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Bill C-31 and First Nation Membership

Aboriginal Policy Research Conference
Pre-Conference Workshop

Summary of Collected Papers

Strategic Research & Analysis Directorate
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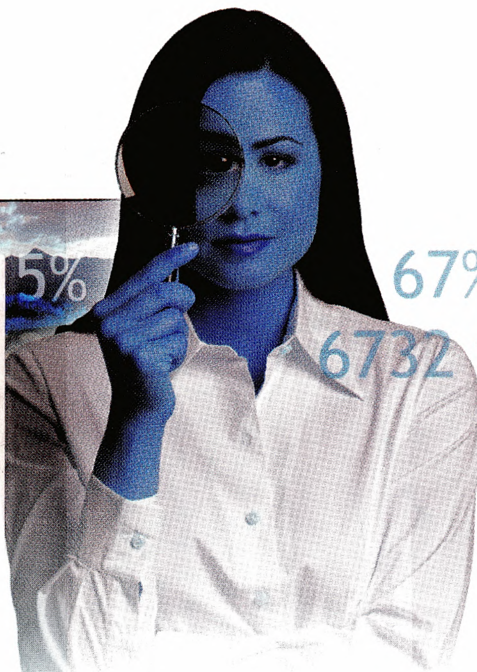

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Summary of Collected Papers

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The views expressed in this report are solely those of the authors and do not necessarily reflect those of Indian and Northern Affairs Canada.

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INTRODUCTION

The ramifications of Bill C-31 changes to the *Indian Act* in 1985 have been the source of numerous legal and policy challenges primarily involving Indian registration and band membership issues. Bill C-31 was intended to bring the *Indian Act* into conformity with the gender equality rights provided under s. 15 of the *Canadian Charter of Rights and Freedoms* and s. 35(4) of the *Constitution Act, 1982.* It was intended to address gender discrimination arising from previous provisions of the *Indian Act*, which stipulated that an Indian woman, who married a non-Indian man, lost her Indian registration, as did their children.

Bill C-31 changed the rules for Indian registration under the *Indian Act* and substantially increased the numbers of individuals eligible for registration. It also allowed First Nations to have limited control over their memberships, but only after certain individuals who had lost Indian status under the *Indian Act* prior to 1985 were granted reinstatement upon application to both Indian status and First Nation membership.

While the Bill attempted to deal with the re-instatement of Indian registration and band membership for Indian women who had "married out," it has not been entirely successful in meeting these objectives. Allegations of gender-based discrimination remain surrounding 6(1) and 6(2) registration categories under the 1985 *Indian Act*, as well as around band membership and the exclusion of women reinstated under Bill C-31. It is also argued that the discriminatory legacy of the *Indian Act* provisions survive in government policy surrounding unstated and unrecognized paternity.

The *Indian Act* has had a profound historical impact in shaping Aboriginal identities, and has posed many challenges for Aboriginal women, First Nation communities and Aboriginal and non-Aboriginal governments. These challenges include the continuing effects of gender discrimination from previous *Indian Act*s, competing notions of what it means to be "Indian" in the face of a shifting First Nations population, and a renewed debate over First Nation control of membership and registered Indian status.

In the end, Bill C-31 attempted to strike a balance between ending all gender discrimination under the *Indian Act* while respecting First Nations control of membership. Many commentators agree that Bill C-31 failed on both counts. Nonetheless, while criticisms abound, workable solutions are elusive in the complicated context of Aboriginal control and historical gender discrimination not of their making.

Both Indian and Northern Affairs Canada (INAC) and Status of Women Canada (SWC) have supported research programs on Bill C-31 issues. The second Aboriginal Policy Research Conference presented the opportunity to showcase recent research funded through these programs, as well as other current research initiatives. INAC and SWC joined forces on a full-day Bill C-31 pre-conference workshop on March 20, 2006, that brought together historical, demographic and legal scholars, as well as First Nation community representatives.

Given the importance of the subject matter and the number of Aboriginal people affected by it, this plain language summary of the papers presented at the workshop was commissioned by INAC and SWC in hopes of reaching the widest possible audience. The full papers can also be found published as a volume of conference proceedings entitled *Aboriginal Policy Research: Moving Forward, Making a Difference, Vol. IV* edited by Jerry P. White, Erik Anderson, Wendy Cornet and Dan Beavon, published by Thompson Educational Publishing in 2007.

The first two papers provide some historical foundations for the reader. In the first, Gerard Hartley examines the legislative history of Bill C-31 and describes the social and political context in which federal *Indian Act* policy developed during the period from 1969 to 1985. He traces the struggle for gender equality of women who married non-Indian men, following the debate within the federal government and the Aboriginal community. This historical analysis is critical to an understanding of the challenges facing any further policy development in this area.

The second paper by Martin Cannon is framed as a "history of injustice surrounding the 1985 *Indian Act* amendments". Given that the legislation is predicted to have impacts on very central issues such as land rights, citizenship, and Aboriginal identity, the author develops discussions on each of these three. He concludes that Bill C-31 is not about women, but rather Aboriginal identity because the legislation impacts men, women, and the whole Aboriginal community.

Considerable time has passed since the enactment of Bill C-31, but the debate surrounding whether gender equality or First Nations governance should be given priority survives. This can also be understood as a debate of individual versus collective rights.

Also critical is an understanding of the impacts Bill C-31 has had at the community level. For this reason, a large portion of the Bill C-31 pre-conference workshop was devoted to discussion of individual and community-level impacts from different perspectives.

In the third paper, Stewart Clatworthy looks at the community-level impacts of Bill C-31 on the Brokenhead Ojibway Nation in Manitoba. His paper examines the population increases, real and projected, to both the registered Indian population and band members. He surveys both on and off-reserve Brokenhead members on a series of issues related to community, family and individual impacts. His paper explores Bill C-31 impacts including population and demography, First Nations membership, the demand for (and use and costs of) key programs and services, and social and political changes within the community.

The next paper by Jo-Anne Fiske and Evelyn George is concerned with community impacts, presenting Bill C-31 and its accompanying policies as cultural trauma. Fiske and George detail the personal, and often devastating, impacts felt by individuals, including an examination of collective stigmatization or rejection that can be felt from one's own culture. Their emphasis is on the imposition of patrilineal identity on matrilineal cultures, and the resulting fragmentation of First Nations identity. They highlight the 1985 policy shift requiring the naming of fathers on birth and Indian registration documents, for the purposes of determining registered Indian status. Fiske and George conclude that the trauma generated by C-31 arises from the ongoing and persistent destruction of individual well being and collective continuity.

Stewart Clatworthy's second paper demonstrates the population increases and projections of both the registered Indian and membership populations, at the national level. Clatworthy highlights the important distinction between Indian registration and First Nations membership for many First Nations who have chosen to develop their own membership codes under the 1985 amendments to the *Indian Act*. He finds that for some First Nations, the future populations of registered Indians and First Nation members will begin to diverge sharply in the not-to-distant future, and other First Nations may experience growing classes of reserve residents with membership, but lacking Indian status, or with Indian status but lacking membership. This, he notes, could have significant impacts on future service provision for a number of First Nations.

The next two papers deal with very significant issues. Michelle Mann looks at Indian registration and unrecognized and unstated paternity; an enormous problem given that 19 per cent of all children born to subsection 6(1) registered women during the period between April 17, 1985 and December 31, 1999 had no paternity stated. As a matter of policy, the INAC registrar demands evidentiary proof of paternity for status Indian registration. This, argues Mann, creates the problem where tens of thousands of children with unstated paternity have no or incorrect status registration. She canvasses both the domestic and international legal environment, holding up the Registrar's policy against human rights law and principles of non-discrimination. Mann examines the various approaches that are open to INAC and concludes that major changes are needed.

Wendy Cornet's paper on First Nation citizenship, kinship, gender and race points out that Aboriginal people cope with layers of legal identities that are confusing, sometimes contradictory and always beyond their control. The consequences are dire for those that can not interpret the laws and regulations; the level of complexity governing Indian status and band membership can create difficult barriers. Wendy Cornet argues that the goal of ensuring the equality and cultural rights of First Nation peoples is not well served by the continued statutory use of the racial term "Indian," and may be better served by First Nation concepts and use of criteria such as culture and family relationships. She points to the increasing arbitrariness of the historical definition of "Indian," culminating in the "Indian/ non-Indian" classification system based on descent under the current *Indian Act*. She outlines a number of social and legal concepts of race, culture and citizenship as a backdrop to a discussion of legal definitions of "status Indian" "band member" or even "treaty beneficiary," with their uniquely associated rights and benefits. Policy options to revise Indian status and band membership provisions under the *Indian Act* are provided.

This collection finishes with a short paper by Clara Gloade, president of the Nova Scotia Native Women's Association. Her piece speaks eloquently to Bill C-31 impacts on the women and their communities. Clara Gloade asks her readers to imagine ourselves in the place of these First Nations women. Imagine, she asks, being told that if you fell in love and married a non-First Nation man, the Government of Canada can take away your birthright, your identity and what few rights you have as a First Nation person.

In that vein, and in order to further understanding and discourse on the impacts and ramifications of Bill C-31, we present these thoughtful and sometimes provocative papers.

THE SEARCH FOR CONSENSUS: A LEGISLATIVE HISTORY OF BILL C-31, 1969-1985[1]

Gerard Hartley, Public History Inc.

I. INTRODUCTION

Canada's 1985 *Indian Act* amendment, known as Bill C-31, was intended to eliminate discrimination against Indian women by creating a non-discriminatory legal definition of "Indian". Before 1985, Indian status under the *Indian Act* was based on a patrilineal system in which a woman's status was dependent on her father and/or husband's status. Indian women who married non-Indian men lost their legal status and their ability to transmit status to their children. Indian men who married non-Indian women, on the other hand, not only retained their status, but also transmitted it to their wives and children. The pre-1985 *Indian Act* provision that removed status from Indian women who "married out" is known as section 12(1) (b). Many native women viewed section 12(1) (b) as a blatant form of discrimination.

This paper examines the legislative history of Bill C-31 and describes the social and political context in which federal *Indian Act* policy developed during the period from 1969 to 1985. It begins with an examination of the origins of the debate in the early 1970s over native women's rights and traces the emergence of competing Aboriginal viewpoints, the evolution of government thinking and the influence of Aboriginal viewpoints on it.

After years of consulting with Aboriginal leaders on how to amend the *Indian Act*, the federal government passed Bill C-31 in 1985 without their consent. This paper examines why the federal government failed to achieve consensus in the Aboriginal community and why Aboriginal groups opposed Bill C-31. It argues that the primary impetus for Bill C-31 was the equality provision in the *Canadian Charter of Rights and Freedoms* and a United Nation's ruling in 1981 in favour of Sandra Lovelace.

II. *LAVELL & BEDARD*

In 1971 Jeannette Corbière Lavell launched a legal challenge against section 12(1) (b) of the *Indian Act*. By the time it reached the Supreme Court of Canada in 1973, Lavell's case had become a *cause célèbre* within the Indian community, leading to bitter divisions between native women's groups and many of Canada's largely male-dominated Indian associations. The case also set the stage for the long and contentious 12(1)(b) debate that culminated in Bill C-31.

Lavell's case was launched after her name was struck from the Indian register as a result of her marriage to a "white photographer". She argued that section 12(1)(b) of the *Indian Act* contravened the equality clause of the 1960 *Canadian Bill of Rights* because it discriminated on the basis of gender. Indian men who married non-Indians retained their legal status; moreover, these men transmitted status to their non-Indian wives and children via section 11 of the *Indian*

Act. Section 12(1)(b) however, fully disinherited Indian women including their rights to band membership, to inherit on-reserve property, or to live on reserve.

Meanwhile, a second legal challenge was brought against the *Indian Act* by Yvonne Bedard, a Six Nations woman who had also lost her status under section 12(1)(b). Bedard sought the repeal of the entire *Indian Act*, claiming that it discriminated on the basis of gender and race.

Accordingly, Indian leaders grew fearful that Indian reserves would be opened up to hundreds of native women and their families. As well, some status Indians felt that "non-status" women should have to live with their decision to "marry-out". Generally, however, Indians were focused on broader legal concerns over the special status of Indian people in Canadian society and the preservation of Indian culture and land. Indian groups feared that the *Lavell* and *Bedard* cases could lead to the abolition of the entire *Indian Act*, which would in turn lead to the disappearance of the Indian reserve system and destruction of the Indian way of life.

In June 1969, the Trudeau government shocked Indians by releasing a White Paper on Indian policy that recommended terminating all special rights for Indians, ending legal status and the Indian reserve system, and repealing the *Indian Act*. Indian leaders flatly rejected the White Paper, denouncing it as an attempt by the government to abrogate its legal and moral responsibility to the Indian people. The government's proposed policy created wide-spread fear among Indians, who perceived it as a fundamental threat to their survival. Indian leaders across Canada joined together to create a powerful new lobby association called the National Indian Brotherhood (NIB). As a result, the Trudeau government scrapped its proposed policy and promised not to make changes to the *Indian Act* without the consent of the Indian people.

Early *Lavell-Bedard* rulings in their favour brought back many fears for Indian leaders who believed that these cases might succeed in the abolition of the *Indian Act*. The Alberta Chiefs convinced the NIB to intervene against Lavell and Bedard. The federal government appealed the *Lavell-Bedard* cases to the Supreme Court of Canada. Lavell and Bedard were defended before the Supreme Court by the Native Council of Canada (NCC) on behalf of Indian Rights for Indian Women (IRIW). The cases were heard jointly in February of 1973 with lawyers for Lavell and Bedard arguing that the *Indian Act* discriminated against Indian women under the *Bill of Rights* and these provisions should be struck down.

The court ruled five to four against Lavell and Bedard, dismissing the argument that the *Bill of Rights* could be used to override the *Indian Act*. There was however a silver-lining: due to media coverage Canadians learned about the problem of discrimination against Indian women for the first time. Now that the 12(1)(b) problem was a public issue, native women's organizations refocused their efforts to effect changes to the *Act* through political pressure.[2]

III. THE QUEST FOR *INDIAN ACT* CONSENSUS 1974-1977

Although Indian leaders opposed Lavell's efforts to bring about an end to section 12(1)(b), they nevertheless believed the *Indian Act* should be modernized, emanating from the Indian people. In October 1974, the federal government agreed to a unique policy-making experiment called

the Joint NIB-Cabinet Committee, with a working group to deal with *Indian Act* revisions. However, native women were left out of the entire process with the NIB steadfastly opposing their participation.[3] By 1977, the Joint Committee had made little progress and by April 1978, the Joint Committee collapsed when the NIB withdrew. Meanwhile, the government was coming under increasing public and political pressure to resolve discrimination against Indian women.

After the government exempted the *Indian Act* from the effects of a human rights bill tabled in spring 1977, IRIW denounced the government's actions. The government, however, retained the provision exempting the *Indian Act* when it passed the *Human Rights Act*. Native women's groups perceived this exemption as a deliberate attempt to deny native women the basic human rights enjoyed by other Canadians, much like the earlier failure of the Canadian *Bill of Rights*.

Accordingly, Sandra Lovelace, a "non-status" native woman, brought her case to the United Nations Human Rights Committee (UNHRC) in December 1977 alleging that section 12(1) (b) of the *Indian Act* was in violation of certain family, minority and sexual equality rights protected under the *International Covenant on Political and Civil Rights*.

IRIW, meanwhile, was gaining prominence and experience as a national organization for native women. After the sympathetic attention brought to IRIW over the exclusion of the *Indian Act* from the *Human Rights Act*, the movement gained further momentum when Canada's Human Rights Commissioner, Gordon Fairweather, warned officials that if the *Indian Act* was not amended to eliminate discrimination against Indian women, his commission would demand it.[4]

IRIW developed an approach in 1978 that proposed restoring "full rights" to both status and membership to native women who lost it through past discrimination, and to their descendants "who meet the criteria of 1/4 blood."[5] Department of Indian Affairs and Northern Development (DIAND) officials soon released a proposal that bluntly rejected retroactivity.

IV. A GROWING NATIONAL DEBATE

In late June 1978, Indian Affairs Minister Faulkner presented Aboriginal leaders with a package of *Indian Act* amendments. Establishing a definition of Indian status that did not discriminate against Indian men, women or children was the underlying principle. Despite being a priority for native women, DIAND officials decided that retroactivity of the membership revisions presented too many "practical" difficulties.[6]

Meanwhile, Prime Minister Trudeau's 1978 conferences on constitutional patriation captured the attention of Indian leaders; constitutional entrenchment of Aboriginal rights soon became their top priority.[7]

Ultimately, the Liberal government fell in the spring of 1979 along with Canada's first policy initiative to end discrimination against Indian women. In July 1979, a "Native Women's March" from Oka, near Montreal, to Parliament Hill rekindled awareness of native women's

plight. However, Prime Minister Joe Clark was prohibited from taking action to remove discrimination from the *Indian Act* when the Conservative government fell in December 1979.

Ending discrimination against Indian women soon became an urgent priority for federal policy makers because of two key events: first, the 1981 United Nation's ruling in favour of Sandra Lovelace; and second, the creation of an equality provision in the 1982 *Charter of Rights and Freedoms*.

After returning to power in 1980 Prime Minister Trudeau immediately began to negotiate with the provinces for patriation and amendment of the Canadian constitution. Aboriginal leaders fought furiously for the entrenchment of Aboriginal rights, eventually securing the recognition of Aboriginal and treaty rights in section 35 of the Canadian *Constitution Act, 1982*. Even more significant for "non-status" native women was subsection 15(1) of the new *Charter of Rights and Freedoms* guaranteeing that:

> every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disabilities.

Because it would not come into effect until April 17, 1985, section 15 provided the federal government with a three-year period in which to remove all discriminatory legislation.

The UNHRC 1981 *Lovelace* ruling found Canada was in violation of Article 27 of the *Covenant on Civil and Political Rights* - a provision that protects minority rights. Lovelace was being denied the enjoyment of her cultural community because as a result of her loss of status under section 12(1) (b), she was prohibited from having band membership. The Lovelace ruling's greatest significance was its impact on government policy thinking on the retroactivity issue. Canadian officials now believed that a policy to eliminate discrimination against Indian women would have to include, at a minimum, reinstatement of women affected by section 12(1)(b).[8]

Accordingly, the government referred the matter of how to amend the *Indian Act* to the Standing Committee on Indian Affairs and Northern Development (SCIAND) in August 1982. The terms of reference instructed SCIAND to deal with discrimination against Indian women before band government. Consequently, SCIAND created the Subcommittee on Indian Women and the *Indian Act* to review the discrimination issue separately. The Assembly of First Nations (AFN - the newly established Indian association formed out of the NIB), NWAC, and NCC were all appointed as *ex officio* members. On September 22nd, 1982, the Subcommittee tabled its report which recommended repeal of section 12(1)(b), reinstatement of women who lost status and their children to status and membership, and allowing bands to decide on the residency and political rights of non-Indian spouses. NWAC and AFN both publicly supported the Subcommittee's report.

