

# **Aboriginal Women: An Issues Backgrounder**

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## **Aboriginal Women: An Issues Backgrounder**

This backgrounder highlights some of the main issues currently faced by Aboriginal women and their supporters, along with a brief synopsis of some remedial options under discussion.<sup>1</sup> It should be noted at the outset that there is great diversity among Aboriginal women, including status and non-status First Nations, Inuit and Métis, reflected in the diversity of issues they face.

Nor are any of the issues stand-alone; rather they are inextricably interconnected and indivisible from the systemic and pervasive nature of Aboriginal women's inequality in Canadian society. The reader is invited to further consider the interplay between the issues and how they might be approached holistically. Community – based policy initiatives which take into account systemic inequality and its root causes may meet with more success.

Key to all the issues is consultation with Aboriginal peoples, women in particular, who require input into program and service development, new legislation and policies, and funding for participation.

### **I. Violence & Aboriginal Women**

Aboriginal women's unequal status in Canadian society results in their increased vulnerability to exploitation and violence. Compared to other Canadian women, Aboriginal women are three times as likely to report that they have experienced some form of violence perpetrated by their spouse and Aboriginal women run eight times the risk of being killed by their spouse after a separation. Twenty-five percent of Aboriginal women were assaulted by a current or former spouse during the 1999 General Survey's five-year period, twice the rate for Aboriginal men (13%) and three times the rate for non-Aboriginal women and men.<sup>2</sup> Violence, including sexual assault, whether inflicted by a spouse or a stranger, is one of the most fundamental transgressions of the human rights of Aboriginal women.

Aboriginal women's vulnerability to violence and sexual assault within their communities is fuelled by social and economic marginalization and a history of colonialist government policies including residential schools, which have disrupted relations between Aboriginal men and women and eroded cultural identity. The dispossession of status Indian women who married outside their communities and the removal of Aboriginal children to be educated in residential schools greatly contributed to the marginalization of Aboriginal women within both their communities and Canadian society. Aboriginal women may also be perpetrators of violence, suffering the intergenerational impacts of residential schools, and caught up in the cycle of violence, the complexity of which exceeds the limits of this paper.

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<sup>1</sup> This backgrounder is not exhaustive; for example all women's socio-economic participation is detailed in a separate paper.

<sup>2</sup> Statistics Canada. *1999 General Social Survey*. Ottawa: Statistics Canada, 1999.

The abuse of alcohol and drugs, poverty and overcrowding in Aboriginal homes are also contributing factors to spousal violence both on and off reserve. The absence of alternative housing arrangements is problematic for all Aboriginal women, noted most particularly for Inuit, while women in remote communities may face inadequate police response time.

In the cities, Aboriginal women are at greater risk of violence and assault than all other Canadian women, arising from racist and sexist attitudes.<sup>3</sup> Discrimination and Aboriginal women's inequality in society contribute to a perception that they are easy targets; discriminatory and sexist policing has all too often rendered this perception reality. Aboriginal women aged 25-44 are five times more likely than other Canadian women of the same age to die of violence, and more than 500 aboriginal women have gone missing or been murdered over the last 30 years.<sup>4</sup>

Both on reserve and off, Aboriginal women remain fearful of reporting violence to police, perceiving that their complaints may not be taken seriously. They may also fear community fall-out and economic consequences where the abuser is also a provider. Social and economic marginalization combined with addictions and other factors, has led to Aboriginal women being highly overrepresented as sex trade workers; racism compounds the threat to safety and security faced by all such workers.

In the urban context there is a shortage of culturally appropriate support services for the rapidly growing urban Aboriginal population, whereas in the North, Aboriginal women face a shortage of services at the local level and a general lack of specialized services which often forces them to leave their communities. Métis and non-status First Nations women further experience lack of access to some programs which are only made available to status Indians and Inuit by the federal government.

Suggestions for action include increasing resources to provide assistance to victims and foster economic independence, the supervision of abusers, and measures aimed at breaking the cycle of violence. Services might include access to culturally appropriate programs for: prevention, targeting youth, shelters both on and off reserve, transition homes, life skills and building capacity within Aboriginal organizations. Police and justice system sensitization and training is also called for as is greater participation by women in community governance.

## **II. Bill C-31 Status and Membership**

In 1985, the Canadian government passed Bill C-31, amending the Indian status and band membership provisions of the *Indian Act*<sup>5</sup>. The amendments were intended to rid the *Act*

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<sup>3</sup> Amnesty International Canada. *Canada: Stolen Sisters - A human rights response to discrimination and violence against Indigenous women in Canada*. Ottawa: Amnesty International, 2004.

<sup>4</sup> *Canada: Stolen Sisters*.

<sup>5</sup> R.S.C. 1985, c. I-5, as am.

of sex discrimination; nonetheless, the provisions still discriminate against women and their children and are damaging for First Nations communities.

