc/1999/1999canlii7782/1999canlii7782.html>
- Quebec Native Women Inc. (2000). *Changes proposed to the Indian Act and the administration of the Indian Act*. Position paper. Retrieved from <http://www.faq-qnw.org>
- Quebec Native Women Inc. (2009). Amendments to the registration provisions of the Indian Act as per the Court of Appeal of British Columbia's decision in the Sharon McIvor litigation. Position paper. Retrieved from <http://www.faq-qnw.org>

- Raven, H. & Gilbert, L. (1996). Part 2: Membership codes. In L. Gilbert (Ed.), *Entitlement to Indian status and membership codes in Canada* (pp. 129-211). Scarborough, ON: Carswell.
- Reid, S. (1993, April 26). Suddenly Canada has a million Aboriginals. *Alberta report/newsmagazine* 20(19), 12. Retrieved from Academic Search Premier Database.
- Re Lavell and Attorney-General of Canada* (1971), 22 D.L.R. (3d) 182 (Ont.C.C.) 7 CNLC 222.
- Re Lavell and Attorney-General of Canada* (1971), 22 D.L.R. (3d) 188 (F.C.A.) 7 CNLC 230.
- Robinson, E. & Quinney, H. B. (1985). *The infested blanket: Canada's Constitution – genocide of Indian nations*. Winnipeg: Queenston House.
- Robson, R. (1991). The *Indian Act*: A northern Manitoba perspective. *Canadian journal of Native studies*, 11(2), 125-128.
- Rogers, K. A. (1995). *Aboriginal women and the feminist project: An uneasy alliance* (Unpublished Master's Thesis). University of New Brunswick, Fredericton.
- Royal Commission on Aboriginal Peoples (1996a). The *Indian Act*. In *Report of the Royal Commission on Aboriginal Peoples, Vol. 1* (pp. 255-332). Ottawa: Author.
- Royal Commission on Aboriginal Peoples (1996b). Women's perspectives. In *Report of the Royal Commission on Aboriginal Peoples, Vol. 4* (pp. 7-106). Ottawa: Author.
- Royal Commission on the Status of Women (1970). *Report of the Royal Commission on the Status of Women*. Ottawa: Author.
- Sanders, D. (1975). Indian women: A brief history of their roles and rights. *McGill law journal*, 21, 656-672.
- Sanders, D. (1984). Indian status: A women's issue or an Indian issue? *Canadian Native law reporter*, 3, 30-41.
- Sanders, D. (1985). The renewal of Indian special status. In A. F. Bayefsky & M. Eberts (Eds.), *Equality rights and the Canadian Charter of Rights and Freedoms* (pp. 529-563). Toronto: Carswell.
- Sanders, D. E. (1973-74). The *Indian Act* and the Bill of Rights. *Ottawa law review*, 6, 397-415.

- Sawridge Band v. Canada* [1995] 4 C.N.L.R. 121 (F.C.T.D.).
- Scrimbitt v. Sakimay Indian Band Council* [2000] 1 C.N.L.R. 205 (F.C.T.D.).
- Silman, J. (1987). *Enough is enough: Aboriginal women speak out*. Toronto: Women's Press.
- Simon, R. (1985a, September). Bill C-31 inquiries: 'The phone does not stop ringing'. *Micmac news*, 15(9), p. 4.
- Simon, R. (1985b, September). Bill C-31 is more than reinstatement. *Micmac news*, 15(9), p. 4.
- Smith, D. E. (1987). *The everyday world as problematic: A feminist sociology*. Boston: Northeastern University Press.
- Smith, D. E. (1990a). *Texts, facts, and femininity: Exploring the relations of ruling*. London and New York: Routledge.
- Smith, D. E. (1990b). *The conceptual practices of power: A feminist sociology of knowledge*. Toronto: University of Toronto Press.
- Sodhi, G. K. (1997). *Ignored are the wives and children: Voices from Band Councils and Native organizations during the Special Joint Committee of 1946-1948 and the Standing Committee on Bill C-31* (Unpublished Master's Thesis). Trent University, Peterborough, ON.
- Sprague, D. N. (1995). The new math of the new Indian Act: 6(2)+6(2)=6(1). *Native studies review*, 10(1), 47-60.
- Stevenson, W. (1999). Colonialism and First Nations women in Canada. In E. Dua & A. Robertson, (Eds.), *Scratching the surface: Canadian anti-racist feminist thought* (pp. 49-80). Toronto: Women's Press.
- Stone, G. P. (1962). Appearance and the self. In A. M. Rose (Ed.), *Human behavior and social processes* (pp. 86-118). Boston: Houghton Mifflin.
- Strauss, A. L. (1969). *Mirrors and masks: The search for identity*. Mill Valley, CA: Sociology Press.
- Strauss, M. (1981, August 15). UN group says Indian Act works against women. *The globe and mail*, p. P.4.
- Swankey, B. (1970). *National identity or cultural genocide: A reply to Ottawa's new Indian policy*. Toronto: Progress Books.