The Special Committee on Indian Self-Government's final report was tabled on November 3, 1983. The Penner Report endorsed the establishment of a "new relationship" with First Nations and the entrenchment of Aboriginal self-government in the Constitution. On the question of membership, it recommended the use of a general list "as a means of providing special status to

people who are Indian for purposes of Indian programs, but who are not included in the membership of an Indian First Nation." The report did not provide recommendations on how to resolve conflicting views on whether reinstatement to membership should be automatic or controlled by the band. The Penner Report's 58 recommendations were endorsed by all three parties in the House of Commons and were fully supported by the AFN.[9] After the Penner Report was tabled, however, officials had little hope that a consensus could be found within the Indian community on how to end discrimination against Indian women. However, with the *Charter* deadline looming, the Canadian government was ready to act.[10]

V. BILL C-47: A FIRST ATTEMPT

In March 1984, federal officials unveiled plans to bring forward two legislative packages - one to deal with ending discrimination against Indian women, the other with Indian band government. Prime Minister Trudeau announced that *Indian Act* amendments to end discrimination against Indian women would be brought forward because the current membership provisions conflicted with the Canadian *Charter of Rights and Freedoms* and UN Conventions. The main components of the proposed amendments included providing status and membership rights to the children and grandchildren of mixed unions in the future; and allowing for the reinstatement of those who lost status and membership as a result of the discriminatory provisions of the *Act* and their first generation children.[11]

Indian leaders angrily rejected the reinstatement proposal. In response Trudeau withdrew the government's proposed amendments "indefinitely" in May. Meanwhile the AFN and NWAC met in Edmonton from May 16th to 18th. Both groups realized that the federal government would act to amend the *Indian Act* and meet its *Charter* obligations if Aboriginal leaders could not reach agreement. Accordingly, NWAC and AFN succeeded in establishing the Edmonton Consensus, the main components of which were a demand that the government reinstate Indian women who lost status and all their descendants (e.g. grandchildren) and that the "newcomers" would be reinstated to a "general" band list from where they could apply for "active" membership in bands. Borrowed from the Penner Report, the general band list would allow bands to determine the criteria for active membership.[12]

On June 18, 1984 the Liberals introduced Bill C-47, *An Act to amend the Indian Act*. The main components of the bill were:

1. Status and membership would not be determined on the basis of gender;
2. Indian status would not be lost or acquired through marriage;
3. In the *future*, status and membership would be provided to individuals with at least "one-quarter" descent (e.g. grandchildren) from individuals registered as Indians; and
4. Indian women who, in the *past*, lost status through the *Act*'s discriminatory membership provisions, and their first-generation children, would be automatically eligible for regaining both status and membership.

On June 26, 1984, three days before summer recess, SCIAND began its review of Bill C-47. Indian Affairs Minister Munro asserted that, given *Lovelace*, denying reinstatement to band membership would make a "mere mockery" of the government's objective of ending discrimination against Indian women. He defended restricting reinstatement to first-generation children, arguing that second-generation individuals were too "remote from the culture of the Indian community" and that their inclusion would run "into a horrendous cost." Further, one of Munro's officials noted that reinstatement must be dealt with not because of the *Charter*, but as a policy matter the government should deal with as a matter of fairness.[13]

On June 27, 1984, Munro tabled Bill C-52, the government's Indian self-government legislation; it never made it past first reading in the House of Commons. After some minor amendments, Bill C-47 received third reading in the House of Commons on June 29, 1984. Because it was the last sitting day of Parliament, the bill required unanimous consent for it to be passed in the Senate before Parliament adjourned. However, two senators denied unanimous consent and Bill C-47 died on the Senate Order Paper when an election was called that summer.

The Edmonton Consensus of May 1984 was historic. It was the first time native women and Indian leaders had formally agreed on the highly contentious issue of reinstating women affected by past discrimination. The government however, rejected their two main tenets: reinstatement of all generations affected by past discrimination and adding these individuals to a general band list. Government officials believed the primary objective of revisiting Indian policy was to fulfill Canada's obligations under the *Charter* and UN conventions. They viewed reinstatement beyond first-generation children as unnecessary to fulfill these obligations and too costly. The general band list was rejected on the basis that denying reinstated women full membership rights would conflict with UN covenants.

Full reinstatement to status and membership rights of 12(1)(b) women and their first-generation descendants was an unyielding cornerstone of the 1984 policy that led to the failed Bill C-47. The bill satisfied neither native women's groups nor Indian associations. As the clock ticked towards the April 1985 deadline for bringing legislation into line with the *Charter*'s equality provision, officials took note of Aboriginal criticisms of Bill C-47. The federal election in fall 1984 brought to office a new government willing to make one more effort to achieve a consensus within the Aboriginal community.

VI. BILL C-31: NEW INDIAN ACT POLICY, 1985

When the Conservatives took office in September 1984, they had only six months to act until the *Charter*'s equality provisions came into effect. Finding a consensus among Aboriginal groups, especially on the reinstatement issue, was still the greatest obstacle to amending the *Act*.

David Crombie, the new Minister of Indian Affairs, set out to develop amendments that struck a balance between the rights of native women to equality and of Indian bands to self-government, a dichotomy often characterized as individual versus collective rights.

On February 28, 1985 Crombie tabled Bill C-31 after what he later claimed were extensive consultations with the Aboriginal community. Its main points were:

1. Removing all discriminatory provisions;
2. Preventing anyone from gaining or losing status through marriage;
3. Restoring status and membership rights to people who had lost them through past discrimination;
4. Restoring status, but not membership, to the first generation children of those who had lost them through past discrimination;
5. Providing band control over membership for the future; and
6. Respecting rights acquired under the current *Indian Act*. In other words, neither non-Indian women who acquired legal status through marriage nor their children would lose out.[14]

Bill C-31 defined two main categories of status Indians:

1. Section 6(1) assigned status to all those who were currently registered Indians and those who had lost status under the discriminatory sections of the *Indian Act* (e.g. 12(1)(b)). Individuals registered under section 6(1) could transmit status to their children regardless of whether they had married an Indian or non-Indian.

2. Section 6(2) assigned status to all those with only one Indian parent registered under section 6(1) (e.g. children of 12(1)(b) women). Individuals registered under section 6(2) could only transmit status to their children if they married an Indian registered under either section 6(1) or 6(2). In other words, children with one parent registered under section 6(2) and one non-Indian parent would *not* be entitled to legal status.

Section 6(2) then, established a second-generation cut-off rule for acquiring Indian status.

Bill C-31, for the first time, formally separated legal status and band membership. The federal government would continue to control legal status; bands, however, could choose to determine their own membership for the future, in accordance with their own rules. Band control of membership, however, was subject to two principles: 1) band rules must be approved by a majority of band electors; and, 2) band rules must protect acquired rights of existing band members and those eligible to have their membership restored - namely Indian women who lost status under section 12(1)(b). Unlike Bill C-47, Bill C-31 did *not* provide automatic band-membership rights to the first-generation children of reinstated women. However, these individuals would be automatically provided with band membership if, following a two-year transitional period which began once Bill C-31 came into force, a band opted not to assume control of its membership.[15]

DIAND officials estimated that the amendments would impact approximately 22,000 individuals affected by past discrimination and approximately 46,000 first generation descendants of these people.[16] Over the next several months, Bill C-31 received close scrutiny in both SCIAND and the Standing Senate Committee on Legal and Constitutional Affairs (SSLCA). Bill C-31 was in for a rough ride - very few Aboriginal bands and organizations supported the amendments.

Generally, native women's groups were disappointed with Bill C-31 because it did not, in their view, put them on an equal footing with Indian men. Marilyn Kane of NWAC rejected Bill C-31's legal distinction between status and membership, arguing that it created more divisions within the Indian community.[17] Kane was also asked about her views on self-government: because of the problems created by the *Indian Act*, the federal government's first responsibility was to restore status and membership rights to those affected by past discrimination under the *Act*. Other native women's groups were even more apprehensive about self-government. While they supported it long term, they believed the government's primary goal should be restoration of full status and membership rights to victims of past discrimination, and their descendants.[18]

The most common criticism on behalf of Indian associations was that the bill did not provide bands with total control over membership, along with accompanying fear of the impact new band members could have on reserve land and resources.[19] The priority for these groups was the constitutional recognition of First Nations government, not amending the *Indian Act*. Nevertheless, the AFN took a moderate view of the bill.

SCIAND's review of Bill C-31 demonstrated that the bill satisfied neither native women's groups nor Indian associations. Yet, there was very little common ground among these organizations, especially in relation to their perspectives on reinstatement and self-government. Native women demanded full restoration of their status and membership rights for themselves and their descendants whereas most Indian associations rejected the entire reinstatement principle, denouncing it as a violation of their right to self-determination.

Crombie had failed to achieve consensus on amending the *Indian Act*. Bill C-31 was widely denounced by Aboriginal groups, but the reasons for their criticisms were varied and conflicting. However, the time for consultations on how to amend the *Indian Act* was over. On April 17, 1985, section 15 of the *Charter* came into effect and the government pushed ahead with its legislative proposals, for the most part without the consent of Aboriginal leaders.

When Bill C-31 was read for a third time in the House of Commons on June 12, 1985, its fundamental principles remained intact. While Bill C-31 did not address the long-standing desire by the Indian people for self-determination, that would be for another day. Bill C-31 passed in both the House of Commons and the Senate and was enacted into law on June 28, 1985.[20]

VII. CONCLUSION

The passage of Bill C-31 in 1985 ended a policy deadlock that had existed since 1970 when Prime Minister Trudeau had promised not to change the *Indian Act* without the consent of Indian leaders. Yet when Canada passed Bill C-31, Aboriginal groups were still divided over the question of membership rights. Native women's groups felt that the government's priority should be restoring full Indian rights to 12(1)(b) women and their descendants, while status associations strongly opposed any government interference in deciding band membership. The main priority of most Indian groups was the constitutional enshrinement of Aboriginal self-government. Although native women's groups also supported the principles of Aboriginal self-government, most native women believed that the process for achieving self-government should occur only after the full restoration of their Indian rights.

Instead of an amendment achieved through consensus among Aboriginal leaders, the main catalysts to Bill C-31 were the creation of an equality provision in the *Charter of Rights and Freedoms* and the 1981 United Nations ruling in favour of Sandra Lovelace. The *Charter* and the *Lovelace* case had an enormous impact on the rationale underlying Canada's *Indian Act* policy. The main pillars became the removal of the discriminatory provisions of the *Indian Act* and that women affected by past discrimination must be reinstated to both Indian status and band membership. These principles can be found in both Bill C-47 and Bill C-31.

Bill C-31 passed with the support of very few Aboriginal groups. Thus, the federal government abandoned its policy of not amending the *Indian Act* without a consensus in the Aboriginal community, providing its own solution to the problem of ending discrimination against Indian women. Ultimately, Canada's 1985 *Indian Act* amendment pleased neither native women's groups nor Indian associations and perpetuated much of the controversy and divisiveness that began with the *Lavell-Bedard* cases in the early 1970s.

ENDNOTES

[1] This article is based on a longer paper prepared for Erik Anderson of the Research and Analysis Directorate of the Department of Indian Affairs and Northern Development.

[2] Kathleen Rex, "Women plan day of mourning for Canada's Bill of Rights," in *Globe and Mail*, September 10, 1973, p. 10; Joe Rosenthal, "Indian Rights", *Globe and Mail*, September 12, 1973, p. 7; "A Sterile view of rights," editorial in *Globe and Mail*, September 6, 1973, p. 6; Weaver, "First Nations Women and Government Policy, 1970-92," p. 100.

[3] DIAND, Main Records Office, File 1/1-8-3, Vol. 31, DIAND brief dated 1975 entitled "Indian Act Revisions"; Cardinal, *Rebirth of Canada's Indians*, pp. 114-115; Weaver, "First Nations Women and Government Policy, 1970-92, p. 101; Kroswenbrink-Gelissen, *Sexual Equality as an Aboriginal Right*, p. 91; Jamieson, *Indian Women and the Law in Canada*, pp. 2-3, 89-92; Kathleen Jamieson, "Sex Discrimination in the Indian Act," in J. Rick Ponting, ed., *Arduous Journey: Canadian Indians and Decolonization* (Toronto: McClelland and Stewart Limited, 1986) p. 127.

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[5] LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, Vol. 3, policy paper by Indian Rights for Indian Women dated April 6, 1978 entitled "Some Proposed Changes to the Indian Act".

[6] LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, Vol. 5, paper by IRIW dated January 18, 1979 entitled "Indian Act Revision, In Response to the Minister's Discussion Paper: Membership".

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[8] LAC, RG 22, Acc. 1995-96/308, Box 31, File D1165-S1-4, Vol. 22, DIAND briefing paper dated August 26, 1983 entitled "Membership/Discrimination Against Indian Women". See also DIAND, Main Records Office, File D1021-J1-1-2, vol.17, draft DIAND discussion paper prepared in ca. January 1982 and LAC, RG 22, Acc. 1998-01695-1, Box 7, File D1021-J1-1-2, Vol. 10, parliamentary briefing card dated October 9, 1981.

[9] Canada, House of Commons, "Report of the Special Committee on Indian Self-Government" in *Minutes of Proceedings of the Special Committee on Indian Self-Government*, October 12 and 20, 1983, Issue No. 40, pp. 54-56; PCO, File N-2-5(a), letter dated November 25, 1983 from Peter [Mark] for David Ahenakew, National Chief, AFN to Prime Minister Trudeau; PCO, File N-2-5 (a), letter dated November 17, 1983 from David Ahenakew, National Chief, AFN to Members of Parliament; newspaper article entitled "MP fears disaster if rights rejected," in *Winnipeg Free Press*, November 5, 1983, p. 10; DIAND, Main Records Office, File A1025-1-1, Vol. 4, John Munro, Minister, DIAND, *Response of the Government to the Report of the Special Committee on Indian Self-Government*, March 5, 1984; Weaver, "Self-Government for Indians, 1980-1990, pp. 12-13.

[10] LAC, RG 22, Acc. 1998-01695-1, Box 8, File D1021-J1-1-2, Vol. 20, DIAND brief dated December 8, 1983 entitled "Removal of Sex Discrimination from the Indian Act"; Weaver, "First Nations Women and Government Policy 1970-1992," p. 111.

[11] DIAND, Main Records Office, File E1021-J1-2-1, vol. 14, DIAND press release dated March 8, 1984 entitled "Government Announced Plans to Eliminate Discrimination Against Indian Women".

[12] LAC, RG 22, Acc. 1998-01695-1, Box 13, File D1021-J1-1-8, Vol. 1, media transcript, CBC, May 17, 1984; Canada, House of Commons, *Minutes of the Standing Committee on Indian Affairs and Northern Development*, Issue No. 12, March 7, 1985; newspaper article entitled "Munro offers compromise over Indian Act changes", in *Globe and Mail*, May 19, 1984, p. 3; newspaper article entitled "Alberta chiefs walk out: Partial reinstatement accepted," in *AMMSA*, May 25, 1984, p. 3.

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[14] DIAND, Main Records Office, File D1021-J1-1, vol. 7, transcript of remarks by David Crombie, Minister of DIAND, during a Press Conference on Indian Act Amendments, dated February 28, 1985.

[15] LAC, RG 10, Acc. 1999-01284-4, Box 4, File N1021-J2, Vol. 2 , DIAND paper prepared in ca. July 1985 entitled "Key Amendments to the Indian Act - A Summary"; DIAND, Main Records Office, File D1021-J1-1-11, vol. 1, DIAND paper prepared in ca. February 1985 entitled "Background Notes: Removal of Discrimination from the Indian Act".

[16] DIAND, Main Records Office, File D1021-J1-1, vol. 7, transcript of remarks by David Crombie, Minister of DIAND, during a Press Conference on Indian Act Amendments, dated February 28, 1985; DIAND, Main Records Office, File D1021-J1-1-11, vol. 1, DIAND paper prepared in ca. February 1985 entitled "Background Notes: Removal of Discrimination from the Indian Act"; LAC, RG 22, Acc. 1995-96/308, Box 7, File D1021-33-1-C-31, Vol. 1, DIAND presentation prepared ca. February 1985.

[17] Canada, House of Commons, *Minutes of the Standing Committee on Indian Affairs and Northern Development*, 1985, March 28, Issue No. 28, pp. 56-70, 94-96.

[18] Canada, House of Commons, *Minutes of the Standing Committee on Indian Affairs and Northern Development*, March 28, 1985, Issue No. 28, pp. 96-100. For example, for views of Quebec Native Women's Association and Native Okanagan Women's League, see Canada, House of Commons, *Minutes of the Standing Committee on Indian Affairs and Northern Development*, Issue No. 24, March 26, 1985, p. 14; Canada, House of Commons, *Minutes of the Standing Committee on Indian Affairs and Northern Development*, March 27, 1985, Issue No. 26, p. 7.

[19] Canada, House of Commons, *Minutes of the Standing Committee on Indian Affairs and Northern Development*, March 12, 1985, Issue No. 13, p. 35; Canada, House of Commons, *Minutes of the Standing Committee on Indian Affairs and Northern Development*, March 18, 1985, Issue No. 17, p. 12.

[20] Canada, *Debates of the House of Commons*, June 12, 1985, pp. 5686-5687; DIAND Library, Press Release Binder, 1985, DIAND Communiqué dated June 28, 1985.

REVISITING HISTORIES OF ASSIMILATION AND INJUSTICE: THE FUTURE OF INDIAN STATUS IN CANADA

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I. INTRODUCTION

This paper is concerned with the history of injustice surrounding the 1985 *Indian Act* amendments, the history of sex and race discrimination in Indian policy and the legal assimilation of status Indians in Canada. Important questions about the process of colonialism and community adaptation are raised. The *Indian Act* is contributing to the extinction of the registered Indian population and putting the future of reserve-based lands into question. First Nations require information about how legal definitions of Indian status operate to exclude Aboriginal people, but should also explore alternative approaches to First Nations citizenship.

I reflect on matters of citizenship and Aboriginal identity in this paper, discussing the history of "involuntary enfranchisement" as it relates to status Indians and Canadian Indian policy. I hope to invigorate thinking on histories of policy-based enfranchisement, racialized injustice and gender-based exclusion. I also draw from my ongoing research concerned with issues of Indian status, the accommodation of Indian policy, and the accessibility of legal knowledge in status Indian communities.