Arising from Bill C-31, the *Indian Act* contains two categories of Indian registration. Pursuant to subsection 6(1), a child is registered as a status Indian where both parents of the child are or were entitled to registration, and under subsection 6(2), where one of the child's parents is or was entitled to registration under Section 6(1).

Where a registered Indian father is not stated or not recognized by the government, there is a loss of benefits and entitlements by either the child or their subsequent children where there is successive out-parenting. In providing for the return of Indian status to women who lost it due to out-marriage plus their children (the second-generation cut-off), the discriminatory effect of Bill C-31 is only postponed until subsequent generations. Section 6 translates into a loss of registration after two consecutive generations of out-parenting with non-registered partners, and is anticipated to eliminate Indian status in the foreseeable future, as more First Nations have children with non-status people.

The benefits conferred by registration are of great import to First Nations women who remain most often the primary care givers of children. The tangible benefits attendant upon obtaining Indian registration are desirable: access/entitlement to Indian and Northern Affairs Canada's (INAC) programming base, tax benefits for those with reserve based property, and access to national programs such as post-secondary education and non-insured health benefits. There are also additional non-tangible benefits that registration may facilitate such as personal, community and cultural identification.

Registration also determines membership in bands whose lists are maintained by INAC, which in turn often determines access to band resources. A First Nations child denied registration will also be denied band membership where their band's membership list is managed by INAC. They may also be denied band membership where their band has assumed control of membership under the *Indian Act*, though this is entirely dependent upon the membership code of each First Nation.

Suggestions for action include changing the status and membership provisions of the *Indian Act*, the administrative policies of INAC surrounding proof of paternity, and provincial Vital Statistics Acts birth registry practices. Other policy options include facilitating access to services and resources for First Nations women, and public education around the implications of unstated paternity, including an enhanced role for Indian Registry Administrators. First Nations women's participation in band decision making and in self-government agreements is also sought in relation to membership.

### **III. Matrimonial Real Property on Reserve**

First Nations women currently have no right in law to certain assets where their marriage breaks down, unlike all other women in Canada. The human rights of First Nations

women and children are violated and they are discriminated against when they are unable to exercise rights that they would have outside of the reserve.

Arising from the distribution of powers in *The Constitution Act, 1867*<sup>6</sup>, provincial or territorial law governs how assets of a marriage or common-law relationship are to be divided upon breakdown, including real property, which is land or things attached to it, such as a house. The legislation generally provides for equal division between the spouses.

However, these laws do not apply on reserve as a result of subsection 91(24) of *The Constitution Act, 1867* which gives the federal government exclusive law-making authority over “Indians, and Lands reserved for the Indians.” This has been interpreted to mean that provincial and territorial matrimonial property laws do not apply to real property on reserve. Since there are no federal provisions in the *Indian Act* or elsewhere that fill in this matrimonial property gap, people living on reserve generally have no legal system for resolving issues relating to land and houses upon a breakdown of their relationship.

Women and their children are therefore left with no legal claim to occupy the family residence. They may be forced to leave the matrimonial home and due to acute housing shortages, may also have to leave the reserve. Where family violence is involved, the women and her children are rendered all the more vulnerable by this gap; sometimes remaining with the abuser for lack of an alternative. (It is noteworthy that Inuit women are often tenants of their homes, with the man's name on the lease, also resulting in great difficulty in removing a male perpetrator of violence from the home.)

First Nations women want an avenue of redress and effective enforcement mechanisms for matrimonial matters involving real property on reserve. Options include interim amendment of the *Indian Act*, and drafting separate legislation so that provincial /territorial matrimonial property laws apply to real property on reserve lands and so that perpetrators of violence may be removed from the home. While implementing interim legislation, it has also been suggested that the government provide First Nations organizations with human and financial resources so that members may develop their own matrimonial real property codes, with the participation of First Nations women.

It is also proposed that provisions in the *Canadian Human Rights Act*<sup>7</sup> preventing its application on reserve should be repealed; allowing for women to claim that a band Council's decision involving housing is discriminatory. The need for more housing on reserve was part of the 2005 Budget.

#### **IV. Justice & Human Rights**

Aboriginal women face race and gender discrimination, often further compounded by inequity due to poverty, ill-health, involvement in the sex trade, or other factors.

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<sup>6</sup> 30 & 31 Victoria, c. 3 (U.K.).

<sup>7</sup> R.S. 1985, c. H-6.

Aboriginal women contend that some government laws and policies contravene the equality guarantees contained in subsection 15(1) of the *Charter of Rights and Freedoms*<sup>8</sup>.