- Thorne, D. (2007, January 23). Case to weigh status of Aboriginal women who marry off-reserve. *CanWest News*. Retrieved from Canadian Business and Current Affairs (CBCA) Reference Database.
- Tobias, J. (1976). Protection, civilization, assimilation: An outline history of Canada's Indian policy. *The Western journal of anthropology*, VI(2), 13-30.
- Tuhiwai Smith, L. T. (1999). *Decolonizing methodologies: Research and Indigenous peoples*. London and New York: Zed Books.
- Turner, J. (1980, July 24). Canadian Indian case will be heard by UN. *The globe and mail*, p. P13.
- Turner, R. (1991a, March 12). Restored Indian status more flood than ripple: Paying for status, part 1. *Winnipeg free press*, 1, p. 4.
- Turner, R. (1991b, March 13). Housing is flashpoint for C-31 rancor: Paying for status, part 2. *Winnipeg free press*, 1, p. 4.
- Turner, R. (1991c, March 13). Not all Indians created equal: Paying for status, part 3. *Winnipeg free press*, p. 2.
- Turner, R. (1991d, March 14). Indian again, women gain in cash, spirit: Paying for status, part 4. *Winnipeg free press*, p. 2.
- Turpel, M. E. (1994, September). Discrimination and the 1985 amendments to the Indian Act: Full of snares for women. *Rights and freedoms*, 6.
- Turpel-Lafond, M. E. (1997). Patriarchy and paternalism: The legacy of the Canadian state for First Nations women. In C. Andrew & S. Rodgers (Eds.), *Women and the Canadian state* (pp. 64-78). Montreal: McGill-Queen's University Press.
- United Nations (1948a). *Convention on the prevention and punishment of the crime of genocide*. Retrieved from http://untreaty.un.org/English/CTC/Ch_IV_1p.pdf
- United Nations (1948b). *Universal declaration of human rights*. Retrieved from <http://www.un.org/en/documents/udhr/index.shtml>
- United Nations (1965). *International convention on the elimination of all forms of racial discrimination*. Retrieved from <http://www2.ohchr.org/english/law/cerd.htm>
- United Nations (1966a). *International covenant of civil and political rights*. Retrieved from <http://www2.ohchr.org/English/law/ccpr.htm>