The research presented is ongoing, though it is focused here on a series of interviews I conducted between February and March of 2006.[1] I spoke with ten individuals in Saskatchewan and Ontario who are registered as status Indians under Canada's *Indian Act*. Their views reflect a diversity of experiences based on age, gender, spirituality and political orientation; they suggest varied knowledges and attitudes exist in Canada about Indian status. This paper is an exploration of these views.

II. THE 1985 *INDIAN ACT* AMENDMENTS

On June 28th, 1985, Bill C-31: *An Act to Amend the Indian Act* became law, promising to end years of blatant sex discrimination directed toward Aboriginal women under section 12(1)(b) of the 1951 amendments. The 1985 amendments are now twenty-one years old, but they have not received widespread attention from federal policy makers. Under the new legislation, discrimination still exists, though it is not always clear or obvious.

Those who register as status Indians now do so under one of seven different sections of the *Indian Act* (1985). The major difference lies between sections 6(1) and 6(2). These sections reproduce legal inequalities because the children of women who married non-Indians before 1985 cannot pass along Indian status under section 6(2). The children of men do not face this same restriction as they are registered under section 6(1). This inequality has been referred to as the second generation cut-off clause, also known as the "cousin's issue".

The cousin issue refers to a current generation of Indians that is being treated differently in law because of their grandmother's choice to marry a non-Indian. An example is my mother's grandchildren who are not eligible for Indian status even though her brother's grandchildren (their second cousins) are registered under section 6(2). His children maintained Indian status under section 6(1) (a) of the amendments, and his grandchildren inherited section 6(2) status by birthright despite one parent being a non-Indian.[2] This is an example of the post 1985 inequality created between the second and subsequent generations of men and women marrying non-Indians.

The community-based impacts of the 1985 amendments have been under-studied. This is unusual, especially since the *Act* has created a series of complexities for many communities -- and for individuals-- in terms of identity. I have employed in-depth interviews as a method of addressing the question of policy-based exclusion and its accommodation by individuals. I will highlight some of this research to illustrate histories of assimilation and the current injustices surrounding "out-marriage" and the loss of legal entitlements.

It is the children of women – but not men – who face ongoing legal assimilation under section 6(2). If they marry non Indians, these people are unable to pass along Indian status like those that are registered under section 6(1). The Canadian Advisory Council on the Status of Women describes this matter as a human rights issue. "Sections 6(1) and 6(2) together with band membership criteria, perpetuate the unequal treatment of Indian men and Indian women", they suggest, "by giving fewer rights to the grandchildren of women who married out."

The *Indian Act* produces legal inequalities for the entire status Indian collective, and therefore represents an injustice for every status Indian. But these issues have not always been framed in racialized terms by governments. Instead, the issues involving Indian status have been understood only to involve sex discrimination. But sex discrimination is a misnomer when it comes to describing legal inequalities produced by Indian status provisions. The children of women who continue to marry non-Indians are currently both male and female Indians. A great deal is riding on their so-called choice to marry non-Indians, or individuals whose "race" is different than that described in the *Indian Act*.

Exogamous marriage (marriage outside of one's group) is now an important factor to raise in research. As discussed in other papers, demographers predict that the *Indian Act*, including section 6(2), leads to eventual legal assimilation of status Indians and their lands in Canada, while high rates of unstated paternity are also being reported. Are people aware of the consequences of their choice to marry non-Indians? Why refuse to state paternity? What are the reasons for not stating paternity and are any of them nation-based or cultural?

These are questions that need to be raised in public policy research, and require further analysis. If section 6(2) furthers the loss of Indian status, how well is this knowledge being transferred to status Indian communities? How familiar are people with the consequences of marrying non-Indians and how do they feel about legal assimilation in general? Before exploring these questions, it is important to revisit histories of policy-based enfranchisement as enacted in Canadian law.

III. ENFRANCHISEMENT IN INDIAN POLICY

The injustice of section 6(2) of the *Indian Act* cannot be appreciated until one revisits the history of Indian policy aimed at assimilation and gender-based exclusion. Policy aimed at assimilating status Indians has a long history in Canada and has been entrenched in the law since the early 19th century. Assimilation has always had a cultural and legal component in Canadian Indian policy.

Cultural assimilation refers to "the loss, by an individual, of the markers that served to distinguish him or her as a member of one social group".[3] The schooling of Aboriginal children in residential schools until 1969 is an example of policy aimed at cultural assimilation. These were policies aimed at cultivating Euro-Christian behaviours, appearances, and values. They were intended to re-socialize Aboriginal peoples into productive members of an emerging capitalist economy.

Legal assimilation is the word that is used to describe the act of losing Indian status in Canada. This started in the 1850s with legislation and policy to encourage assimilation, by introducing two new racialized categories of Aboriginal peoples: Indian and non-Indian. It was assumed (and expected) that band council governments would administer these new categories of people. Sociologists refer to this process, whereby a heterogeneous, linguistically diverse population is singled out for different (and often unequal) treatment as racialization.[4] But racialization, as it is often defined, does not refer to the act of taking up or realizing racial categories, however conscious a person might be of that process. Aboriginal peoples did not play a part in creating the "racial" category Indian, but policy has had the effect of institutionalizing the category as a system of relations among status Indians in Canada. This is racialization.

The history I am describing is etched in the memory of some, but not all, status Indians. I am a status Indian and I have personally witnessed what the *Indian Act* is capable of doing legally, especially section 6(2). The *Indian Act* has been just as concerned with constructing the legal category "Indian" as it has been with getting rid of status Indians. Legal assimilation therefore refers to the process of becoming a non-status Indian -- whether an aboriginal person is aware of it or not.

Legal assimilation was one of the motivations behind enfranchisement policy. Enfranchisement emerged in 1857 with the explicit and avowed purpose of assimilating status Indians. The premise behind this policy was simple: upon meeting certain criteria, Indian men who were literate, free of debt and of good moral character could (along with their "dependents"), give up legal status and become non-Indians. Enfranchisement was re-established in three subsequent pieces of legislation, but was not always voluntary.

Under the 1918 *Indian Act*, Indian men (along with their wives and children) could become voluntarily enfranchised if they lived away from their communities. The policy of enfranchisement was not only racialized, it was therefore simultaneously patriarchal. Enfranchisement policy assumed that, like other women, Indian women were to be legally subject to their husbands. This was a foreign notion to my own nation of peoples, the Six Nations of Grand River Territory.

Enfranchisement continued well into the 20th century. Under the 1951 *Indian Act*, enfranchisement occurred for individuals meeting a variety of criteria, including the involuntary enfranchisement of women marrying non-Indians and the voluntary enfranchisement of entire bands of people who so desired upon approval of the Minister of Indian Affairs. The children of women born prior to a woman's marriage to a non-"Indian" also became involuntarily enfranchised under an amendment to the *Indian Act* in 1956.

The very concept of voluntary enfranchisement (or voluntarily becoming a non-status Indian) did not end in Canada until June 28, 1985 with the passage of *An Act to Amend the Indian Act*. In a manual on registration and entitlements legislation, Indian and Northern Affairs Canada proclaimed that section 6(1) (d) had "abolished" the practice of enfranchisement under the *Indian Act*.[5] However, there is reason to believe that involuntary enfranchisement survives the 1985 amendments to the *Indian Act*.

Involuntary enfranchisement takes place in Canada, whenever a status Indian (registered under section 6(2) of the *Indian Act*), marries and has children with a non-Indian person. This act of exogamous, "out-marriage" may seem a relatively neutral one, but section 6(2) works to disenfranchise the grandchildren of women who married non-Indians before 1985. These individuals represent a new class of "involuntarily enfranchised" Indians. They are the children of section 6(2) intermarriages.[6] These children lose their parent's birthright to be registered as status Indians in Canada. The loss of legal entitlements is brought on by their parent's choice to marry non-Indians.

Indians marry non-Indians in the process of migrating to cities. Their choices are sometimes influenced by the depletion of resources and the lack of economic opportunities on reserves in Canada.[7] These decisions lead to a loss of inheritance for the children born of section 6(2) intermarriages. As I will demonstrate, it is superficial to assume that all status Indians are aware of this process, or that it leads to their children losing status. However conscious status Indians may be of it, the children of section 6(2) intermarriages are not legally entitled to *Indian Act* status like the children of section 6(1) intermarriages.

Subsection 6(2) of the 1985 *Indian Act* is little different in effect than section 12(1) (b) of the 1951 *Indian Act*. Both sections propagated the loss of Indian status by those who marry non-Indians. The only difference is that -- in 2006 -- it is also men who involuntarily enfranchise their children when marrying non-Indians. The choices facing these *male and female* Indians of the status Indian population registered under section

6(2) are therefore not any different than those facing women from 1850-1985.

Intermarriage is still not a neutral act for status Indians in Canada. It is the children of those who are registered under section 6(2) and who marry non-Indians that are now being disinherited. These are the grandchildren of women who married non-Indians prior to 1985. They are, collectively, a class of Indians that stand to alter and change the composition of status Indian populations in Canada.

In these papers, Clatworthy predicts that the registered Indian population will witness a dramatic decline because of section 6(2) and other changes stemming from the 1985 *Indian Act* amendments. He projects that on- and off-reserve populations entitled to membership and Indian registration will witness a population of 914,300 by the year 2077, a dramatic drop from the projected 987,600 in 2052.

These forecasts raise a series of concerns about the future of Indian status in Canada. They suggest that policies of legal enfranchisement, including the long term effects of section 6(2), will result in the eventual legal assimilation of status Indians and their lands in Canada. Several factors will influence the rate at which this takes place, including the frequency of exogamous marriage. But legal assimilation also depends on a people's familiarity with, and knowledge about, section 6(2) of the *Indian Act*. In general, what do status Indians think about the *Indian Act*, and the prospect of legal assimilation? Are people aware of the potential effects of section 6(2)?

IV. REVISITING HISTORIES OF LEGAL ASSIMILATION

Legal assimilation takes place in law whenever Indians registered under section 6(2) intermarry and have children with a person outside of the racialized collective. This "choice" creates a new generation of legally enfranchised children who do not have Indian status because their parents married non-Indians. As noted in Mann's paper, they may also include the children of status Indian women who refuse or are unable, to prove registered Indian paternity at the time of registration.

The children I am describing are a new generation of Aboriginal peoples. Their ages range from 0-22, and they are not currently entitled to register as status Indians. They have been placed in unequal relation to the status collective, and to the grandchildren of men who married non-Indians prior to the 1985 amendments. "Second-generation cut off clause" refers to the legal inequality between the grandchildren of men and women who married non-Indians before 1985. This generation of Aboriginal peoples inherits the historic weight of racialized and gender-exclusionary discrimination. They are the second-generation of descendants to experience inequalities in the law. They are placed in the same unequal relationship to one another as their grandparents were before 1985.

Twenty-one years ago, it was possible for an Indian man to marry a non-Indian woman and remain a status Indian. Because he never lost Indian status, he was able to make his wife and children status Indians prior to 1985. His children were entitled to registration under section 6(1) following the 1985 amendments. The children of out- marrying women, on the other hand, could only register under section 6(2). Those who are registered under section 6(2) cannot pass along Indian status unless the other parent is also a status Indian. Only those with section 6(1) status are able to independently pass status on to their children.

It is important to ask how legal inequalities created by sections 6(1) and 6(2) are playing themselves out among status populations today. In fact, some of these inequalities have yet to be fully articulated in political, judicial and social forums. This occurred to me in ongoing research

where I asked a group of status Indians, aged 19-35, what it meant to be registered under section 6(2) of the *Indian Act*.

In one interview, I asked one of my study participants if she knew of the consequences of being registered under section 6(2). She responded:

> I'm just categorized under section 6(2), what can I do? It's like, I just fall under that status under what their requirements are, you know? And so, I'm just another person basically categorized into a spot. That's about it.

Other interviewees were very aware of the inequality produced by section 6(2), but these individuals expressed cynicism about finding a resolution. As one person explained:

> I can't see the government telling me "Well, if you go and do this, your children won't have status." I think they'd rather me just go and do it without my knowing and then my children would be screwed over. That is an issue for me, I'd like my children to be status Indians, not for any reason in particular, it's just cause I feel like that's a right that every Native person in Canada should have ... Having to worry about who you marry shouldn't be an issue, but it is, you know?...

Another person I interviewed for the purposes of this paper expressed confusion about Indian registration. As she put it:

> [W]hen they gave me my status, they basically sent me a letter saying I was approved with my status number but it had nothing on there stating what I was considered to be like, you know, Bill C-31 or whatever. My parents are Bill C-31s, but I have no idea what that makes me, and I have no idea what that is gonna make my children. Like, I think that's a big problem. I haven't actually gone out and tried to figure it out on my own, but I've asked a lot of people, you know teachers, profs, and everything, to see if they can explain it to me....

There exists both apathy around and criticism of, Indian status and citizenship injustices. Issues of knowledge accessibility and sharing create some of this apathy. Injustices must be therefore placed into terms that "the general Native public" understands, particularly before individuals can take action.[8] But issues of knowledge accessibility and dissemination will not alone eliminate the apathy expressed over the 1985 amendments.

Apathy is also expressed because of some people's preference to talk of identity in terms of nations, territories, or a community of people to which they belong. This is common at Six Nations of Grand River Territory, the nation where I am a band member and an Oneida citizen. I have also heard this expressed by status Indians across Canada.

According to one of the individuals I interviewed for this paper:

> Having a status card doesn't make you any more Indian. I definitely think it has a lot to do with your culture and how much of it you actually connect with, you know? ... I've

> always enjoyed anything that has to do with my culture, like powwows, round dances, and feasts. My family has always been involved in a lot of that stuff. So I think being Native has to do with how much you connect with your culture...

Another status Indian identified herself as belonging to a community of people. This is what mattered in defining herself as an Aboriginal person. As she explained:

> I guess I've never even concerned myself with things like status. I see my children as Indians because I've raised them as such, and for me, what makes them Indians is the values, which is why the traditions and the ceremonies are important to me. Being part of a larger Indian community is really important to me; it's not about blood or what the government says.

Identities are being realized outside of racialized Indian status provisions, and in nation-specific terms. These identities are tied to communities, nation-to-nation agreements, and to historic treaties.[9] The capacity of Canada to acknowledge and grasp these identities is a matter of outstanding colonial injustice.

V. RETHINKING INDIAN STATUS: ENGAGING WITH CITIZENSHIP

The interviews I conducted with status Indians concerning the 1985 *Indian Act* amendments permit three major conclusions. First and foremost, that legal assimilation is furthered by the inability of governments (deliberate or inadvertent) to transfer knowledge concerning legal inequality to status Indian communities. Second, that many people prefer to talk of identity and citizenship in nation-specific terms. Third and finally, that it is necessary to scrutinize the political and legal contexts and discourses that prevent "identification approaches" to identity and citizenship.[10]

According to my research, there is variable knowledge possessed by a new and emerging generation of individuals registered under section 6(2) of the *Indian Act*. Some of these individuals know what it means to be a non-status Indian while identifying as an Aboriginal person. Some of them endeavour to establish, or maintain, a connection with their own and other communities. But others know very little about status injustices. This works in the interest of legally assimilating the registered Indian populations of Canada.

If section 6(2) contributes to the loss of Indian status as demographers predict, then this knowledge must somehow be transmitted to each and every status Indian. Aboriginal peoples are entitled to know about status inequalities, especially within the broader context of a history aimed at their racialization, legal assimilation and enfranchisement. The sharing of this knowledge ensures the right of Aboriginal peoples to revisit a more equitable system of defining Indian status -- or of resisting this system altogether.

The *Indian Act* has perpetuated inequalities between individuals. To pretend that Indian status is inconsequential is to undermine the importance of legal distinctions, and how these affect the relationships between status Indians, both male and female. Yet, the people I interviewed also

suggested a way of thinking about identity outside of Indian status provisions. These issues of citizenship and belonging are of immediate importance to Aboriginal populations; how and where do we get around to debating them?

Section 6(2) injustices invite the people who want to challenge them to become even more deeply drawn into the colonial frameworks that have been used to define and sometimes divide them.[11] Seeing people in state-constructed terms often conceals historic events which imposed racialized distinctions on all Aboriginal nations, and that later required people to be legislated outside of them. It also detracts from the conversations governments could be having about Aboriginal identity and citizenship.

VI. CONCLUSION

> Freedom from colonization is the sense of an unbounded self and the ability to live fully in a wide and open world. It is to feel and live large! Being "Indian" and being "aboriginal" is accepting a small self, imprisonment in the small space created for us by the white man: reserves, aboriginal rights, Indian Act entitlements, etc.[12]

A major change in thinking is required before issues of Indian status can be fully understood or rejuvenated in Canada. I believe the future is now– and can be - realized by refusing to acknowledge the *Indian Act* as the source for determining Aboriginal citizenship. Legal assimilation is less threatening to individuals who are mindful of Aboriginal identity and community in all of its infinite capacities. However, even these individuals are unable to prevent the legal assimilation of status Indians and their reserve lands in Canada.

Indian status or status inequalities will require the ongoing attention of federal and band-based governments. Several issues will emerge out of these discussions involving citizenship and Indian status. Before meaningful discussion can take place, it will be necessary to move beyond the *Indian Act.* This will require legally acknowledging a sense of belonging based on real or assumed bonds between people, their shared knowledge of traditional stories or history, original nation-to-nation agreements, common beliefs, and a tie to some specific territory -- including urban areas.[13]

It is also necessary to begin the process of *affirming* the nations of Aboriginal peoples in law and politics, including how our citizens are defined. Only after these issues are addressed will Aboriginal peoples become truly self-determining. As Phil Fontaine, Grand Chief of the Assembly of First Nations recently noted:

> It is morally, politically and legally wrong for one government to tell another government who its citizens are, and we are calling for a process to move citizenship to the jurisdiction where it properly belongs, and that is with First Nations governments.[14]

The *Indian Act* remains ineffective as a tool for regulating identity, though this does not mean that Canada is prepared to acknowledge the people who do not "qualify" for Indian status and registration. It does not require that nation-to-nation agreements, urban-based individuals,

territories, or nation-specific understandings of citizenship be acknowledged. Nor does it justify the ongoing legal inequalities created by section 6(2) of the *Act*. This requires the attention of governments, policy makers and those most affected by citizenship injustices.

