

Canadian Aboriginal Women: Legal Discrimination

On June 28, 2005, Aboriginal women protested in front of the Canadian Parliament in Ottawa. They were there to mark the 20th anniversary of the adoption of Bill C-31 to amend the *Indian Act*. In 1985, after a struggle that lasted over 10 years, they had finally succeeded in having a discriminatory clause regarding the federal government's recognition of their identity revoked. In practice, however, they soon realized that Bill C-31 had adverse effects on their identity and that of their children.

In Canada, and throughout the Americas, statistics show that Indigenous people are among the poorest, least educated and most marginalized citizens. While the gap between indigenous and non-indigenous people has narrowed in recent years, the life expectancy of indigenous people is still six years below the national average. And the situation is even more alarming for indigenous women who are more vulnerable to domestic violence and poverty than their male counterparts. These indicators are the outcome of a long history of oppression and dispossession.

Before 1985: Implementing assimilation policy

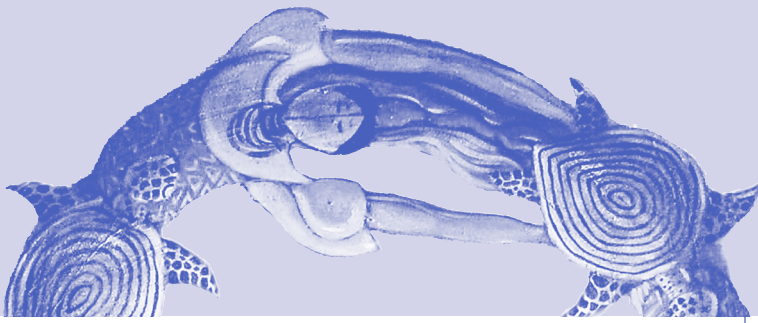
Beginning in 1850, the Government of Canada put in place a legal arsenal designed to assimilate Aboriginals into the new majority of European settlers and, above all, to take possession of their land and resources.

In keeping with this objective, several laws were integrated into a framework law called the *Indian Act*. In 1876, this legislation was adopted by the Parliament of Canada, an institution that excluded Aboriginals, by denying them the right to vote and to run as members of Parliament. The *Indian Act* affected many aspects of Aboriginal life: it stipulated that the Government of Canada controlled land and effectively made Indians wards of the state; it defined who was and was not

Indian; it turned Indians into minors under the law which prevented them from voting until 1960, signing a will or administering their assets; it prohibited certain Aboriginal ceremonies and political institutions; it made education in one of Canada's two official languages (English and French) obligatory; and it even controlled the comings and goings of people on reserves.

It was in this particular context that systemic discrimination against Aboriginal women took hold. By assuming the right to define who was and was not legally Indian, the Canadian legislature imposed its patriarchal vision of the family. Until 1985, only an Indian man could pass on "Indian" status to his spouse, even if she was non-Indian, while Indian women automatically lost their legal status upon marriage to a non-Indian. Under the *Indian Act*, a brother and sister both raised by Aboriginal parents found themselves in diametrically opposed situations with respect to their culture and territory, if they married a non-Indian: while the brother could enjoy the same status as before marriage and his non-Indian wife was free to live with him on the reserve, the sister was forced to leave her community and find another place to live with her non-Indian husband in accordance with the law. Furthermore, the brother's children were recognized as Indians whereas the sister's children became "Whites" under the *Act*.





Since women are primarily responsible for transmitting culture to their children, the *Indian Act* served as an assimilation factor, like the obligation of education in English or French and the restriction on observing Aboriginal traditions. The effects of this discrimination against women were particularly detrimental for Aboriginal societies traditionally rooted in matrilineal lineage, such as Iroquois societies.

The Struggle of Aboriginal Women against Systemic Discrimination

Aboriginal women living in Canada did not give in to systemic discrimination. In fact, the struggle against the *Indian Act* became one of their major demands which led to the creation of groups in 1974 such as Quebec Native Women's Association and the Native Women's Association of Canada (NWAC). This action was crucial since mixed Aboriginal organizations did not lend the necessary support and some leaders even supported the *Indian Act*.

In 1973, Jeannette Corbière-Lavell and Yvonne Bédard turned to the courts claiming discrimination on the basis of sex. These two Aboriginal women from Ontario contested the loss of their status as Indians after marriage to a non-Indian, a form of exclusion that did not apply to men under the *Indian Act*. In the end, they took their case to the Supreme Court of Canada. According to the judges, this provision of the *Act* was not discriminatory since it applied indiscriminately to all Indian women.

Later, Sandra Lovelace, a Micmac from Nova Scotia, in Eastern Canada, called on the United Nations to denounce the fact that she had been forced to leave her community after marrying a non-Indian. This expulsion stripped her of her rights and prevented her from practicing her culture within her community as a part of daily life. In 1981, the UN Committee on Human Rights ruled in favour of Ms Lovelace.

Before Bill C-31

An Indian woman who marries a non-Indian loses her status and is therefore not considered Indian. Her children are not considered to be Indian.

However, if an Indian man marries a non-Indian, this woman acquires legal status and is therefore considered Indian. Her children are also considered Indian.

After Bill C-31

Article 6(1) allows an Indian woman who marries a non-Indian before 1985 to restore her status which she lost through this marriage. Her children, born out of this marriage, also recover their status as Indians, but under Article 6(2). In order for their children to also obtain status as Indians, they must marry someone who has status.