Discrimination has been evidenced within the justice system by disproportionate rates of charging, prosecution and conviction of Aboriginal women and their over-representation in prisons. It is also evident in the action or lack thereof, taken on missing Aboriginal women. Issues have also been raised by Aboriginal women pertaining to restorative justice sentencing for male offenders convicted of crimes involving violence and abuse, and whether their victims (often Aboriginal women) have adequate voice. Options include increasing Aboriginal women's access to legal aid, cultural awareness training for police, prosecutors, judges and corrections staff, and the recruitment of more Aboriginal peoples throughout the justice system. Aboriginal women also want access to culturally appropriate life skills programs and community re-integrations supports.

Section 67 of the *Canadian Human Rights Act* provides that nothing in that *Act* affects any provision of the *Indian Act*, leaving status Indian women without protection that other Canadian women have. Section 67 operates to prohibit anyone on reserve lands from claiming that an *Indian Act* band council decision is discriminatory; its repeal would mean that First Nations women can benefit from the *Acts'* protection.

## V. Health

Aboriginal women do not share the same level of good health experienced by other Canadian women. In 1999-2000, life expectancy for First Nations women was 76.6 years and for Inuit women in Nunavut 70.2 years, compared with 81.8 years for Canadian women in general.<sup>9</sup> Aboriginal women have higher incidences of diabetes, tobacco addiction, and HIV/AIDS. They are also more likely to seek services to treat drug and alcohol abuse than are other Canadian women. Related are problems concerning fetal alcohol syndrome (FAS) and its effects (FAE), and family dysfunction and violence. Aboriginal women also have a suicide rate up to eight times that of other Canadian women, depending upon age.<sup>10</sup> The sub - Canadian standard of health of Aboriginal women cannot be disassociated from other factors, including poverty and unemployment, family violence, poor housing and living conditions and the cost of quality food in remote communities.

To address the pressing health needs of Aboriginal women it has been suggested that health services be made more accessible. Health services are a jurisdictional quagmire, with federal government responsible for primary health care services and non-insured health benefits coverage for status Indians and Inuit in Canada, regardless of residence. Provincial and territorial governments provide health services for Métis, and non - status Indians, but also provide services such as doctors and hospitals to status Indians and

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<sup>8</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

<sup>9</sup> Health Canada. *A Statistical Profile on the Health of First Nations in Canada*. Ottawa: Health Canada, 2003.

<sup>10</sup> *A Statistical Profile on the Health of First Nations in Canada*.

Inuit. There is a movement toward First Nations and Inuit communities controlling health services, though Aboriginal women want to see gender analysis conducted.

Many Inuit experience problems accessing even mainstream health services in the North, due to a territorial decrease in resources. Further, there is a gap in culturally appropriate health services for urban Aboriginal people, who often have access to only mainstream programs. There is a call for more funding for urban Aboriginal health programs and services, and better co-ordination and communication between the different levels of government. Enhanced and stable funding is sought for Aboriginal health organizations.

## **VI. Power and Decision-Making**

Aboriginal women seek greater political participation and input into decision making for First Nations, Métis, and Inuit women. They seek access to the powers of Chief and Council, political participation in local and federal governance structures and participation in the negotiation of self-government agreements and their implementation. The mode of governance for Inuit peoples is, and has been, different from that imposed by the *Indian Act* upon First Nations; both Inuit and Métis women face distinct challenges in facilitating national dialogue on access to governance.

Options for facilitating greater involvement include providing better funding and more independence to Aboriginal organizations that seek to facilitate women's involvement and provide leadership training. Aboriginal women also seek access to redress and accountability mechanisms for local governments and access to an Aboriginal ombudsperson or complaint office. Aboriginal women's access to power and decision-making also requires that certain primary issues are resolved, including their safety, health and access to economic resources.

## **VII. Conclusion**

Aboriginal women and their supporters throughout Canada are taking action to end the injustice and systemic racism and sexism that erects barriers to their lives, creating and perpetuating their inequality in Canadian society. They are organizing locally, regionally and nationally to engage government at all levels in all areas that require action. In that regard, at a May 2005 Cabinet retreat the president of the Native Women's Association Canada (NWAC) signed a joint accord with Canada that cements the direct participation of NWAC in the federal policy development process. Accords such as this may pave the way for greater collaboration and co-operation between other Aboriginal women's groups and differing levels of government in the future as Aboriginal women continue to fight for their rights.

### **About the Author:**

Michelle M. Mann is a consultant who has authored numerous reports on Aboriginal and human rights issues for government departments, and non-governmental and Aboriginal organizations. She is former legal counsel to the Department of Justice, Native Law and

the Indian Claims Commission. She is also a freelance writer, legal affairs columnist and legal and political affairs commentator for television. She holds a BA in history from the University of Guelph, and an LL.B. from the University of Ottawa and is a member in good standing of the Law Society of Upper Canada.