A change in the way of thinking about Indian status is required in Canada. Citizenship injustices have their origins in the racialized and sexist understandings that were introduced historically, and that remain a part of colonial policy. It follows that historical analysis (or "liberating strategies") must be committed to realizing – and addressing – both types of discrimination. The loss of Indian status – and Indian status in general – is not something that belongs to women or "individuals". The loss of Indian status is something that belongs to the Aboriginal collective because of the potential of section 6(2) to disinherit them, and because of complex injustices that exist at the intersection of racialization and patriarchy. Indeed, many men are now included among individuals experiencing discrimination at the "intersection" of race and gender.

A new politics of identity is forming in Canada, and it includes a generation of men and women who are disqualified from Indian status, even though they are Aboriginal peoples. Some of these individuals were registered under section 6(2) of the *Indian Act* and face the same choices available to their mothers as "Indians". For the generations affected by it, section 6(2) brings about a different way of thinking about "Indianness". It could even bring forward a new way of thinking about historical discrimination, preferably leading many of us to realize that citizenship injustices were never really about women. They were about state-inspired definitions, and the act of becoming (or not) a member of the racialized collective.

ENDNOTES

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1 I would like to acknowledge the Strategic Research and Analysis Directorate (Department of Indian and Northern Development) for funding this research.

2 Section 6(1) (a) of *An Act to Amend the Indian Act* (1985) reads: "6(1) a person is entitled to be registered if (a) that person was registered or entitled to be registered immediately prior to April 17, 1985."

[3] Deborah Davis Jackson. *Our Elders Lived It: American Indian Identity in the City*. DeKalb, IL: Northern Illinois University Press, 2002: 74).

[4] P. S Li. (ed.). *Race and Ethnic Relations in Canada*. Toronto: Oxford University Press, 1990: 7.

[5] Indian and Northern Affairs Canada. *The Indian Act Past and Present: A Manual on Registration and Entitlement Legislation*. Ottawa: Indian Registration and Band Lists Directorate, 1991: 21.

[6] This new generation also includes the children of women registered under section 6(2) with unstated or unacknowledged paternity.

[7] James Frideres, and René Gadacz. *Aboriginal Peoples in Canada*. Seventh Edition. Pearson Prentice Hall, 2005: 164-170).

[8] Audrey, Huntley, Fay Blaney, Rain Daniels, Lizabeth Hall and Jennifer Dysart *Bill C-31: Its Impact, Implications and Recommendations for Change in British Columbia- Final Report*. Vancouver: Aboriginal Women's Action Network (AWAN), 1999: 74.

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BROKENHEAD OJIBWAY NATION & THE 1985 *INDIAN ACT*

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I. INTRODUCTION

The 1985 amendments to the *Indian Act* (or Bill C-31) have the potential to affect First Nations significantly. In the short term, the populations of many First Nations have experienced considerable growth as a result of the reinstatement and registration provisions introduced. In the longer term, inter-marriage and the rules governing entitlement to Indian registration are expected to result in growing numbers of descendants who lack registration entitlement.[1] Most of these descendants will also not qualify for First Nations membership.

This case study, which focuses on the experiences of Brokenhead Ojibway Nation (Brokenhead), explores the potential impacts associated with Bill C-31, including population and demography, First Nations membership, the demand for (and use and costs of) key programs and services, and social and political changes within the community.[2] It also examines how the future population is likely to change arising from the rules used to determine Indian registration and the membership rules employed by the First Nation.

Brokenhead Ojibway Nation is located in Manitoba approximately 60 kilometres northeast of the city of Winnipeg, but remains essentially rural in character. According to the 2002 Indian register, the registered Indian population of Brokenhead totalled 1,423. At that time, about 30 percent of the population (429 individuals) lived on reserve. Although data concerning the location of the off-reserve component of the population are limited, most are believed to reside in the city or in small communities within the Winnipeg region.

Brokenhead is governed by a Chief and four member Council elected by band members. The community maintains its own membership list. Members may reside either on or off reserve. Brokenhead administers a wide range of services, including governance, housing and community infrastructure, elementary and secondary education, employment and training, social services and health services. Most of these services relate to the population living on reserve, although some services, (e.g. employment and training) are also administered for the off-reserve population. Other services and programs available to Brokenhead residents, (e.g. economic development, community futures) are administered by the Southeast Resources Development Council (SERDC), of which Brokenhead is a member.

II. APPROACH

The case study research involved three main components. The initial component focused on estimating the role of the 1985 *Indian Act* in contributing to changes in the size and composition of the Brokenhead population. This part of the study examined population changes that have occurred from the time of enactment in April 1985 to December 31, 2002. In addition to documenting existing population impacts, future population changes

over the course of the next 75 years were explored. A custom population projection was developed to explore these longer-term changes in relation to the populations entitled to Indian registration and eligible for membership with Brokenhead. Data used for the population impact components of the case study were obtained from the Indian register and Brokenhead membership list.

A second part of the research involved examining administrative data and records concerning changes in program and service usage, as well as conducting interviews with key staff and council members responsible for overseeing programs and services delivered by Brokenhead. These interviews were designed to obtain views and opinions of staff and management concerning policies related to service provision and the impacts of Bill C-31 registrants on program/service demand and usage. In addition to records maintained by Brokenhead, this aspect of the study also examined data provided by Health Canada concerning Bill C-31 usage of the Non-Insured Health Benefits Program.

The third part of the research involved a survey designed to capture perceptions and opinions concerning Bill C-31 from the members of Brokenhead Ojibway Nation. The survey of members addressed a wide variety of issues, including: views and opinions about Bill C-31's impacts; knowledge of and concerns about Brokenhead's rules governing membership; experiences and perceptions of equality in terms of accessing various programs and services administered by Brokenhead; and concerns about potential future impacts of Bill C-31.

The survey was administered using in-person (or telephone) interviews and included members residing both on and off reserve, as well as members who (re)acquired registration under Bill C-31 and those who were members pre - Bill C-31.[3] A total of 170 individuals completed the survey, including 101 living on reserve and 69 living off reserve. Thirty-six (or about 21 percent) of survey respondents were registered under the reinstatement/registration provisions of Bill C-31.

III. BROKENHEAD POPULATION GROWTH

Historic data from the Indian register were used to identify changes in the size of the Brokenhead registered Indian population over the 1980 – 2002 time period when the population increased by about 144 percent from 583 to 1,423. Most of this population growth has occurred since 1985, suggesting that changes introduced by the 1985 *Indian Act* have played a significant role. Prior to the 1985 amendments, Indian registration could be gained or lost through marriage or other events. Section 12 of the 1951/56 *Indian Act* excluded or authorized the removal from the register of:

- women who married non-Indian men (and any children born to such women prior to the marriage);
- the descendants of these marriages;
- "illegitimate" children of Indian women and non-Indian men (through successful protest within 12 months of the child's registration); and

- people whose mother and father's mother were non-Indian (the "double mother" clause).

Section 11 of the 1951/56 *Act* allowed:

- Indian men (subject to the "double mother" clause) to transmit registration entitlement to any of their children, regardless of the child's mother and without the consideration of marriage; and
- non-Indian women who married Indian men to gain Indian registration.

In addition to removing the provisions of previous *Indian Act*s that resulted in the loss of registration, the 1985 *Act*:

- allowed for reinstatement of Indian registration to those who lost registration under prior versions of the *Act*, as well as the "first time" registration of their children; and
- established new rules governing entitlement to Indian registration for all children born on or after April 17, 1985.

The revised rules governing Indian registration are contained in section 6 of the 1985 *Indian Act*, and provide for registration under one of two sub-sections: section 6(1), where both of the individual's parents are (or are entitled to be) registered; and section 6(2), where one of the individual's parents is (or is entitled to be) registered under section 6(1) and the other parent is not registered.

In relation to the prior *Act*, the 1985 *Indian Act* created four new sources of growth in the registered Indian population. These sources of growth include:

- "Bill C-31" reinstatements and registrations;
- children born to Bill C-31 and pre-Bill C-31 parents after April 16, 1985 who would not have qualified for registration under the prior rules; and
- Indian women who have not been removed from the register after April 16, 1985 as a result of marriage to a non-Indian male.

As non-Indian women cannot acquire registration through marriage under the 1985 Indian Act, this source of growth no longer applies.

Bill C-31

The number of additions to the registered Indian population of Brokenhead through Bill C-31's reinstatement and registration provisions as of December 31, 2002, was 311. Growth in the number of Bill C-31 additions to the population has slowed dramatically since the mid-1990's. For the 1999-2002 portion of the period, new Bill C-31 registrants have averaged about 7 annually, a level roughly one-quarter of that recorded annually at the outset of the 1990's decade. As of December 31, 2002, the surviving population of Bill C-31 registrants numbered 298 and represented about 21 percent of the total registered Indian population of Brokenhead.

Although reinstatements and registrations form the largest component of incremental growth in the registered Indian population attributable to Bill C-31, other changes made to the rules governing Indian registration have also contributed to significant incremental growth of the Brokenhead population during the 1985-2002 time period.

Data on parenting patterns have been compiled for the parents of all children born and registered with Brokenhead since the adoption of Bill C-31 (April 17, 1985) to December 31, 2002.[4] Of particular interest are children who qualify for Indian registration under the rules of the 1985 *Indian Act*, but who would not have qualified had the rules of the previous *Indian Act* remained in force during the period. These children include:

- children born to two Bill C-31 parents;
- children born to a Bill C-31 parent registered under section 6(1) and whose other parent is not registered;
- children born to a pre-Bill C-31 woman and non-Indian male, and
- children born to a pre-Bill C-31 woman and a male registered under Bill C-31.

An estimated 137 children have been born to these specific combinations of parents and recorded on the register as of December 31, 2002, who would not have qualified for registration under the rules of the prior *Act*. About 59 percent of these children (81 in total) result from parenting between pre-Bill C-31 women and males who would not have qualified for registration under either Bill C-31 or the rules of the previous *Indian Act*. The remaining 41 percent (56 children) result from parenting by individuals who acquired or reacquired Indian registration under Bill C-31.

As Bill C-31 no longer allows for the removal of women from the Indian register for marriage to a non-Indian, some portion of the growth in the registered Indian population after April 16, 1985 derives from the retention on the register of pre-Bill C-31 women who inter-married. Data concerning the actual marriage patterns of registered Indians are not available for this time period nor are precise or *direct* estimates of the number of Indian women who would have been removed from the register in the absence of Bill C-31. An approximation however, results in an estimate of 35 women who were not removed from the Indian register during the 1985-2002 time period through marriage to non-Indian males.

Bill C-31 also removed the provisions of the previous *Indian Act* which allowed non-Indian females to acquire Indian registration through marriage to Indian males. Recent marriage data were also unavailable on this question however this study estimates 28 women who did not gain registration through marriage during the study period.

The total growth in the registered Indian population of Brokenhead attributable to the changes introduced by the 1985 *Indian Act* is roughly 442 individuals, including 298 Bill C-31 registrants, 137 children (who would not have qualified under the previous rules) and 7 (35 - 28) women (resulting from Bill C-31's changes to the marriage provisions). The incremental population attributable to Bill C-31's changes represents about 31.1 percent of

the total registered Indian population of Brokenhead in 2002 and an increase in the registered Indian population of about 45.1 percent over that expected, had the provisions of the previous *Indian Act* remained in force throughout April 17, 1985 to December 31, 2002. Bill C-31 accounted for the majority of population growth reported during the period both on (52.4 percent) and off (60.4 percent) reserve.

IV. IMPLICATIONS

This case study examined the impacts of Bill C-31 population growth on programs and services administered by Brokenhead in eight service areas.

Social assistance support is provide on the basis of need and is available to all reserve residents, regardless of registration or membership status. Administrative records maintained by Brokenhead do not distinguish between Bill C-31 and pre-Bill C-31 recipients. Brokenhead has established a relationship with Manitoba for the recovery of expenditures for non-registered recipients of benefits. Resources for registered Indians are provided by Indian and Northern Affairs Canada (INAC). Although the social assistance caseload on reserve has increased steadily recently, this increase is attributed by staff to changes in employment opportunities and changes in values (work ethics) of those who maintain young families. Bill C-31 population growth was not viewed as a factor.

Brokenhead's policy concerning allocation of reserve housing restricts access to band owned housing to those who are members. Applicants are evaluated based on the time of application and needs in relation to housing availability. Historically, Bill C-31 status was believed to be a factor affecting access (i.e. in practice pre-Bill C-31 members were given preferential access), but this policy is no longer applied. Brokenhead did receive a special INAC allocation in the late 1980's to provide incremental housing for Bill C-31 members. Administrative records concerning this allocation and occupants of Bill C-31 housing were unavailable. Population growth associated with Bill C-31 is believed by staff to have increased the demand for band housing resources during the late 1980's period, though the current impact is not documented and remains unknown.

All reserve residents are eligible for education services subject to school capacity restrictions. Brokenhead provides education service directly for grades kindergarten to eight. Junior to senior high school services are provided by off-reserve schools. Capital, operations, maintenance and program resources for elementary and secondary education services are provided by INAC. No special resources were provided to Brokenhead following the enactment of the 1985 *Indian Act*, although educational program resources associated with any incremental demands associated with Bill C-31 students would have been funded by INAC based on nominal roll counts. Elementary and secondary education enrolment has been growing steadily and the community requires more classroom space and resources for the K-8 programs, however this situation is not viewed by staff as an impact of Bill C-31 population growth.

Financial support for post-secondary education is available to members residing both on and off reserve subject to the availability of resources. Brokenhead does not have any specific policy concerning Bill C-31 members and did not receive any special allocations for this segment of the member population. The demand for post-secondary education funding has been growing steadily and more quickly than available resources. Population growth associated with Bill C-31 may have contributed to increased demand, but the extent of any impact cannot be documented from available records and remains unknown.

Basic community health services are available to all reserve residents, regardless of registration or membership status. Non-insured health benefits (administered by Health Canada) are available to those who are registered, regardless of residency. Community health services and non-insured health benefits are resourced by Health Canada. Brokenhead did not receive any special allocation for the Bill C-31 population. Demand for community health services has been growing rapidly on reserve. Although some portion of this growth may relate to the Bill C-31 population, staff believe that increases in service demand derive from increased incidence of substance abuse and diabetes among community residents. Statistical data supplied to this study by Health Canada for the non-insured health benefits program allow one to distinguish beneficiaries (and program service costs) on the basis of Bill C-31 status. Analyses of these data for the 1996 and 2001 time periods reveal rates of program usage and service costs to be quite similar for the Bill C-31 and pre-Bill C-31 components of the population. This finding implies that population growth associated with Bill C-31 has likely resulted in significant increases in the demand for and resources required to provide non-insured health benefits.

Child and family services are provided by SERDC and include some services to both on- and off-reserve residents. SERDC is mandated to provide a full range of services, including child protection and apprehension, to all reserve residents. Services off reserve exclude child protection and apprehension. Resources to support child and family services are provided by INAC, although some resources are also supplied by Manitoba. Services presently being provided to members off reserve are not currently funded. According to SERDC staff, demand for child and family services is increasing both on and off reserve, and is outpacing available resources, resulting in growing waiting lists for some services. This situation is not viewed by staff as an impact of Bill C-31 population growth, but rather the increasing complexity of clients needs.

Employment and training services to Brokenhead members residing on and off reserve are now provided by Brokenhead, which has received additional resources from Human Resources Development Canada (HRDC). The employment and training program operated is relatively small and demand for services on reserve has been growing steadily and even more rapidly off reserve. As the program does not differentiate between trainees on the basis of Bill C-31 registration status, Bill C-31 participation in the program remains undocumented. Associated population growth may have contributed to increased demand for employment and training services, but the extent of any impact remains unknown.

Community Perspectives

The survey of members conducted for this study attempted to address a broad range of potential impacts associated with Bill C-31 population growth. Issues explored included perceptions concerning equality of access to services, the use of specific programs and services and changes in the social and political fabric of the community. Results from the on-reserve component of the member survey provide additional evidence of the role played by Bill C-31 in promoting growth among the population living on reserve. All of the on-reserve Bill C-31 members interviewed reported that they had moved to the community since (re)acquiring Indian registration. Migration to the reserve of sizable numbers of Bill C-31 registrants appears to have played a significant role in the population increase.

Roughly one-half of the on-reserve members interviewed for this study expressed the view that Bill C-31 had resulted in changes within their community. Among those who reported changes, most noted increased population growth. Many, although a minority, of the on-reserve respondents also perceived some negative impacts of Bill C-31, including: increased levels of prejudice and discrimination (13 percent), housing shortages (12 percent), reduced access to other programs and services (6 percent) and greater difficulties obtaining employment (4 percent).

Survey responses among members living both on and off reserve provide little evidence of inequality in access to or receipt of programs and services based on Bill C-31 registration status. Bill C-31 members were slightly more likely than pre-Bill C-31 members to report that they had applied for programs and services administered by Brokenhead. Among those who did apply for services, no differences were identified between Bill C-31 and pre-Bill C-31 respondents in terms of the proportion reporting receipt of services. With the exception of post-secondary education and to a lesser extent children's education services, a large majority of Bill C-31 members believed that they had the same level of access to services administered by Brokenhead as other (i.e. pre-Bill C-31) members. Of the small number of on-reserve respondents (23) who reported difficulties obtaining services, only 3 (or 13 percent) reported Bill C-31 status as the reason for not being able to obtain services.

The member survey results also provided little evidence that profound changes have occurred in the social and political fabric of the community as a consequence of Bill C-31, with less than 5 percent of all on-reserve respondents believing it had resulted in increased friction among members.

V. MEMBERSHIP

The 1985 *Indian Act* also introduced changes affecting membership; First Nations were permitted to develop and apply their own rules governing membership. In cases where the rules for membership differ from the rules governing registration, the registered and member populations can differ. Brokenhead elected to adopt its own membership rule. The rule admitted into initial membership all individuals contained on the band list as of June 25, 1987, including all those who regained their registration under the reinstatement

provisions of the 1985 *Indian Act*. Individuals who were not on the band list or born after June 25, 1987, are eligible to apply for membership if they are sponsored by a member and are entitled to Indian registration. This includes not only descendants of members but other registered Indians as well (e.g. Indian spouses of members).

The rule also contains additional criteria which are used to evaluate adult applicants. These criteria include: the band's financial and housing capabilities; the applicant's character and life style; kinship and other community ties. The membership rule also contains residency provisions, although individuals living off reserve can also apply for and be admitted into membership. Decisions concerning applicants are made by a membership committee, and in the case of adults, decisions require ratification by Chief and Council. Until recently, Brokenhead's membership rule was administered by SERDC. According to Brokenhead staff now involved with membership, under SERDC's administration virtually everyone who applied for membership and met the Indian registration criterion, was approved. Administration of the membership rule was assumed by Brokenhead in 2001 in order to exert more control over the applicant screening and approval process.