In 1985, the Government of Canada finally amended the *Indian Act*. Bill C-31 therefore enabled thousands of women and their children to be reinstated in the Indian Register after having been excluded in the past due to marriage to a non-Indian. Their reintegration, however, sparked tensions within the communities, as authorities were confronted with housing problems and a high demand for services due to this sudden increase in the population. Some of the women whose status had been restored experienced discrimination in their communities of origin because the Canadian government had not put any measures in place to help these communities receive their children.

After 1985: Replacing one Form of Discrimination with Another

Aboriginal women won their cause, but their victory was not complete. While Bill C-31 authorized their reinstatement in the Indian Register, it also put conditions on the recognition of their children as registered Indians. From this point on, women with restored status could pass on



Aboriginal People in Canada since the Adoption of Bill C-31

- Number of people reinstated in 10 years (1995 to 2005): **over 130,000**
- Population increase among Indians registered solely as a result of Bill C-31, 1985 to 1990 : **19% in 5 years** (Report of the Royal Commission on Aboriginal Peoples, 1996.)
- Total number of status Indians in Canada: **733,626** (Report of the Royal Commission on Aboriginal Peoples, 1996.)
- Number of Indians (self-identification) according to 2001 census: **976,000**

their new-found status to their children, but their children could only pass it on to their children if their spouses were registered Indians. For women who had children out of wedlock, the situation was even more problematic. If the biological father refused to legally recognize his child, Bill C-31 assumed that the child was not a status Indian. The reality in Aboriginal communities was that many children were born of single mothers and absent fathers. In these cases, the children were raised by their mothers and members of the community who transmit-

ted their Aboriginal language and culture. And yet their status was not recognized legally.

Status and Identity: is there a Difference?

The legal status conferred by the Canadian government and the Aboriginal identity felt by each individual as a function of their personal history, culture and education are two very different things. Yet, legal status and membership in a band are two determining factors when it comes to enjoying certain rights within the community. In fact, both provide the possibility of living on a reserve and obtaining housing, attending bilingual school or participating in cultural and spiritual life. When this is denied, people are forced to live in cities where it is more difficult to transmit their culture to their children and where Aboriginal identity is even more fragile.

Discrimination against Canadian Aboriginal women in terms of recognizing their legal status affects their identity and undermines their ability to raise their children with respect to their identity. Over a century ago, Canada

Fragmented Identity




Michèle Audette

The mother of Michèle Audette, a Montagnais woman from Uashat-Mani-Utenam, had the "misfortune" of falling in love with a Quebecer and marrying him. As a result, she lost her status, as did her children, as stipulated by law. Thanks to legislative amendments, under Article 6.1 of Bill C-31, she was able to regain her status, as did over

1000 women in Quebec. However, it was another story for their children. While Michèle Audette [former president of Native Women of Quebec] was able to obtain status by virtue of Article 6.2, she could not

transmit her status to her own children! Yet, her male cousins born to a White mother and Aboriginal father could. In short, this form of discrimination was corrected for one generation but was transferred to the next. Michèle Audette's eldest son was considered White, since he was born out of a union with a non-Status Indian, that is, a "pure-blooded" but non-recognized Indian (some Aboriginals who were not in the "village" when the representative from the Department of Indian Affairs and the North came to call were never registered!). However, her youngest son, whose father was a registered Indian, could pass on his status. Two brothers, two nationalities, two sets of rights.

Claire Gagnon and Anne Panasuk, "Amérindiennes : Révolte de l'intérieur," *Gazette des femmes*, 24, 5 (January-February 2003): 17-38 (www.gazettedesfemmes.com/recherche).



The term “band” designates an Aboriginal community recognized by the Canadian government. Bands are generally governed by a Band Council that exercises its authority over the community or reserve. The term “reserve” designates communities governed by the *Indian Act* and established on land reserved for Indians, but owned by the Government of Canada.

imposed its criteria on Aboriginal peoples in defining persons it considered Indian and non-Indian. Since then, Canada has developed policy based on this definition which has had negative effects on Aboriginals, particularly for their cultural survival. Yet, self-definition of indigenous peoples is a right entrenched in international instruments such as Convention 169 of the International Labour Organization. Unfortunately, many nations and communities have adopted the definitions inherited by Canadian authorities and are perpetuating the same discrimination against women. Other nations and communities are currently divided on issues regarding status and identity.

Today, Aboriginal women and their children still face discriminatory practices by the Canadian government in various legal aspects, including:

- the right of women and their children to Indian status;
- the right of women and their children to belong to a band;
- the registration of children whose paternity is contested or not recognized;
- the right of women as well as their spouses and children to live on a reserve;
- the clause regarding land distribution and services on the reserve;

- the division of property when a couple separates;
- the application of the Canadian Charter of Rights and Freedoms within First Nation governments.

These discriminatory practices contravene the Canadian Charter of Rights and Freedoms as well as several international conventions that Canada has signed! (Fédération des femmes du Québec, www.ffq.qc.ca).



Questions for discussion

- **How does your community determine who is and is not Aboriginal? What criteria are used?**
- **As an Aboriginal woman, do you experience discrimination within your community, nation or on the part of your government?**
- **Do you know of any discriminatory laws in your country? If so, which ones (for example, access to education, health, employment, or others)?**
- **Is someone working to change these discriminatory practices? Who and how?**

FOR MORE INFORMATION

Quebec Native Women,

Brief: Proposed Changes to the Indian Act and the Administration of the Indian Act, September 2001 (www.faq-qnw.org/publications_eng.htm).

Native Women's Association of Canada,

various documents regarding Bill C-31 (www.nwac-hq.org/reports.htm).