- United Nations (1966b). *International covenant on economic, social and cultural rights*. Retrieved from <http://www2.ohchr.org/English/law/cescr.htm>
- United Nations (1966c). *Optional protocol to the international covenant on civil and political rights*. Retrieved from <http://www.un.org/Pubs/CyberSchoolBus/treaties/civil.asp>
- United Nations (2007). *United Nations declaration on the rights of Indigenous peoples*. Retrieved from http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- Van Kirk, S. (1976). 'The custom of the country': An examination of fur trade marriage practices. In L. H. Thomas (Ed.), *Essays on Western history* (pp. 49-68). Edmonton: University of Alberta Press.
- Van Kirk, S. (1980). *"Many tender ties": Women in fur-trade society in Western Canada, 1670-1870*. Winnipeg: Watson & Dwyer Publishing Ltd.
- Vryan, K. D., Adler, P. A., & Adler, P. (2003). Identity. In L. T. Reynolds & N. J. Herman-Kinney (Eds.), *Handbook of symbolic interactionism* (pp. 367-390). Oxford: Altamira Press.
- Wallace, K. E. (2006). Use your anger to initiate positive change! A tribute to Mary Two-Axe Earley. Retrieved from <http://www.cawlocal200.org/Use%20Your%20Anger%20to%20Initiate%20Positive%20Change.pdf>
- Warburton, R. (1997). Status, class and the politics of Canadian Aboriginal peoples. *Studies in Political Economy*, 54, 119-141.
- Ward, Percy Richard v. Samson Cree Nation No. 44*, 1997 CanLII 4954 (F.C.). Retrieved from <http://www.canlii.org/en/ca/fct/doc/1997/1997canlii4954/1997canlii4954.html>
- Wasacase, T. (2003). *Sovereignty >> The empty mirror: Western theories of identity and the attack on Indigenous peoples* (Honours Thesis). Retrieved from <http://www.nativestudies.org>
- Weaver, H. N. (2001). Indigenous identity: What is it, and who really has it? *American Indian quarterly*, 25(2), 241-255.
- Weaver, S. M. (1983). The status of Indian women. In J. L. Elliot (Ed.), *Two nations, many cultures: Ethnic groups in Canada*, 2nd ed. (pp. 56-79). Scarborough, ON: Prentice-Hall.

- Weaver, S. M. (1993). First Nations women and government policy, 1970-92: Discrimination and conflict. In S. Burt, L. Cody, & K. Dorney (Eds.), *Changing patterns: Women in Canada*, 2nd ed. (pp. 92-143). Toronto: McClelland and Stewart.
- Whitaker, R. (1999). Sovereignties old and new: Canada, Quebec, and Aboriginal peoples. *Studies in political economy*, 58, 69-96.
- Wilson, D. (1993, October 25/November 7). Bill C-31 supporter fighting back. *Windspeaker*, 11(16), 3.
- Wilson, S. (2008). *Research is ceremony: Indigenous research methods*. Halifax & Winnipeg: Fernwood Publishing.
- Wilson v. Indian Registry (Registrar)*, 1999 CanLII 5333 (BC S.C.). Retrieved from <http://www.canlii.org/en/bc/bcsc/doc/1999/1999canlii5333/1999canlii5333.html>
- Wotherspoon, T., & Satzewich, V. (2000). *First Nations: Race, class and gender relations*. Regina: Canadian Plains Research Center.

APPENDIX I⁴⁰

CHRONOLOGY OF EVENTS

1869 – Parliament enacts first clauses that discriminate against Indian women and their children when the women marry non-Indians in the 1869 Enfranchisement Act.

1876 – Parliament enacts consolidated *Indian Act*.

1960s – Individual Indian women such as Mary Two-Axe Earley of Kahnawake publicly condemn the discriminatory *Indian Act* provisions.

1971 – Jeannette Vivian Corbiere Lavell and Yvonne Bedard take their individual challenges to the discriminatory *Indian Act* provisions to court.

1973 – The Supreme Court of Canada hears a joint appeal of Lavell's and Bedard's cases and overturns the earlier decisions.

August 1977 – Tobique women demonstrate in front of the Band office over housing problems and later occupy the Band office.

December 1977 – Sandra Lovelace files a complaint against the Canadian government with the United Nations Human Rights Committee.

July 1979 – Tobique women walk to Ottawa from Oka to protest on-reserve housing conditions and hold a rally on Parliament Hill.

July 1981 – The United Nations Human Rights Committee finds Canada breached the International Covenant on Civil and Political Rights with the discriminatory *Indian Act* provisions.