The membership rule requires that eligible individuals apply; many who are eligible have not. As of March, 2002, the member population of Brokenhead numbered approximately 730 individuals, representing about 52 percent of the total registered Indian population. Although nearly all of those who were registered, but not members, resided off reserve, off-reserve members formed about 41 percent of the total population of members.

Based on the responses to the survey of members, issues surrounding membership do not appear to be well understood among those living either on or off reserve. Only 35 percent of respondents to the survey were aware that Brokenhead had adopted its own rule governing membership. Less than 25 percent reported that they had some knowledge of the details of the rule. Awareness and knowledge of the rule were especially low among off-reserve respondents (less than 8 percent).

Among those who reported some knowledge of the details of the rule, nearly one-half expressed concerns about it or its implementation. Concerns identified most frequently included lack of consistency in application of the rule (23 percent) and the rule's potential to deny membership in the future to descendants who do not qualify for Indian registration (19 percent). This latter issue (i.e. loss of registration entitlement and membership eligibility among descendants) was also noted by more than 25 percent of all survey respondents as a concern in relation to the future impacts of the 1985 *Indian Act* rules governing Indian registration and Brokenhead's membership rule.

Longer Term Impacts

Indian registration represents one of the main criteria for membership in Brokenhead. As such, the future population eligible for membership will be affected by the 1985 *Indian Act*'s rules governing Indian registration. These rules in concert with inter-marriage have the potential to result in loss of registration entitlement among large and growing numbers of descendants. Responses to the survey conducted for this study suggest that many

members are concerned about the future impacts of the registration rules of the 1985 *Indian Act* on their families and the Brokenhead community.

Custom population projections were developed to explore the longer-term impacts of the 1985 *Indian Act* and Brokenhead's membership rule on the populations eligible for Indian registration and membership with Brokenhead.[5] The rate of inter-marriage is a critical factor affecting the future population entitled to Indian registration. Estimates of inter-marriage rates for the Brokenhead population were constructed using data contained on the 2002 Indian Register. Indian/non-Indian parenting accounts for about 67 percent of all children born to Brokenhead registered Indians during the 1985-2002 time period, a level considerably higher than the national average (48 percent). Rates of Indian/non-Indian parenting during this period, were considerably higher among females (59 percent) than males (43 percent) and also considerably higher among those living off (80 percent) than on (55 percent) reserve.

The high rates of Indian/non-Indian parenting which characterize the Brokenhead population imply that significant composition changes can be expected to occur among the populations residing both on and off reserve, as many descendants of the current population are likely to lack eligibility for Indian registration and consequently membership.

The projected population of Brokenhead survivors and descendants by Indian registration and membership eligibility status assumes the rates of Indian/non-Indian parenting as observed for the 1985-2002 time period remain stable in the future. The projection spans a 75-year period, which can be roughly interpreted as three generations into the future. The population entitled to Indian registration (and eligible for membership) is projected to rise for about one generation (25 years) from about 1,488 (adjusted for late reporting) in 2002 to 1,943 in 2027. Throughout the remainder of the period, this segment of the population is projected to decline at an accelerating pace and number 1,472 after three generations. Further declines in this population would be expected in the longer term. The population of survivors and descendants who do not qualify for Indian registration and consequently will be ineligible for membership is projected to increase rapidly throughout the period from just 77 individuals in 2002 to 1,639 after three generations. At that time, non-entitled individuals are expected to form a majority of the Brokenhead population.

Loss of entitlement to Indian registration and membership is projected to affect large and growing numbers of descendants both on and off reserve. Within one generation (25 years), about 1 in every 4 children born on reserve is expected to lack registration entitlement and eligibility for membership. Within three generations, children who qualify for registration and membership are expected to form a minority. The process of loss of registration entitlement and membership eligibility is expected to occur much more rapidly off reserve where rates of Indian/non-Indian parenting are considerably higher. Off-reserve children who are projected to qualify for registration and be eligible for membership are expected to form a minority within about 20 years. Within three generations (75 years), the projections suggest that only about 1 in every 8 children off reserve will qualify for registration and be eligible for membership.

VI. SUMMARY AND CONCLUSIONS

The results of this analysis clearly suggest that the 1985 *Indian Act* amendments have had quite significant impacts on the size of the Brokenhead's registered Indian population. In fact, the analysis reveals the changes introduced by the *Act* have been the most important factors affecting growth both on and off reserve during the 1985-2002 period.

A significant minority of Brokenhead members believe that the population growth associated with the 1985 *Indian Act* has resulted in changes to their community, including population growth, greater competition for programs and services and more competition for jobs. A much smaller minority (about 8 percent) believe that the associated population changes have also contributed to erosion of social cohesion within the community. There is very little evidence to suggest that inequality exists with respect to access to band administered programs and services on the basis of Bill C-31 status. Rates of application for services and rates of receipt of services do not differ greatly between Bill C-31 and other members. Moreover, only a very small minority of members attribute difficulties in obtaining services to Bill C-31 residents or Bill C-31 status.

A significant minority (more than one-quarter) of the Brokenhead population expressed concerns about the future impacts of the 1985 *Indian Act*. These concerns relate to the potential impacts on descendants of the rules governing Indian registration and eligibility for membership with Brokenhead. Longer-term population projections developed for this study suggest that these concerns are well-founded, as high rates of inter-marriage are expected to result in growing numbers of descendants who lack entitlement to Indian registration and consequently to membership under Brokenhead's current rules.

The transformation of Brokenhead's population from one which is almost entirely comprised of those who are both registered and eligible for membership to one in which a majority lacks both registration entitlement and eligibility for membership clearly presents a number of challenges to Brokenhead's population and leadership. Although Brokenhead also faced (and responded constructively to) challenges associated with population growth and change during the 1985-2002 period, the challenges emerging in the future appear to be significantly greater. Issues related to membership, maintaining and promoting political and social equality, ensuring equality of access to needed programs and services, and responding to the differential rights and entitlements of different classes of citizens are likely to require the community's attention in the near future.

ENDNOTES

[1] The term inter-marriage is used to refer to the process of exogamous parenting (i.e. parenting between someone who is a registered Indian and someone who is not entitled to registration). .

[2] This research was undertaken as part of a broader examination of the 1985 amendments of the *Indian Act* supported by the Manitoba Southern Chiefs Organization and the Research and Analysis Directorate of Indian and Northern Affairs Canada (INAC).

[3] The term "pre-Bill C-31" is used to refer to those individuals who were entitled to Indian registration and membership prior to the enactment of Bill C-31 in April of 1985. This population is also frequently referred to as "original" members.

[4] The Indian register does not contain a complete record of all children born to registered Indian parents. Specifically, those children who have only one Indian parent registered under section 6(2) are not in the register as they do not qualify for registration under the provisions of Bill C-31.

[5] As the Brokenhead membership rule contains discretionary provisions which cannot be reasonably included in the projections, the projections examine only the population that is eligible to apply to membership. It should be recognized that the actual number of future members is likely to be considerably smaller than the number who are eligible to apply, as some may not apply and some who do apply may not be approved for membership.

BILL C-31: INFLICTION OF CULTURAL TRAUMA[1]

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I. INTRODUCTION

As discussed in the introduction and several papers in this collection, in 1985 Canada amended the *Indian Act*. Popularly known as 'Bill C-31', these amendments created new classes of Indian registration and also allowed Bands some control over membership. As discussed in Mann's paper, Bill C-31 was followed by a policy requirement: for women to register their children they are now required to disclose the father's identity and to prove his Indian status. Although C-31 was designed to repair the harm done to women and their communities when women were forced out upon marriage to a non-Indian or to a member of another First Nation, its repercussions have been painful and contradictory.

In this paper, we shift the focus from legal implications to consider C-31 and the attendant policy requiring disclosure of paternity as cultural trauma. We review the experiences and share in the narratives of women of three matrilineal First Nations – Cheslatta Carrier, Nee Tahi Buhn and Lake Babine.

Late twentieth century understanding of trauma includes the disruption of intergenerational cultural continuity as a form of "wounding". The idea of cultural trauma speaks to slow, insidious disruptions of well being that are claimed by the collective but experienced by the individual. By calling these interruptions cultural trauma, the human experience of immediate and delayed suffering is exposed and located within specific historical and social contexts. Here we apply the notion to three different processes: trauma to culture, collective stigmatization or rejection by one's own culture, and historic trauma. Trauma *to* a culture is experienced collectively. C-31, through its imposition of identity traced through the father with respect to children of reinstated women, and INAC's unstated paternity policy and its breakdown of intergenerational membership, constitutes trauma to a culture. This is even more radically so in a culture that traces lineage through the mother. The trauma generated by C-31 arises not from an unexpected event of horrific consequences but rather from a persistent destruction of individual well being and collective continuity. C-31 is experienced as traumatic within a cultural process shaped by the continuing breakup of First Nations identity and sovereignty resulting from colonization. This fragmentation continues today in new and often subtle ways. Current power structures exist within a history marked by paternalism and patriarchal assumptions that are imposed upon First Nations women without regard to cultural differences.[2]

II. CONTEXT

Bill C-31 entered the lives of First Nations women after centuries of colonial displacement and historic traumas. These included patriarchal and sexist practices that disrupted family relations, diminished women's economic independence and eroded community well being and collective identity. These traumatic disruptions occurred alongside other colonial intrusions into family

relations. First Nations people mark the residential school as wounding their societies most deeply. The traumatic consequences of these intrusions include deaths of children in institutional epidemics, estrangement of grandchildren from grandparents, and immeasurable losses to language, cultural knowledge, spiritual well being, and social cohesion. The social disruption and family suffering from loss of children nurtured in First Nations' cultures were exacerbated by the "sixties scoop", a period when children were apprehended by the state and placed for adoption in non-Aboriginal families. The frustrations wrought by the failure of Euro-Canadian society to meet the needs of First Nations families and to honour Aboriginal rights have led to emotional despair and abiding mistrust that continue to shape perceptions of the *Indian Act.*

From 1876 to 1985 the federal *Indian Act* discriminated against women by denying them rights to Indian status by virtue of marriage to a non-Indian. The *Indian Act* has displaced the core social structures of First Nations--kin corporate and extended family groups--with the patriarchal, patrilocal nuclear family. By legally constituting women as 'non-status' upon marriage to non-Indians Canada asserted its control over an entire population by delegitimizing customary kin relations. With this assault on First Nation concepts of kin relations the very essence of the idea of family in First Nations terms was denigrated. C-31 locates women who married out prior to 1985 in an inferior position to men who did the same by allowing these men to retain their Indian status and extending Indian status to their non-Indian wives. Under the 1985 amendments to the *Indian Act*, the descendants of Indian men who 'married out' are deemed to have two Indian parents regardless of the 'race' of the mother, thus constituting the children as 6(1), a benefit denied children whose mothers married out. Women who married out are subordinated within their kin networks and within the public realm as they and their descendants are marked as different under the *Act.* Women and children whose status was reinstated have come to be known as "C-31s" or "C-31ers" and viewed as outsiders to a community of authentic members. Subordination of women through state imposed concepts of family and identity constitutes a wounding of individuals and communities that shapes not only personal identity but also provides context for the policy demanding disclosure of paternity.

III. CULTURAL TRAUMA

In a study we conducted in 2004, women of three First Nations with traditional matrilineal organization gave voice to the pain of subordination and their helplessness in the face of C-31. They addressed questions of geographic and cultural alienation from their home communities, tensions within their families, fear of the second generation cut-off rule, and discriminatory practices. The imposition of patrilineal rules for transferring Indian status and/or band membership essentially delegitimizes traditional family structures grounded in kin corporate status. The women identified this as the most compelling evidence of trauma to their cultures.

Historically, matrilineal descent in these nations conferred membership in clans, that is to say a social group sharing economic rights, obligations, land, and other privileges. Through the clan system, children were never dependant solely upon a nuclear family for nurture and sustenance. All children would have two clans active in their lives: the mother's and the father' clans, each bearing particular obligations to nurture and provide for the child. If a father was outside of the community or unknown, the mother's father's clan assumed the paternal obligations to the child.

The roles of the father's clan were formalized in rites of passage and clearly defined obligations reciprocated with the mother's clan. Reciprocal obligations were, and continue to be, acknowledged through feasting and gift exchanges known as the *balhats.* Today the state's focus on the nuclear two-parent family denies the traditional roots of identity and the matrilineal kin structures that locate each child as a community member. Although social and cultural engagement in the community through the clan system remains vibrant at a personal level, because traditional kin authorities have been delegitimized, only the state can transmit full membership and attendant privileges defined within the *Indian Act.*

Women frame their experiences of C-31 in terms of collective loss and ensuing community and kin tensions as they, their children and their female kin are forced to live away from the home community. Language knowledge is lost. Highly skilled and capable individuals migrate to urban centres. Traditional forms of governance are weakened and matrilineal lines of succession disrupted. The desire to *"be Indian"* intensifies as government regulation of personal life leads to resentment. As tensions ripple through families and communities, traditional principles of respect and generosity are undermined. Children are cast adrift from their culture when alienated by distance or status identity. One woman described the long term cultural impact when traditions of respect are not taught to the young:

> I think the traditions still work for us especially for those who follow them strictly. These are the ones who do not get into trouble because our traditions are based on respect. Respect includes everything from animals to plants. If we base everything on respect then there would not be anyone feeling they don't belong. All people will belong where they were meant to be. We need to get back to our traditional ways and no government.

In the words of one woman, a leader in her community,

> There has been a lot of mistrust, lack of respect, manage [ment] and control issues. There is loss of historical identity, language and cultural traditions. Confusion between the western way of doing things and the Indian way, and at times those two clash, and leaves unnecessary wounds.

She adds that while matrilineal traditions endure for residents or those living nearby through participation in the *balhats*, the indirect impact is for individuals coming back from outside the community not prepared and/or having lost touch with their teachings whereby they try to introduce protocols and/or principles that do not fit the traditional ways. Her experience in administration and governance has led her to realize:

> [t]here seems to be a lot of misconceptions as to their entitlements. They seem to think that as leaders, previous leaders, we were responsible for the choices their parents made. Show how they feel that we as a Nation owe them for any possible wrong doing that happened at the hands of the government.

Her observations are supported by personal experiences of leaders and office workers in a second community. Here the elders are just now feeling the effects of C-31 in their own families and coming to recognize the implications for a nation with fewer than 300 members. Elders pressure

their First Nation to include non-registered children in services and to provide homes for reinstated women and their families. Office workers and elected councilors explain,

> Members who fall under Bill C-31 become…lost in space because they don't have any benefits. So we are losing our numbers because of Bill C-31 and the ones that we are losing don't understand why and get pretty upset with us because we have no choice but to refuse them services.

Women's stories illustrate the depth of trauma cultures have experienced as families are divided by C-31. Women describe the pain of being raised outside the community and conflicts between cousins as young children in extended families become aware that some of them will have rights to inherit family property while others will not. Within families some of the women who are cultural leaders either do not have status or are listed as 6(2) and their children do not have status. This creates uncertainty for the future of the community. A young girl of a large family whose members are fluent speakers of their language and are skilled in the traditional economic cycle described her anxieties:

> As I said my aunties are Bill C-31. There are not in my community but we go out to our summer village where we are from, it is there that they are in the community. I think they belong to that community and it is there that they practice their traditional skill and their cultural ways. This is good because they pass the tradition to us. It is in the community that they were taught this tradition. Our traditional ways are being lost and if these women are willing to be in our community and pass these traditional skills on then this is a good thing.

Her cousin, whose adoptive mother lost and then regained status, shares her fears for the future. This young girl is raised with a brother who is registered 6(2) while she is 6(1). She realizes all too well the possibility that her family will be further torn asunder by the second generation cut off rule and the demand for disclosure of paternity:

> I would like to go to my summer home and not worry that some day that house would be taken away from me or even the following generation of my family. I fear…the effects of Bill C- 31. If my children's children or any of my following generations… and wonder if they may not get their education because of C-31. I would like for every native in the Act of Bill C-31 to be able to live on their homeland despite that they did not choose a native person to be their partner.

Others in this large extended family are torn with emotion as the aunties come to recognize that their grandchildren are not registered and under the current rules will be unable to inherit property or engage in traditional economic practices such as netting salmon.[3]

Out-parenting is perceived to be the greatest threat small First Nations face. A number of participants spoke of the conflict between Bill C-31 and local patterns of marriage in remote communities. Generations have been taught that out marriage is necessary to avoid violating social rules governing incest within clans and marriage to close relatives. Women were often encouraged to marry non-Indians in customary marriages. Communities were unaware of the

implications of the *Indian Act* for matrilineal First Nations. Historically with this practice, matrilineal descent remained undisrupted and children's birthright in the community unquestioned. In small communities, where out-marrying is necessary, this is very significant.

Bill C-31 is particularly felt as an assault on customary law. Adoption and foster care within extended families is now encouraged by Canada and Manitoba, a stance compatible with matrilineal practice. In the cultural tradition of the three First Nations studied here, a grandmother routinely adopts children. As adults these children will be primary caregivers to their aging kin members. If they are denied access to First Nations land and resources, they will not be able to fulfill their traditional obligations in a meaningful way. Without sufficient support from federal funding, small First Nations are currently unable to provide for their citizens. Denial of status to the third generation in the small communities means the First Nations will not have funds to support children who in the future would be supporting the elders. Whatever customs of reciprocity and obligation may have prevailed in the past, adherence to legal custom of care for adoptive parents within kin and clan networks is not now constituted as legal grounds for granting status. The very basis of customary law—reciprocal obligations—has been delegitimized and in consequence the foundation of social relations disrupted.

This rupture of family is seen as a most serious violation of Aboriginal rights. Insofar as customary adoption by grandmothers is recognized under C-31, children adopted by widowed grandmothers and/or unmarried grandmothers are denied 6(1) status even when this is the category of the adopting mother, and adoptions by grandmothers registered as 6(2) have not conferred status in all instances. Participants worry that adoption by a widowed grandmother is viewed as a one-parent family if no father is registered in these circumstances. In the words of one grandmother, "They [INAC] just don't want our clan system."

Women, in particular elders and hereditary chiefs, do not view C-31 in isolation but in the context of other government interventions into family life. Apprehension of grandchildren by social services is particularly problematic and this issue dominated all the discussions. When daughters and granddaughters do not disclose paternity, the rift within communities intensifies when elders beseech their elected governing councils and administrative staff to intervene. In these communities the full impact of Bill C-31 comes as a shock as elders struggle to comprehend the reality that is facing their families. With their new understanding of government policy comes the recognition that grandchildren and great grandchildren are not eligible to inherit lands and cannot pass inheritance rights to future generations. "What is to become of us?" asked one distraught grandmother, a sentiment commonly shared by young and old alike.

