



Aboriginal Women and Bill C-31

An Issue Paper

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Background

On June 28, 1985, Bill C-31, *An Act to Amend the Indian Act*, received Royal Assent. Bill C-31's purpose was to eliminate sexual discrimination within the *Indian Act* and make it congruent with the Canadian Charter of Rights and Freedoms. Bill C-31 was a response to the decision of the United Nations Human Rights Commission in the case of Sandra Lovelace (Nicholas). The UN recognized that Canada was discriminating against First Nations women as a result of the marriage provisions within the *Indian Act*. While the Canadian legal system had not ruled similarly in the case of Mary Two-Axe Early and Jeanette Corbiere Lavell, First Nation women saw justice prevail at the International level. Though some may have seen the enactment of Bill C-31 as a gain, it was offset by other provisions which continued the discrimination against Aboriginal women and their children.

The 1985 amendments to the *Indian Act* (Bill C-31) introduced three key changes:

- The reinstatement of Registered Indian Status primarily affected women who had lost their eligibility for registration through provisions of earlier versions of the *Indian Act*. The amendments also provided for the first time registration of many children;
- the introduction of new rules governing entitlement to Indian registration for all children born after April 16, 1985 (Section 6); and
- the ability for First Nations to develop and apply their own rules governing membership (Section 10)¹

Bill C-31 removed the concept of enfranchisement. It became no longer possible for a First Nations person to “sell” their Indian status. In addition, Bill C-31 provided for the return of Indian status to those women who lost status under section 12 (1) and their children. The amendments to the *Indian Act* generated by Bill C-31 provided in section 6 (2) that a person cannot be registered as an Indian if one parent is a non-Indian and the other is a reinstatee. This created a new element of discrimination between the children of reinstates and the children of other registered individuals under the *Indian Act*. In Mary Eberts report “*Aboriginal Women’s Rights are Human Rights*” she states the following:

“The “Indian-ness” of the reinstatee is less powerful than the “Indian-ness” of someone who derives status under other provisions of the *Indian Act*;

¹ Clatworthy, 2005-Indian Registration, Membership and Population Change in First Nations Communities

this is so even if their Aboriginal lineage is identical. Subsection 6 (2) of the Indian Act is called, colloquially, the “second generation cut-off.”²

Bill C-31 affects First Nation people in that not all have the same ability under the law to pass on their status to their children. For example a non-Aboriginal woman who became Status Indian under section 12 before 1985 had the ability to pass on full Indian Status. In contrast, the children of woman who were reinstated after 1985 cannot pass on Status to their children: the third generation cut-off.

As a result of Bill C-31, a chaotic situation developed for First Nation communities because membership was a key factor in determining funding. While membership increased as a result of the changes made possible by the bill, the funding allocated to First Nations did not increase. As such Bill C-31 created new divisions between individuals and fostered discrimination within First Nation communities. First Nations budgets in housing, education, social assistance and infrastructure sectors have been stretched since 1985 due to the increase in members requiring services and supports. Many First Nations women wait for adequate services for themselves and their children due to the stress created on the funding available.

Under the provisions of Bill C-31, First Nations women must state the status of the father when registering their children. This causes difficulties for some women, who may not wish to state the paternity of the children or formalize the relationship between the father and the children. Under Bill C-31, if the father of the child is not listed on the birth certificate then Indian Affairs assumes that the father is non-status. Unstated paternity means that the child will either have Section 6 (2) status or no Indian status.

Bill C-31 provided each First Nation community with the mechanism to develop their own membership codes. While each membership code had to be approved by the Minister of Indian Affairs, subsequent amendments are not subject to this requirement. The creation of band membership codes created problems as such some people who were registered under Section 6 (1) were automatically put on a band list. Many others got a conditional membership or no membership. Indian bands were not required to give those registered under Section 6 (2) band membership. This meant that some people can have band membership and status, while other could have band membership and no status and others could have status with no band membership. This creates great division in First Nation communities.³

All First Nation communities have issues with the lack of resources related to Bill C-31: financial, infrastructure, land and housing. There were concerns that increased First Nations populations would have detrimental effects on already

² Eberts, p.5

³ NWAC, p. 5, 1998-Bill C-31 Unity for our Grandchildren Final Report

limited lands and resources. The Federal Government should have provided additional lands and resources to offset the increase in First Nations populations.

Current Conditions

Due to the lack of additional lands and resources allocated to First Nations, the Federal Government has been lobbied at many levels to address the needs that exist. NWAC has been involved in these ongoing efforts to address the gap between the demand for services and the resources available.

First Nation women now may have to deal with more exclusive membership codes or Self-Government Agreements that dictate beneficiary conditions and codes. Some First Nations women are facing discrimination from their own people and feeling doubly subjected to unfair and unjust treatment. While self-determination is a goal of most First Nations, the question of how the *Canadian Charter of Rights and Freedoms* impacts First Nations membership codes and self-government agreements leaves many First Nations women vulnerable to decision making beyond their control.

Finally, since Bill C-31 was introduced there have been hundreds of cases being litigated in the courts. These cases deal with membership issues, status issues and continued discrimination and sexual discrimination within Bill C-31. While some women applauded the recognition of the discrimination many women agree that the Bill is not the mechanism to address the scope and depth of that discrimination. Many women believe that Bill C-31 only caused more suffering and in the long term has perpetuated injustice.

Recommendations

1. The Native Women's Association of Canada urges a review of Bill C-31 to recognize the longstanding discrimination against Aboriginal women in Canada, specifically the role-played in that discrimination by government policy, the *Indian Act* and actions taken under the *Indian Act* and by self-governing First Nations.
2. That the federal government make a commitment to address and resolve outstanding human rights issues for Aboriginal women with active engagement and consultation with Aboriginal women and their representative organizations.
3. That a Bill C-31 Secretariat be created that will provide coordination, develop an effective communication network, conduct research and consultation, and provide legal and technical resources.
4. That First Nations develop membership codes that are fair and equitable, regardless of gender and parentage.

5. That all future policy and legislation be carefully analyzed through a gender based analysis process within an Aboriginal context.