1982 – Tobique women begin attending conferences and assemblies on a regular basis to increase awareness of the 12(1)(b) issue.

June 1984 – Bill C-47, "An Act to Amend the *Indian Act*," dies when the 32nd Parliament closes in 1984.

1985 – Bill C-31, "An Act to Amend the *Indian Act*," becomes law.

2009 – Sharon McIvor challenges the second-generation cut-off in the *Indian Act* in the Courts of British Columbia.

⁴⁰ Adapted from Silman (1987).

APPENDIX II

QUESTIONS FOR REINSTATED WOMEN

- How and when did you first learn that you were no longer considered Indian?
- How did you feel when you first found out you were no longer considered Indian?
- Why did you feel it was important to once again be recognized as Indian?
- How has the reinstatement process worked for you?
- What do Indian status and band membership mean to you?

APPENDIX III

INFORMED CONSENT INFORMATION SHEET

Bill C-31: The Lived Experiences of 'Indian' Women Who 'Married Out'

Fern Paul, a master's student in the Department of Sociology at the University of New Brunswick, is interested in speaking with women who have been reinstated under Bill C-31.

The Purpose of the Study

This research is directed toward understanding the individual experiences of women who married non-Indian men and later found out they were no longer considered Indian. The purpose of the study is to find out what this experience was like for individual women and how well the reinstatement process has worked. The ultimate goal of the research is to provide the knowledge to help revise policy and legislation for Aboriginal peoples.

Your Participation

As part of this study, you will be asked to take part in an interview that will take approximately 2 hours. Questions will address experiences of finding out you were no longer considered Indian and at various stages of the reinstatement process, including your original goals, and your experience of the process itself. You have the right to refuse to answer any question that makes you uncomfortable and you have the right to withdraw from the interview process at any time.

Interviews will be tape-recorded, and all information will be kept private and secure. Tape recording of interviews allows me to make sure I understand fully and can record correctly your experiences and point of view. I will ask you, therefore, to consent to my recording of your interview. If for any reason you feel uncomfortable with this, please let me know and I shall take written notes. Only the researcher and her supervisor(s) will have access to the information. What you say in the interview will be kept confidential, and your identity will remain anonymous, if requested.

Anonymity and Confidentiality

Your participation in the study will be anonymous, if requested. Your real name will not be used. Instead, you will be asked to choose an identifier, or false name, which will be used instead of your real name when the information gathered during the study is published.

All information gathered during the interview will be kept confidential. All tapes and notes from the interviews will be kept in a secure cabinet. Only the researcher and

her supervisor(s) will have access to the information, which will be destroyed after the thesis is written.

Identifying information (such as place names, band particulars, names of children) will be removed when interview tapes or notes are typed. Such information will not be included in the written thesis. After the tapes or notes are typed the original tapes and notes shall be destroyed.

Because New Brunswick's First Nations community is small, however, it might be possible that members of your community may be able to guess your identity from quotations in the thesis. Although I shall make every effort to ensure that you cannot be identified in the thesis, complete anonymity may not be possible. Before I write my thesis, I shall consult you about quotations I intend to use in my thesis. You will have the right to suggest changes if you feel changes are needed to protect your identity.

Contact Information

If you have any questions or concerns, if you would like more information about your participation in this research project, or if you would like to know how you may receive information as to the outcome of this project, you may contact:

Fern Paul,

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E-mail: Fern.Paul@unb.ca,
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Dr. Linda Neilson,

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APPENDIX IV

INFORMED CONSENT FORM

Fern Paul has discussed with me and has explained to me the contents of an information sheet. She is leaving a copy of that document with me. I have had an opportunity to ask questions about my participation. I freely consent to participate in the study:

***Bill C-31: The Lived Experiences of
'Indian' Women Who 'Married Out'***

I acknowledge receiving a copy of this consent form.

I agree that Fern Paul may tape record my interview.

I agree that the researcher may use this information from the interview for her thesis.

I understand that, should I request it, my participation will be kept anonymous.