Bill C-31 constitutes a trauma to culture as it threatens to drastically reduce the future status population. As women came to recognize their personal grief over the exclusion of their grandchildren they turned to the question: How many of our nation's babies are not registered? They asked: "Why is the government doing this to us?" And they answered their own question in terms of racialized gender discrimination. As they live with the repercussions of C-31 and the administrative policy that requires disclosure of paternity they recognize that the state intrudes into their private lives and sense of identity in a way faced by no other women in Canada.

When asked how they would like to deal with the crises of C-31, the participants were at a loss for words. C-31 is but one of several assaults on their culture that has left First Nations powerless to control their destiny. In keeping with customary law, the women emphatically repeated that the answer must lie in matrilineal membership: time honoured recognition of women as family leaders and grandmothers' customary practices of adoption were raised repeatedly as the solution to cultural continuity and family strength.

IV. COLLECTIVE TRAUMA

Collective stigmatization or rejection by one's own culture forces individuals away from cultural foundations that should offer expressions of identity. By its very nature, the *Indian Act* sets the terms of this stigmatization; these distinctions give rise to social disparities so that C-31 has become a state of being. INAC commonly refers to persons as "C-31s".[4] Aboriginal peoples ask such questions as "Who *is* C-31?" In our research this was a continuous expression as researchers and participants alike signaled social distinctions by labeling who was and was not C-31. Stigmatization and rejection are insidious forms of trauma; they reflect the internalization of colonialism and create doubly marginalized minorities within minorities. In this way, a collective trauma is felt; a shared suffering emerges. Identity is coercively imposed in negative terms: to *be* C-31 is to be outside full community membership, displaced to community margins.

Reinstated women related common experiences; when returning home they found themselves stigmatized and often rejected. Few have had the opportunity to move onto the reserve and become permanent community members living in their own homes. Because the region is sparsely settled and long distances separate off-reserve 'white' communities, reinstated women find it difficult to live near their home communities. Isolation from reserve communities compounds stigma. Financial and geographical barriers block regular participation in community events. In the words of one young woman whose father is registered and whose mother is non-native, "You really don't consider yourself Indian.... It is easier to live in urban areas because on reserve you are discriminated from those that live there."

Community members express a range of conflicting views over residential choices of reinstated women. Some felt that rules and resources were needed to aid the women in reestablishing themselves on First Nations lands, others thought reinstated women and young adults registered as 6(2) prefer not to live on the reserve. These views conflicted with personal experiences of young adults who grew up away from their home communities who expressed a sense of frustration and social loss, caught between their desire for community membership and a felt need to build social ties outside reserve communities in the interests of their children. Stigmatization and conflicting needs of mothers and children did not deter all the participants in their quest to return home, some endured the ongoing struggle for acceptance. However, the failure of the government to provide the necessary resources, in particular housing, left them feeling cheated. Government discrimination had set them apart from their families and communities and compounded the insult by denying them benefits that they felt were a right.

The social and legal divisions that have been created between mothers and children are a constant source of personal and collective trauma. Women who have fought the stigma of not

belonging must now guide their children through the same maze of humiliating experiences. In small communities that are marked by tensions between Aboriginal and non-Aboriginal residents, this is no easy task. Mothers face the dilemma of teaching their children to be proud of their First Nations culture even as the children come to know that they are different from their on-reserve family and friends.

Just as the residential schools were constituted as an assault on Aboriginal identity and were meant to remold the First Nations people in the image of Euro-Canadians, denial of status to women marrying out was intended to reconstitute their identity. And like the residential schools, the *Indian Act* failed. A woman who lost status and her right to reserve residency describes the devastation felt by her entire family:

> At the time I was enfranchised my mom and dad were very upset that I would not be considered henceforth. Undue stress and misery I'm sure was felt by my whole family. It was bad enough to my family that I was marrying a non-native (in those days it was almost taboo to marry out of our race), but to lose my status over him was completely devastating to my whole immediate family....As you are aware I am living on the reserve now, but when I was not and considered non Indian I felt very alone in that old non-native world. I felt like I did not belong anywhere and yet I had historical roots in the Lake Babine Nation. It was a very disconcerting time for me. I used to long to be able to return home and live next to Mom and Dad.

The impact of disrupted social and cultural relations and imposed notions of changing identity are felt strongly by women who experience rejection in their First Nation community and in the mainstream society. The desire for acceptance is very strong among women and their children who struggle to integrate into cultural life after reinstatement. When they do not feel accepted they find it hard to practice their tradition. A young woman explained that "to participate in the *balhats* they need to feel they are accepted" by the entire community.

Questions of identity and the experiences of fragmentation arise as well from government bureaucratic processes. The son of an out-marrying woman experienced stress at finding he has been registered under two different family names: the non-native father's surname and his mother's surname. His pain surfaces as he reflects: "That could be white on the outside and native inside, half and half. Half and half is better than nothing." He speaks within the perspective shared by other participants who use terms "full status" and "half status" to label community members whose identity has been defined after registering under section 6. As this man listens to the interviewer he comes to recognize the broad significance of C-31 and the struggles women are having with respect to their children and grandchildren.

> ....holy! I didn't know that! Bill C-31 is a lot bigger than just women marrying a white man. It is bigger, it's just what we've been told...when we come into problems with our children is where women are starting to stand up and look into the bill especially when we're told that oh yeah, your child is not going to have any part of the status. Your grandchildren, that's when it hurts.

To fully understand this process as traumatic, one must appreciate the conflicting constructions of identity that emerge as individuals and communities struggle against internalizing imposed racial distinctions. Bill C-31 exacerbates tensions of identity that arise from intermarriage as children of mixed parentage are cast into denigrating categories, C-31ers or 'half status'. Racial stereotyping implicit in the term C-31 is made explicit with stigmatizing labels. One young man's experience exemplifies this. Although others in his family are registered he is not. Because he 'looks white' he is taunted as "white wash", "puppy face white wash." In these circumstances government imposed definitions of identity do not offer coherence or stability but place children and adults as victims of cultural imposed trauma that shatters and fragments identity and social well being. The above speaker sees the solution as government creating a new situation where everything [is] equal. Like just 'cause a woman marries a white guy you know that doesn't give the government the okay to say "Well you're no longer native." You were born native. How could the government--the government come and say "Well you got to be white now 'cause you got married."

Perhaps more damaging than any other disruption of identity was the act of stripping women of their cultural identity upon marriage. In the process they and their children were stripped of the cultural consistency that is the foundation of stable, healthy identities. Fragmented identity of one family's mother led to multiple traumas for the entire family where an individual was born to the mother whose status was reinstated under C-31 and a non-status father. In this circumstance the speaker would normally be registered as 6(2). However, she was adopted by a father with status and thus achieved registration as 6(1). Through adoption the speaker feels she is entitled to live in her mother's birth community and as a result has achieved a higher quality of living than any of her sisters, because her sisters were not adopted by a status father. During the mother's period of not being registered, she disassociated herself from her Nation as she was ineligible for benefits. When her status was restored there was no housing on the reserve and she could not return. In her daughters' words,

> I think my mother kinda found out her benefits were gone…she slowly stopped being dependent on the ….Nation for anything, like to the point where she was disability and she was on white welfare instead of coming home to her native nation to be happier. She stayed in Vancouver and stayed on her disability and I think that the result of her alcoholism causing her death. So because she was Bill C-31 she was unable to come home. Well theoretically she would of come home but she wouldn't have got the benefits the white government was able to provide her because of her status….Eventually we [the speaker and her sisters] followed mom to Vancouver and we all didn't survive…I got two sisters with HIV and I've got two sisters that died of overdosing along with my mother drinking and overdosing, she died herself…

Clearly the social and cultural alienation of this family led to oppressive situations in which sustaining good mental health became impossible. In crisis, the family members become entrapped in negative stereotypes in a complex situation that has been termed 'ethnostress'. This occurs when the cultural beliefs or joyful identity of a people are disrupted. It is the negative experience they feel when interacting with members of different cultural groups and themselves. Ethnostress starts within the individual, centred around self-image and sense of place in the world and extends to the collective groups of family, community and nation. It carries with it a

sense of helplessness and powerlessness, as women confront the pain of their families and the future impacts of the second generation cut off and unstated paternity. Having suffered themselves and watched their children suffer, they worry about the grandchildren to come. Stresses of identity, alienation from family and community, and mixed messages of racialization and marginalization are bound to affect future generations in the same ways women and children were initially alienated by section 12(1) (b) of the old *Act* and by section 6 of the current *Act*.

Women and men alike express a sense of helplessness that spills over from personal anguish to shared feelings. They share the view that their lives are not theirs to live freely. Through seeking to control intimate relations and reproduction, they see the government as not only telling women with whom they should have children but also constraining communities in how and to whom they pass down tangible and intangible resources and teachings. The impact of the cultural and collective trauma will continue to be felt through the generations as children of today are forced to cope with disruptions in identity in the future. In this way, C-31 will come to resonate as an historic trauma as the direct experiences of racist, sexist, and cultural oppression today come to shape the meaning of personal experiences and identity in the future.

V. HISTORIC TRAUMA

Historic trauma is initially experienced directly. Over time it is experienced indirectly by subsequent generations because of the meaning the traumatic event carries in historic narratives. Historic trauma is widely experienced and is transferred through generations as lived experiences of descendents of the original trauma victims are shaped by the past. The complexity of historic trauma lies in relations of power; as identities get formed through the dominating powers' view of the traumatized community. Bill C-31 emerges from colonial distortion of identity and belonging, and exists within current cultural disruption that denies individuals access to a coherent culture from which the wisdom and skills necessary for community survival are drawn. Within this context to *be* C-31 can erode self-esteem and cause a depression of disenfranchisement whereby one feels alienated and pushed to the margins of community.

Community members are well aware of the historical prejudices against them because of their matrilineal organization. They see state imposed patrilineal laws as a deliberate attack on matrilineal peoples that has humiliated women and left First Nations governments powerless to control their destinies and women powerless in their personal lives. They do not view the impact of the *Indian Act* over the past century in isolation but within historical context of colonization by church and government. Categorization of First Nations individuals under C-31 is understood as being interwoven with the traumatic consequences of the residential school and the ongoing dilemma of child apprehension. Participants' stories speak to three themes of historic trauma: colonially imposed arranged marriages that stigmatized and forced young women from their families, the forced removal of women who married out and disruption of family ties through the generations as women and men were treated differently upon marriage.

From the time of contact with Europeans in the first decade of the nineteenth century through to the present, colonial biases have stigmatized matrilineal traditions and the women who asserted their autonomy and individuality. These sexist and racist sentiments have influenced present day

perceptions of family histories. One family's history illustrates the impact of racist attitudes toward historic marriage practices, as these become shaped by meanings arising from C-31. Up until the mid twentieth century, families arranged marriages for young women. Families sometimes did so in order to meet economic needs, such as alleviating debts or bringing men who could earn wages and/or provide by hunting and other unpaid labour into an extended family. Several decades ago, when this one family faced an economic and social crisis, they followed tradition and arranged a marriage between a daughter and a non-native. Following Bill C-31, the children of this marriage were able to regain status in the 6(2) category. Today their own children and grandchildren have been denied status. Through four generations this family is doubly traumatized: family members fight to override the stigma associated with the forced marriage of their mother/grandmother and the perception that the bride was 'sold' either out of heartless action or from desperate poverty. Currently, the generations denied status seek to assert their cultural identity through social and economic affiliation within the feasting system and other community ties of reciprocal obligation. However, they carry the sense of being outside and remain anxious for the social and cultural future of their grandchildren.

Under the 1951 *Indian Act*, the forced removal of out marrying women left communities feeling helpless. By denying out marrying women community membership and cultural identity, the *Indian Act* has continuously signaled to First Nations peoples, and matrilineal peoples in particular, disregard, if not contempt, for cultural practices that differ from Euro-Canadian. To the extent that these views have been internalized, they are reflected in community practices and individual sentiments. Thus community members may hold individual women responsible for their decisions to marry out and reiterate that First Nations have no power of redress. Out marrying women's descendants who now feel alienated and "punished" for the mother's choices. Families suffer from a complex of having been 'divided and conquered'. Some participants spoke of family turmoil and personal pain resulting from the sexist biases of C-31. A sister and brother, born to unwed parents, the father a registered Indian, the mother non-native, now have different entitlements. The brother is 6(1) because his entitlement comes from being registered prior to 1985 when patrilineal rights were bestowed on 'illegitimate' sons. The sister is categorized 6(2) because she could only be registered after 1985 and can claim only one registered parent. Imposed sexist biases leave female kin vulnerable to low esteem and mistrust as they witness their male kin benefiting while they endure feelings of isolation and rejection.

The traumatic impact of C-31 is felt most strongly in the demands for disclosing paternity. Few participants in our study wished to discuss this issue, and those who did were not mothers directly affected by the policy. Grandmothers wept and trembled as they learnt for the first time that grandchildren and great grandchildren were not, and apparently cannot be, registered. Many, however, would only speak privately. In the presence of each other, their grief consumed them. Younger women were often too stressed to address the issue in focus groups. Some community members shared views that naivety, ignorance, and the complication of registering babies can explain why young mothers are not identifying fathers. But older women were far more concerned about the safety related reasons for the silence of young mothers. One grandmother described teenage mothers raising their babies in an extended family setting, where customary adoption was never questioned. To her, disclosing the father's name breached rules of respect and personal dignity. Silence, not disclosure, she suggested, is the way to respect everyone where naming a father could shame others. One elder who accepts principles of reincarnation,

sees the demand to reveal a father as a misunderstanding of life. People 'come back' she explained, and we can never be sure that the babies the government refuses are not ones who have 'come back' to be with their families. By not registering babies because their fathers are not named, communities lose continuity through generations.

The impact of unstated paternity constitutes historical trauma. Shaped by colonial history while shaping the future, the policy implicitly reintroduces the historic Euro-Canadian repugnance for matrilineal societies and moral judgments against 'illegitimate' births. It reinforces the very biases against 'mixed heritage' that resonate in the multiple categorizations listed in section 6 of the *Indian Act.* More specifically, by enforcing patrilineal notions of descent, and implied measures of blood quantum, this rule disregards the very essence of cultural difference: the sacred meanings of birth are swept aside by imposing a universal means by which to construct identity and to constrain defining characteristics of First Nations membership. By dividing families at the time of birth, it inflicts trauma on mothers whose children will be alienated in the future. If carried into the future it will place burdens of proof on the children whose paternity is unstated, creating social distress for those who cannot determine their fathers' identities, and for those who can and cannot register in consequence. Knowing the misery arising from the *Indian Act*, it is impossible to view a stable future for children and families divided by unstated paternity. Concern for the future creates genuine and deep anguish across First Nations.

Communities struggle with a sense of having been 'divided and conquered' as they confront the emotional conflicts resulting from C-31 and individuals' demands that First Nations leaders take action. A member of the Nee Tahi Buhn First Nation described the continuing impact of the *Indian Act* as being a 'silent crime'. Community fractures from the initial discrimination of 12(1) (b) in the 1951 *Act* through to the impact of C-31 on extended family today, she says, have not been addressed publicly by either the government or First Nations leaders. In her eyes there has been no accountability and without public apologies the community will remain divided. She describes the situation today as one in which the Nee Tahi Buhn First Nation is "like two separate bands....Bill C-31s feel separate. Nee Tahi bun is a small band of 128 and we shall see the impacts very heavy in the future generation." Similarly, a member of the much larger Lake Babine Nation calls for healing of historic wrongs. She contextualizes her criticism of the *Act* within the need to "decolonize people." In her view,

> some people are conditioned to this new [Indian Act regime] era....We need to heal from the impacts of colonization, the residential school and child welfare system and look at things holistically, where by we can make informed decisions and move our nations forward in a progressive manner.

She also views the need to heal in historical context: First Nations must move beyond the history of government control to a point where they can take their destiny in their own hands and act on their responsibility for future generations. In sum, the *Indian Act*, and C-31 in particular, must be understood as historic trauma.

VI. CONCLUSIONS

Any understanding of C-31 needs to be placed within the colonial circumstances that have wrought historic trauma on First Nations women, families and kin networks. The historic, multilayered impact of state imposed identity constructs is the root of contemporary experience of C-31. Women experience C-31 within their collective articulation of what has happened to women and children in the past, in the present and within their shared apprehension of the future, as fewer and fewer children carrying 6(1) status are born into their First Nations communities.

Bearing in mind the axiom, laws make persons, it follows that where law and force of the state delegitimizes established forms of family, kin and identity law remakes identity. To the extent that this imposes cultural discontinuity and social disruption, the ensuing process is one of multilayered trauma that encapsulates individuals and communities. With respect to C-31 and demands for disclosure of paternity, the trauma has and will continue to reverberate through kin relations as communities are depleted of registered members and grandmothers struggle with the loss of grandchildren whom they can never know on their own terms.

ENDNOTES

[1] A fuller account of this study was funded and published by the Policy Research Directorate, Status of Women Canada, 2006 under the title *Seeking Alternatives to Bill C-31: From Cultural Trauma to Cultural Revitalization through Customary Law.*

[2] A number of terms are used to describe families organized around male authority and social and economic privileges. The patriarchal nuclear family is the conventional family form of Europe; that is a married couple and dependent children with the husband/father carrying privileges of authority and rights denied to the wife/mother. In keeping with preferences for patriarchal family organization, colonial authorities enforced patrilineal rules, descent through the father, to determine Indian status. Married women were expected to reside in the home community of their husbands, a practice known as patrilocal residence. Paternalism is the assumption that male authorities within the family and state are best able to define the needs of others. All of these practices undermined traditional membership in extended groups of kin who shared property and resource rights. These groups, known as kin corporate groups, protected women's access to resources through descent and through marriage.

[3] The speaker is from a First Nation that has followed the Indian Act rules and excludes non-status individuals from its membership code, though it is engaged in debate on membership.

[4] We have recorded use of C-31 as a term of identity at public talks, at conferences, and in meetings between INAC officials and First Nations.

INDIAN REGISTRATION, MEMBERSHIP AND POPULATION CHANGE IN FIRST NATIONS COMMUNITIES

Stewart Clatworthy, Four Directions Project Consultants

I. INTRODUCTION

Much discussion of the 1985 Bill C-31 amendments to the *Indian Act* has focussed on the reinstatement of individuals who lost status registration through earlier provisions of the *Act*, and the registration of their children, or on Indian registration for children born post April 16, 1985. While both changes have resulted in substantial short-term increases to the registered Indian populations of many First Nations[1], they have potential for more significant impacts in the medium and longer-terms. These impacts emerge from the interplay of the new rules for determining Indian registration, the rules adopted by First Nations determining membership and the parenting patterns of First Nations populations.

Prior to the 1985 *Indian Act*, registered Indian status and First Nations (Band) membership were equivalent. "Band members" were individuals contained on the Indian register for a given First Nation. Since the adoption of Bill C-31, the Indian register continues to determine membership only in cases where a First Nation has not adopted its own membership rules. First Nations that adopted membership rules under section 10 of the 1985 *Act* maintain their "Band List", distinct from the Indian register.[2] Thus, the population eligible for membership and Indian registration can differ.

Registration and membership convey different sets of rights, entitlements and benefits. Indian registration guarantees freedom from taxation on reserve, eligibility for post-secondary education support and access to a broad range of health care services provided under Health Canada's Non-Insured Health Benefits (NIHB) program. The registered Indian population is also the basis for determining financial allocations to First Nations for some programs and services. Membership conveys political rights (including the right to vote and run for Council in First Nations elections), and in many First Nations is a defining criterion for access to First Nations programs and services.

This study examines the rules currently being used by First Nations to determine membership and how they interact with Indian registration to facilitate social and political inequalities within future First Nations populations. Projections are used to illustrate how the populations of First Nations using various types of membership rules are likely to change. Some of the program and service challenges facing First Nations and other governments given the emergence of new "classes of citizens" are discussed.

II. A REVIEW OF FIRST NATIONS MEMBERSHIP RULES

In their 1992 review, Clatworthy and Smith examined membership rules adopted by 236 First Nations as of April, 1992, whose features included:

- definition of the initial member population (those who qualify for membership at the time of adoption of the rule);
- the "descent or inheritance rules" by which descendants of the initial member population inherit or qualify for membership in the future;
- additional criteria -limitations or tests- applied to otherwise qualified individuals;
- provisions for extending membership to individuals who do not qualify for initial membership or on the basis of descent (e.g. spouses, adopted children); and
- the mechanics of implementation, including the decision-making bodies involved in the approval/rejection of membership applicants.

Using information concerning the population eligible for initial membership and the descent (or inheritance) rules determining how membership eligibility is transferred to future generations, they identified four main types of membership rules adopted under section 10 of the 1985 *Indian Act*, including:

- ***Limited One Parent rules***, where eligibility for membership requires at least one parent who is a member and applicant entitlement to Indian registration;
- ***Unlimited One Parent rules***, where eligibility for membership requires at least one parent who is a member, regardless of applicant's entitlement to Indian registration;
- ***Two Parent rules***, where eligibility for membership requires that both parents be members; and
- ***Blood Quantum rules***, where eligibility for membership is determined on the basis of the amount of "Indian blood" that person possesses in relation to a minimum standard.

These four main types of membership rules were further divided into 22 sub-groups based on the definition of the population admitted into initial membership. First Nations that adopted membership rules prior to June 28, 1987 were allowed to exclude certain groups whose rights to membership were not protected under the 1985 *Act*. The largest group excluded from initial membership included the children of women who lost Indian registration status under the previous *Indian Act* as a consequence of marriages to non-Indians and who were born subsequent to those marriages.[3] The exclusion of this group of individuals also has important implications for their descendants, as they will not qualify under the terms of most First Nations membership rules. The failure of the revised *Act* to guarantee rights to membership for the children of women who were removed from the Indian register as a consequence of inter-marriage has given rise to claims of "residual" gender discrimination in the 1985 *Indian Act* and is the basis for several on-going legal challenges.

III. REVISING THE CLATWORTHY/SMITH TYPOLOGY

First Nations must submit proposed membership rules under section 10 of the 1985 *Indian Act* to Indian and Northern Affairs Canada (INAC). As of December 31, 2002, INAC records indicate that 311 First Nations had submitted membership rules, of

which 241 rules received approval. Nine of the 241 First Nations with approved section 10 membership rules are no longer applying these rules; eight now determine membership under self-government legislation while one now bases membership on the rules governing Indian registration under section 6 of the *Act*.

INAC records revealed that only five First Nations had submitted membership rules that were approved since 1992. Membership rules for these First Nations were reviewed and classified using the same criteria developed earlier. Three First Nations employ a one parent membership rule limited to registered Indians and including all registered Indian descendants of members. Two other First Nations employ an unlimited one parent rule open to all descendants of original members.

A survey of all First Nations that had adopted membership rules under section 10 was undertaken to determine whether they were being applied and to obtain information concerning the nature of any approved or planned amendments. The main findings are:

- A large majority of First Nations that adopted section 10 rules are applying these rules to determine membership. Of the 212 First Nations for which interviews were completed, only 18 are not presently using a membership rule;

- Among the 18 First Nations not applying their membership rules, seven were currently using the *Indian Act* rules. In four First Nations decisions concerning membership were being made by Chief and Council. Another four reported a moratorium concerning membership. Two First Nations indicated that membership was based on family or community sponsorship, while one did not reveal.

- 31 First Nations reported amendments to original membership rules. Respondents for six either refused to specify or were unsure of the changes. Amendments for 19 dealt with minor aspects that appear to have little impact on membership eligibility.

- Substantive rule amendments were reported for six First Nations, including two that made changes to underlying descent provisions. These two were originally identified as using restrictive two-parent rules; one reported a change to the descent provisions governing Indian registration and the other to the more inclusive descent provisions of a one parent rule. The expected effects of these changes would be the qualification for membership of a larger segment of future descendants.

- Two other First Nations that had excluded the descendants of women who inter-married prior to the 1985 *Indian Act* amendments, reported changes that extended initial membership eligibility to all Bill C-31 registrants, including this group of descendants. In the future, membership eligibility would also be extended to some of the descendants of this group.[4]

Based on these findings it is possible to re-assign First Nations that have made changes to their membership rules according to Clatworthy and Smith categories. Membership in most First Nations (377) is determined by the rules governing Indian registration

under section 6 of the 1985 *Indian Act*. About 58 additional First Nations are currently applying rules which are equivalent to the *Indian Act*. The remaining 174 First Nations are applying rules which differ significantly from those governing Indian registration. These include 84 using unlimited one parent rules, 64 using two parent rules, and 26 First Nations using blood quantum rules.

IV. POPULATION PROJECTIONS: REGISTRATION & MEMBERSHIP

This section of the report discusses a new series of projections which estimate the future population eligible for First Nations membership and Indian registration. The projections span a 75-year period (2003 to 2077), roughly three generations into the future. The projections focus on the population that is eligible for membership by virtue of satisfying the descent or inheritance requirements of First Nations membership rules and other limiting conditions such as entitlement to Indian registration. Other discretionary factors may also be applied in determining membership; as they generally exclude some individuals, the actual population of First Nation members is likely to be smaller than the eligible population.[5]

These projections focus on the populations of 593 First Nations, including the 232 that adopted their own membership rules and 377 who did not, whose membership is determined by the rules governing Indian registration. Individual First Nations were aggregated into 93 small groups on the basis of three key factors expected to influence their future populations: the type of membership rule in use, the rate of exogamous (Indian /non-Indian) parenting and regional location. Separate projection models were also configured for the populations residing on and off reserve.

Depending upon the type of membership rule, the four population sub-groups are:

- Indian registration and also eligible for membership (**Registered Members**);
- Indian registration but not eligible for membership (**Registered Non-Members**);
- Not entitled to Indian registration but eligible for membership (**Non-Registered Members**); and
- Not entitled to Indian registration and not eligible for membership (**Non-Registered Non-Members**).

Registered members form the largest component of the First Nations population. Significant numbers of individuals entitled to Indian registration but ineligible for First Nations membership, were common only among First Nations using two parent rules and one parent rules that excluded from initial membership individuals whose rights to membership were not protected under the *Indian Act* prior to June 28, 1987. Non-registered descendants who also lacked eligibility for membership were common among First Nations using all types of rules except unlimited one parent and 25% blood quantum rules. Individuals who lacked entitlement to Indian registration but met conditions for membership were common only among First Nations using unlimited one parent membership rules.

Most of the roughly 45,000 individuals who were ineligible for First Nations membership form one of two sub-groups: the section 6(2) children born to women who inter-married (and lost their registration status under the prior *Indian Act*) and the descendants of these children. In general, First Nations which experience higher rates of exogamous parenting have populations where those who are entitled to Indian registration as well as eligible for membership are a smaller segment.

Some Projection Results

The total population is projected to increase throughout most of the 75-year time period reaching a maximum of about 1.371 million in year 2072. The population eligible for First Nations membership is projected to rise over the initial 50-year period reaching about 987,600 individuals in year 2052. This population is projected to decline to about 914,300 individuals by year 2077.

Projected estimates for the combined on- and off-reserve population at the national level by membership eligibility and Indian registration sub-group show that Registered Members are expected to form a majority of the total population throughout the projection period. This population is expected to grow over the initial 45 year period to about 955,000, but decline to about 858,100 within 75 years. The population eligible for First Nations membership is expected to include a growing number of individuals who do not meet the requirements for Indian registration. This segment of the population, which is estimated to total only about 3,000 individuals in 2002, is projected to increase throughout the period to about 56,200 within 75 years.

The population that does not qualify for First Nations membership is expected to increase throughout the entire time period from the current level of 44,600 to 456,400 individuals within 75 years. Although individuals who are not entitled to Indian registration are projected to form a large majority of those ineligible for membership, they will also include a growing number of Registered Non-Members. This latter group is expected to grow from about 20,900 individuals in 2002 to about 45,100 individuals within 25 years and to about 86,300 individuals within 75 years.

Population changes at the national level are expected to be quite different on and off reserve. Growth in the total population of survivors and descendants on reserve is projected to occur throughout the entire projection period reaching about 840,800 individuals within 75 years. Rates of growth on reserve, however, are expected to fall throughout the period and approach zero near the end of the period. The population eligible for First Nations membership is projected to increase for about 60 years peaking at about 688,700 in year 2062, followed by a small decline over the remainder.

A large majority of the population eligible for membership on reserve is also expected to qualify for Indian registration. This population group is expected to grow for about 60 years reaching about 670,900 in year 2062, then to decline gradually thereafter, and number about 652,500 within 75 years. Growth in the on-reserve population ineligible

for membership is expected to occur throughout the projection period. Currently estimated at about 9,500 individuals, it is projected to rise to about 44,700 within 25 years and about 171,300 within 75 years. Although most of those ineligible for membership are also expected to lack entitlement to Indian registration, the Registered Indian component of those lacking eligibility for membership is expected to increase sharply from about 6,000 in 2002 to about 55,600 within 75 years. Growth is also expected over the period in the on-reserve population that are Non-Registered Members. This sub-group is projected to increase from about 500 individuals in 2002 to about 17,000 individuals over the projection period.

Much more pronounced changes are expected to occur in the composition of the off-reserve population. While the total population of survivors and descendants off reserve is expected to increase for about 65 years, growth in the population eligible for membership is expected to occur for only 30 years. The member-eligible population is expected to peak at about 345,300 individuals in 2032 and fall to about 244,800 individuals within 75 years (a level roughly 40,000 lower than in 2002). The off-reserve Registered Members population is projected to increase for only 25 years, peaking at about 332,500 individuals. Over the remainder of the projection period, this population is projected to decline to 205,500, roughly 78,000 lower than in 2002.

High rates of exogamous parenting that characterize off-reserve populations are expected to result in very rapid growth in the population lacking membership eligibility. This population, which is estimated to number about 35,200 individuals in 2002, is projected to rise to about 109,200 within 25 years and to about 285,000 within 75 years. Within about 70 years, those ineligible for First Nations membership are expected to form a majority of the off-reserve population, the vast majority of which are also projected to lack entitlement to Indian registration.

Population Impacts by Membership Rules

This sub-section provides a summary of national projection results for different types of membership rules for the combined population living on and off reserve:

- The number of survivors and descendants ineligible for membership in First Nations that base membership on the rules governing Indian registration is expected to increase sharply throughout the period. Within 25 years this population is expected to number about 89,300, (about one in every 8 individuals), and is projected to grow to about 207,600 within 50 years and to about 316,000 within 75.

- First Nations that use rules equivalent to the *Indian Act* but exclude those whose rights were not protected under the 1985 *Indian Act,* are projected to experience rapid growth on the share of the population that is ineligible for membership. This population which formed about 20 percent of the total population in 2002 is projected to increase to about 40 percent within 75 years.

- All survivors and descendants of First Nations that use unlimited one parent rules retain eligibility for membership. Over the course of the projection period, however, a growing segment of the population eligible for membership is expected to lack entitlement to Indian registration. Within 75 years, more than one in every 3 members is expected to lack Indian registration.

- Individuals who are eligible for membership are projected to form a majority of the populations of First Nations that use unlimited one parent rules but exclude those whose rights were not protected under the 1985 *Indian Act*. Within 75 years, however, about 1 in every 4 members is expected to lack entitlement to Indian registration.

- The population eligible for membership in First Nations that use two parent membership rules is projected to decline rapidly throughout the period. Within 25 years, those ineligible for membership are projected for a majority of the population. Most of those who do not qualify for membership are expected to qualify for Indian registration.

- Those who do not qualify for membership are expected to form a growing share of the populations of First Nations that use 50% blood quantum rules. Within 75 years about one-third of the population is expected to lack membership eligibility. About 1 in every 4 of those who lack membership eligibility is however, expected to qualify for Indian registration.

- All survivors and descendants of First Nations that use 25% blood quantum rules are expected to retain eligibility for membership. Within 75 years, however, about 1 in every 4 individuals eligible for membership are expected to lack entitlement to Indian registration.

V. IMPLICATIONS FOR SERVICE PROVISION

Populations of most First Nations are in the process of changing from those who are eligible for Indian registration and membership forming a large majority to those who lack eligibility for membership and/or Indian registration forming a large and growing segment. These residents are expected to form a majority of the population in many First Nations communities within two generations.

The main focus of this study relates primarily to: the demand for services associated with various classes of First Nations citizens and the financial resources required for comparable levels of services to the various citizen groups. Current policies and funding mechanisms have evolved within a context with no distinctions between membership and Indian registration among First Nations. As the impacts of the interplay of membership rules, Indian registration rules and exogamous parenting unfold, First Nations and other governments are likely to experience growing pressures

to provide a wide range of services to groups of citizens who have not traditionally generated significant service demand on First Nations reserves.

How First Nations and other governments respond to these compositional shifts in service demand can be expected to have profound effects on First Nations communities. However, this study's contribution to the topic is limited to providing some information about the scale of future demand for specific types of services by various groups of citizens expected to comprise First Nations populations and estimates of associated financial requirements. Responsibility for provision, funding and delivering services to these various citizen groups remains to be determined.

Many of the underlying and unforeseen factors which can shape the future demand for and cost of services are quite difficult to forecast accurately, especially in the medium and longer terms. Accordingly, estimates prepared for this study are based on a specific hypothetical scenario which assumes that both demand and the cost per service or cost per client remain stable in the future at levels estimated for the baseline year, 2002. The scenario also assumes that the future service needs among individuals of different citizen groups within First Nations populations are the same. It allows one to explore the requirements and related costs of providing comparable levels of services to all classes of First Nations citizens, regardless of membership or Indian registration status. Service demand and cost implications are explored over a 25-year period spanning the years 2002 to 2027.

Demand and related financial estimates for housing, infrastructure, education, children in care and social assistance have been carried out for the population residing on First Nations reserves, as First Nations administrative responsibilities for these services are generally restricted to reserve residents. Estimates for post-secondary education support services and for NIHB's pharmacy and dental benefits also include the population residing off-reserve, as these programs do not contain residency restrictions. Collectively, these programs and services account for a substantial portion of the total resources provided by the federal government to First Nations populations.

Estimates resulting from this analysis suggest that the levels of financial resources that would be required to extend comparable levels of services to all sub-groups residing in First Nations communities are likely to become quite significant over the next 25 year period. While Registered Members are expected to account for most of the incremental demand for future services, resources associated with providing comparable levels of the services to population sub-groups that lack membership eligibility and/or Indian registration are expected to approach $3.7 billion over the 2003-2027 period. Most of these resources would be associated with maintaining comparable levels of service to descendants who lack entitlement to Indian registration. Children are expected to form the largest segment of this population throughout the 25 year projection period.

The level of incremental resources required to support comparable levels of service provision among sub-groups which lack eligibility for membership and/or Indian

registration are expected to remain modest in the short term, but increase at an accelerating pace in medium and longer terms. Within 25 years, more than one-quarter of the projected increase in resources needed to provide the services highlighted in this report is expected to result from service demands associated with residents who lack Indian registration and/or First Nations membership.

VI. CONCLUSION

As a consequence of the 1985 *Indian Act* changes to the rules governing Indian registration and the adoption by many First Nations of membership rules, the populations of most First Nations in Canada are undergoing significant transformations. The move is generally away from populations which are comprised largely of individuals who meet the requirements for both Indian registration and First Nations membership to those which include growing numbers of citizens who lack Indian registration and/or eligibility for membership. Shifts in the composition of First Nations populations are presently pronounced off reserve and are expected to become significant in many reserve communities over the course of the next generation. Within this timeframe, classes of citizens with differing rights and entitlements are expected to become the norm in most First Nations communities.

This study's results suggest that First Nations and other governments are likely to experience growing pressures to provide a wide range of services to groups of citizens who have not traditionally formed a significant component of service demand. How First Nations and other governments respond can be expected to have profound effects not only on individuals but also on many aspects of life in First Nations communities. Jurisdictional and financial responsibilities for program and service provision to the various classes of residents which are expected to comprise First Nations communities in the future are unclear. Current First Nations policies surrounding service allocation (which generally tend to limit services to members) may result in some groups of citizens who lack access. Similarly, the basis for establishing funding levels under current inter-governmental transfer agreements may not recognize the service needs of all sub-groups of citizens residing in First Nations communities. Resulting inequalities among citizen groups with respect to access to services could lead to conflicts, legal challenges and the erosion of social cohesion within communities.

A central issue relates to the principle of establishing comparable levels of access to services among all community residents. In this regard, options available to First Nations within the confines of the *Indian Act* appear limited. Membership rules and the formulation of service allocation policies which are cognizant of the emerging changes in community populations may be an option for some First Nations. Such initiatives could mitigate some of the inequality among classes of citizens but are also likely to require new financial transfer arrangements with the federal/provincial government(s). It is not clear that suitable financial transfer arrangements could be achieved within the context of the current *Indian Act*. As such, First Nations may also want to explore the option of self-government. In theory, self-government financial transfer agreements

can be configured to enable service provision to all citizens who reside in the community. Inter-governmental negotiations, however, are likely to be required in the process of pursuing this latter approach.