- I wish my identity to remain anonymous.
- I allow the researcher to disclose my identity in the final report.

If I request that my identity be kept anonymous, I agree to the use of an identifier – rather than my real name – and to the removal of personal identifiers from any information that is published.

The identifier I agree to be used is: _____

I understand that all information gathered in the interview will be confidential. I understand that interview tapes and notes will be kept in a secure cabinet, and they will be destroyed after the thesis is written.

I understand that my participation in this study is voluntary, and that I may refuse to participate or withdraw from the research project at any time.

Participant's Signature

Date

Researcher's Signature

Date

APPENDIX V

PERSONS ENTITLED TO BE REGISTERED (1951)

11. Subject to section 12, a person is entitled to be registered if that person
- (a) on the 26th day of May, 1874, was for the purposes of An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands, chapter 42 of the statutes of 1868, as amended by section 6 of chapter 6 of the statutes of 1869, and section 8 of chapter 21 of the statutes of 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;
 - (b) is a member of a band
 - (i) for whose use and benefit, in common, lands have been set apart or since the 26th day of May, 1874, have been agreed by treaty to be set apart, or
 - (ii) that has been declared by the Governor in Council to be a band for the purposes of this Act;
 - (c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b);
 - (d) is the legitimate child of
 - (i) a male person described in paragraph (a) or (b), or
 - (ii) a person described in paragraph (c);
 - (e) is the illegitimate child of a female person described in paragraph (a), (b) or (d) unless the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered; or
 - (f) is the wife or widow of a person who is entitled to be registered by virtue of a paragraph (a), (b), (c), (d) or (e). (S. C. 1951, c. 29, p. 135)

APPENDIX VI

PERSONS NOT ENTITLED TO BE REGISTERED (1951)

12. (1) The following persons are not entitled to be registered, namely,
- (a) a person who
 - (i) has received or has been allotted half-breed lands or money scrip,
 - (ii) is a descendant of a person described in subparagraph (i),
 - (iii) is enfranchised, or
 - (iv) is a person born of a marriage entered into after the 4th day of September, 1951, and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph (a), (b), (d), or entitled to be registered by virtue of paragraph (e) of section 11, unless, being a woman, that person is the wife or widow or a person described in section 11, and (b) a woman who is married to a person who is not an Indian.
- (2) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect. (S. C. 1951, c. 29, p. 136)

APPENDIX VII

PERSONS ENTITLED TO BE REGISTERED (1985)

6. (1) Subject to section 7, a person is entitled to be registered if
- (a) that person was registered or entitled to be registered immediately prior to April 17, 1985;
 - (b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;
 - (c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;
 - (d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;
 - (e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,
 - i. under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section. or
 - ii. under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or
 - (f) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.

Idem

- (2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1). (R.S., 1985, c. I-5, p. 4)

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Universities attended:

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Publications:

2008. Fern Paul. "Canada, Aboriginal Women." In Richard T. Schaefer (Ed), *Encyclopedia of Race, Ethnicity, and Society* (pp. 227-230), Sage Publications.

Conference Presentations:

2007. Presented "Bill C-31: The Lived Experiences of 'Indian' Women Who 'Married Out.'" 24th Canadian International Qualitative & Ethnographic Research Conference, St. Thomas University and the University of New Brunswick, Fredericton.

2005. Presented "Embellished 'Stories'? Oral History in the Bill C-31 Legal Debate in Sawridge, Tuplin and Wilson." Conference on Aboriginal Oral Traditions: Theory, Practice and Ethics, Gorsebrook Research Institute, Saint Mary's University, NS.

2005. Presented "Feathers and Guns: Resistance by Aboriginal Peoples in Canada." 13th annual Graduate Student Association Conference on Student Research, University of New Brunswick, Fredericton.

2004. Presented "Bill C-31: Can We Change Seven Generations of Colonialism?" 12th annual Graduate Student Association Conference on Student Research, University of New Brunswick, Fredericton.