ENDNOTES

[1] As of December 31, 2002, more than 114,000 individuals have been added to the registered Indian population through these provisions. Clatworthy, S. J., *Implications of First Nations Demography: Recent Trends and Projected Population Changes*, Prepared for the Research and Analysis Directorate, Indian and Northern Affairs Canada, Ottawa, 2002.

[2] This is also the case for self-governing First Nations; their membership rules are not part of this study.

[3] Eighty five (or roughly 36 percent) of the 236 First Nations that had adopted membership rules at the time of their review, elected to exclude this group of descendants from initial membership. Clatworthy, S. J. and A. H. Smith, *Population Implications of the 1985 Amendments to the Indian Act,* Assembly of First Nations, Ottawa, 1992.

[4] In addition, 86 First Nations reported that they were actively considering changes to their membership rules. Twenty-six (26) of these First Nations reported changes that were considered to be major and would impact on significant numbers of individuals. In all cases, the proposed changes would extend membership eligibility to additional groups of individuals denied under the original membership rule.

[5] For example, membership in most First Nations is not automatic upon birth; individuals are required to apply. Some may not do so.

INDIAN REGISTRATION: UNRECOGNIZED AND UNSTATED PATERNITY[1]

Michelle M. Mann, B.A., LL.B.

I. INTRODUCTION

While Bill C-31 attempted to deal with gender-based discrimination in the *Indian Act*[2], it has not been entirely successful. One remaining concern pertains to federal policy relating to the registration of children with "unstated" or "unrecognized" paternity.

Given high rates of unstated and unrecognized paternity in the First Nations community, questions arise concerning the Registrar's policy and the determination of Indian registration and accompanying Band membership for many children born after 1985.

This paper provides a critical appraisal of a variety of policy options for the Registrar of Indian and Northern Affairs Canada (INAC) concerning Indian registration and unstated or unacknowledged paternity. It offers conclusions that address the causes and impacts of unstated paternity and uphold the principles of non-discrimination as reflected in the Canadian *Charter of Rights and Freedoms*[3] and international human rights covenants Canada has ratified.

II. THE REGISTRAR'S POLICY: IMPACTS & CAUSES

After Bill C-31 in 1985, INAC Indian registry policy[4] was changed to require the father's signature on the birth form and other forms of proof of paternity, without which the child's registration would be determined solely on the basis of the mother.

As a result, many children are either registered incorrectly, or not registered at all where fatherhood is not established in accordance with the Registrar's policy at INAC. Non-reporting or non-acknowledgment of a registered Indian father may result in the loss of benefits and entitlements to either the child or its subsequent children through the loss of Indian registration.

For example, if a First Nations woman entitled to subsection 6(1) registration has a child with unestablished paternity, that child is automatically entitled to subsection 6(2) registration. If the First Nations woman is registered under subsection 6(2), then her child is not entitled to registration as a status Indian. Similarly, the child of a non-registered woman with an unnamed registered father will not be entitled to registration.

The INAC policy pertaining to Indian registration is similar across all regions. Currently the Registrar accepts Vital Statistics birth records and statutory declarations as evidence along with a completed *Child Application for Registration as an Indian* form with signed parental consent statements. (INAC 2003)

Thus, while the *Indian Act* provides that determination of a child's Indian status is based on both parents, the requirements for proof of paternity are established by INAC policy.

The gravity of the unstated paternity problem is evident. An analysis of the Indian register for children born to women registered under subsection 6(1) between April 17, 1985 and December 31 1999 indicated roughly 37, 300 children with unstated fathers. This number represents about 19 per cent of all children born to subsection 6(1) registered women during that same period.[5] And while direct numbers were not available for children with unstated fathers born to subsection 6(2) registered women, as many as 13,000 may have unstated fathers and are therefore ineligible for registration.[6]

Indian registration provides tax benefits for those with reserve based property, membership in Bands whose membership is still determined by INAC, 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.

The benefits conferred by registration and membership are of great import to First Nations women who remain most often the primary care givers of children. Aboriginal women in Canada experience lower incomes and higher rates of unemployment than Aboriginal men or other women, and have a higher proportion of single mother families.[7] While many First Nations women and their children experience the detrimental effects arising from unstated or unrecognized paternity, teenage mothers and their offspring may suffer disproportionately.

In addition, the two-parent rule's reduction of registered Indians can be perceived as governmental attempts at genocide, assimilation, and gradual elimination of the population.

The causes underlying unstated paternity are many, ranging from administrative issues to a mother's decision not to name the father. Unacknowledged paternity can be said to arise where the mother names the father but not in accordance with the requirements of provincial Vital Statistics or INAC policy, thereby causing paternity to be considered unstated. Approximately 50 per cent of unstated paternity cases are considered to be unintentional on the part of the mother, while the other 50 per cent are deemed intentional. [8]

Problems have been identified with the registration of birth form which is required by Vital Statistics in each province. It is completed by the mother, and names the father along with other details of the birth. In most provinces the registration of birth form must be signed by both parents where they are not married. Where the form is not signed by both as required, the father's name is stricken from the birth registration if it was present.

In areas of the country where Vital Statistics requires only the mother's signature on the birth registration form, unmarried parents file a joint request form with both signatures where the father is to be acknowledged. Where the joint request form is not received, the father's information is stricken from the birth registration form.

The requirement for the father's signature on the birth registration form is highly problematic; where the mother must travel outside of the community to give birth, the father may not attend and therefore not be present to sign the birth registration. The difficulties and expense inherent in amending birth registration information are also identified as a cause of unstated paternity.[9]

Problems with registering the father with Vital Statistics then lead to problems with obtaining Indian registration. Where the birth document is silent on paternity but Indian paternity is

claimed, INAC requires statutory declarations by the parents to substantiate the father. However, commissioners of oaths are not easily located in remote communities and generally charge a fee for their services. In addition, registration of a birth with INAC requires a completed *Child Application for Registration as an Indian* form accompanied by signed parental consent statements by both parents where paternity is stated.

At the opposite end of the spectrum is the situation whereby the mother decides not to state the father, or the father refuses to acknowledge paternity. Underlying causal factors may include the mother and father having an unstable relationship, concerns about confidentiality in a small community, and the mother's concerns about child custody and access or her own registration and membership.[10] In addition, the pregnancy may be the result of abuse, incest or rape, in which case the mother will likely be unwilling or unable to identify the father.

It has also been noted that single First Nations mothers often feel that the father's background should not be a factor where he is not an active member of the family and that to require his acknowledgement is culturally inappropriate.[11]

III. LEGAL CONSIDERATIONS

A through approach to arriving at recommendations that seek to ameliorate unstated and unacknowledged paternity issues requires a consideration of the legal environment. Those legal instruments perceived as most relevant are canvassed.

The most relevant section of the *Charter* for the purposes of this discussion is subsection 15(1) which provides for equality before and under the law, as well as equal protection and benefit of the law without discrimination.

As far back as 1988, the Standing Committee noted residual sex discrimination in the requirement for unmarried Indian women to name the father of their children to establish their children's entitlement to registration and band membership.[12]

Both the cases of *Villeneuve, McGillivary v. Canada*[13] and *Gehl v. Canada (Attorney General)*[14] deal directly with the unstated paternity issue, though neither case has gone very far. In both cases, women are saying they and their children are registered incorrectly or not at all due to unstated paternity. They argue that their rights to equality under the law have been violated because the government discriminates against applicants for Indian registration on the grounds of both sex (being female) and family status (the children of unwed parents).

A section 15 *Charter* equality case that is of interest is *Trociuk v. Attorney General of British Columbia.*[15] In this case, an estranged non-Aboriginal father and mother were battling over the mother's legal right to submit the statement of live birth on her own, marking the father as "unacknowledged by the mother". The father successfully challenged this law, on the basis that it discriminated against him as a man (and father). However, the Supreme Court of Canada said that there are circumstances where a biological father will be appropriately unacknowledged. This includes where a woman becomes pregnant as a result of rape or incest; where this has occurred, a special application procedure involving affidavits could be designed to control negative effects on mothers that might flow from making an unacknowledgment application.

The Court said that such a procedure would be helpful to two disadvantaged groups under subsection 15(1) of the *Charter*: women who have valid reasons to unacknowledge a father, and their children.

Many First Nations women also say Canada's international commitments are being broken by how the Registrar's unstated paternity policy impacts on the children of unwed parents, and their mothers.

The *Universal Declaration of Human Rights*[16] provides for freedom from discrimination on the basis of sex and birth, and for the equality and equal protection of the law for all. Article 25 says that everyone is entitled to an adequate standard of living, while motherhood and childhood deserve special care and assistance. All children, whether born in or out of marriage, are to enjoy the same social protection.

Article 2 of the *Convention on the Rights of the Child*[17] provides for non-discrimination irrespective of a child's or his or her parent's sex, or birth. Article 8 protects a child's right to preserve their identity, while article 30 provides that children of indigenous origin shall not be denied the right to enjoy his or her own culture.

The *International Covenant on Civil and Political Rights*[18] also provides protection from discrimination on the grounds of sex and birth in Article 2; Article 26 contains equality provisions and article17 protects individual privacy rights.

Article 27 of the *International Covenant on Civil and Political Rights* guarantees that persons belonging to ethnic minorities may enjoy their culture in community with other members of their group. Article 27 was the basis for the success of *Sandra Lovelace v. Canada* at the United Nations Human Rights Committee in 1981, where Sandra Lovelace challenged the now infamous *Indian Act* provisions wherein a woman lost Indian registration upon "marrying out".[19] In 1985, the government responded to this international criticism with Bill C-31, restoring registration to these women.

IV. CRITICAL OPTIONS

It is the opinion of the author that the registration needs of First Nations women and their children with unstated and unrecognized paternity cannot be resolved without addressing INAC policy in a fairly fundamental way.

1. Maintain the Status Quo

The first option is self-explanatory: maintain the status quo, do nothing, but wait and see where litigation and political pressures take INAC. Advocates of this approach posit that it avoids making premature changes that will run counter to the demands flowing from current, unresolved challenges.

The least proactive of all options, it does not address what is likely to be increasing litigation on the issue and the possibility of a high court decision rendering the policy inoperable. It also does

not address the political environment, in which many First Nations' men and women increasingly challenge the legitimacy of the federal government defining "Indianness". Nor does it address the children; those who suffer for the actions or oversights of their biological parents under a policy that is not in their best interests.

2. Departmental Prioritization

Departmental prioritization of the unstated paternity issue could include more targeted research and exploration of policy options, including vetting by stakeholders, most particularly within the First Nations community and by First Nations women. The issue requires greater commitment from the Department which could develop and implement a national initiative. Stakeholders should receive funding for participation where necessary.

However, departmental prioritization does not address the youth being inappropriately registered or denied registration every year and the resulting impacts on their quality of life. Nor does it take into account pending litigation on the issue.

3. Educational Initiatives

Any educational initiatives pertaining to paternity and Indian registration must be targeted to both men and women, since men are the fathers whose signatures may be missing or withheld.

INAC could participate in developing informational material concerning birth, Indian registration and unstated paternity for distribution to expectant parents, as well as community workshops and information sessions, some of which might be specifically targeted to teens.[20] The government should make funding available to Aboriginal women's organizations to develop these educational materials and ensure they are widely distributed across Canada.[21]

INAC could enhance the role of Indian Registry Administrators (IRAs) who obtain the appropriate supporting documents and signatures for "field events"[22] in their community then report to the regional office or enter them directly in the Indian Register. IRAs are based in First Nations communities and are therefore well positioned to undertake local education initiatives.

While education is a valuable initiative, it will not address the current litigation environment, nor will it likely impact upon the ongoing loss of, or incorrect, registration in the near future. Most importantly, while educational initiatives will address some situations in which paternity in unstated, others will remain, such as situations in which the mother will/can not identify the father.

4. Remedy "Administrative" Issues

The provincial *Vital Statistics Act* contributes to the problem, given that INAC heavily relies on birth registration for proof of parentage. Addressing some of the administrative concerns discussed earlier would likely result in a reduction in unstated/unacknowledged paternity.

It could be made easier to get both parental signatures on the birth registration form, including by the provision of birth accompaniment funds to fathers by INAC, joint request forms for birth registration signed in the community prior to the mother leaving to give birth, and alternatives to

notarization for amendments to birth registration, or the provision of a commissioner of oaths or s.108 *Indian Act* alternative to the community. INAC could also provide administrative and interpretation services in communities with respect to preparation of documents, and communications with outside agencies whether via "advocacy" offices or the IRAs.

Administrative measures will assist in reducing the number of First Nations children with unstated or unacknowledged paternity, but will not address the most grievous of situations, where the mother has reason for not disclosing paternity or the father refuses acknowledgment. It also does not address any discrimination existent via the Registrar's policy.

5. Registrar's Policy Change

While the two-parent rule is contained in section 6 of the *Indian Act* the requirements for proof of paternity are contained in the Registrar's policy. Policy is changed far more easily than legislation. The previous 1970 incarnation of the *Indian Act* provided that the child of a registered mother was entitled to registration unless the child's father was proven non-registered. Nothing in the literature reviewed indicates that this approach opened the "floodgates" to registration for children not so entitled.

A policy wherein the child of a registered Indian woman who swears that the father is also registered, is entitled to registration on the basis of both parent's heritage would address the problem. It would remedy any discrimination in the current policy and address related litigation, while staunching the flow of loss of and incorrect registration.

If INAC and First Nations have concerns about opening the "floodgates" to incorrect registration, than a policy similar to that contained in the 1970 *Act* could be instituted, notifying Bands of registration and allowing them one year to rebut registered Indian paternity.

At the very least, INAC policy should be changed to include a "*Trociuk*" style amendment, wherein women whose pregnancies are the result of abuse, incest, and rape and who want to "unacknowledge" the father, may file an affidavit as to registered Indian paternity. This would be an ameliorative approach for those women disadvantaged on the basis of sex, and for those children who are disadvantaged based on the conditions of their birth. The requirement of an affidavit from women who have been victimized would necessitate the availability of culturally appropriate trained counsellors in order to minimize the potential for re-victimization. Further input into the development of such a process should be obtained from First Nations women's organizations and such counsellors.

6. Amend the Indian Act

INAC could undertake to open up the *Indian Act* and amend the two parent rule contained in section 6, replacing it with one type of registration that could be determined by descent from one Indian parent. This would address the immediate issues concerning Indian women and unstated paternity, as it would no longer be a determining factor for registration of the children of one Indian parent. This would also effectively abolish the second generation cut-off rule. It would also accord with the feelings of some First Nations' women that registration should be determined by the mother.

It is beyond the scope of this paper to propose a new registration scheme for the *Indian Act* though it appears likely that the *Act* will be subject to increasing challenges. Changes to the *Act* could circumvent some registration related litigation; however, passing legislation in this area not only takes years but is also not guaranteed to succeed. Legislative amendment may be on the horizon, but it does not offer a timely solution to the unstated paternity issue.

7. Remove Registration from the Indian Act

Distaste for the entire registration system emerged in focus groups held by the Special Representative, wherein Aboriginal women voiced the alien nature of the *Indian Act* to Aboriginal culture. These participants felt that the registration and membership provisions of the *Act* should either be amended to respect traditional ways (such as matrilineal heritage) or the *Act* should be abolished altogether in favour of traditional laws.[23] It has been suggested that the *Indian Act* provisions be replaced with First Nations governance and citizenship codes

Courts have indicated that non-registration under the *Indian Act* is not to be equated with a loss of treaty rights, noting that there are other more important determinants. A similar rationale could be applied in determining entitlement to INAC's programming base for registered Indians.

The *Indian Act's* determination of Indian registration is likely to be subjected to increasing legal and political challenge in the years to come. However, the removal of registration from the *Act* and the subsequent development of alternative First Nations approaches will be a painstaking process, rendering it a less tenable option for addressing unstated and unacknowledged paternity.

V. CONCLUSION

The Registrar's policy regarding requirements for proof of paternity should be amended to allow an unmarried First Nations woman to swear an affidavit or declaration that the other parent of their child is a registered Indian. At the very least, the Registrar's policy should be changed to include a "*Trociuk*" style amendment.

Further policy and legal analysis should be conducted to ascertain whether this policy change should also apply to non-registered parents (Aboriginal and non-) who claim a registered Indian parent of their child, and to determine ways to curb possible abuse.

Further input into the development of such a process should be obtained from First Nations women's organizations and culturally appropriate trained counsellors in order to minimize the potential for re-victimization. First Nations women's and other representative groups are key stakeholders and should be consulted throughout the development of any policy and legislative change, educational initiatives, or administrative approaches. Where necessary, they should receive funding to facilitate their involvement.

The roots of First Nations women's systemic inequality are both broad and deep. While Bill C-31 was intended to weed the *Indian Act* of existing gender based discrimination, its replacement with discriminatory federal policy pertaining to the registration of the children of First Nations women with unstated and unrecognized paternity remains an ongoing cause of oppression of both First Nations women and their children.

ENDNOTES

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[1] This project was funded by Status of Women Canada, policy research fund.
[2] *Indian Act*, R.S.C. 1985, c. I-5, as am.
[3] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.
[4] Indian and Northern Affairs Canada. *Policies on Indian Registration*. Ottawa: Indian and Northern Affairs Canada, 2003.
[5] Clatworthy, Stewart. *Factors Contributing to Unstated Paternity*. Ottawa: Indian and Northern Affairs Canada, 2003a:2-3.
[6] Clatworthy 2003a:3.
[7] Hull, Jeremy. *Aboriginal Single Mothers in Canada 1996: A Statistical Profile*. Ottawa: Indian and Northern Affairs Canada, 2001: x.
[8] Clatworthy, Stewart. *Factors Contributing to Unstated Paternity Lecture*. February 21, 2003b.
[9] Clatworthy 2003a:14-15.
[10] Clatworthy 2003a:18.
[11] Holmes, Joan. *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, 1987:25.
[12] *Standing Committee on Aboriginal Affairs and Northern Development. C-31 Fifth Report. Ottawa: House of Commons, 1988:46:35.*
[13] *Villeneuve, McGillivary v. Canada*, Re- Amended Statement of Claim, August 20, 1998.
[14] *Gehl v. Canada (Attorney General)*, [2002] O.J. No. 3393.
[15] Trociuk v. British Columbia (Attorney General), [2003] 1 S.C.R. 835.
[16] *Universal Declaration of Human Rights*. Adopted by the General Assembly, United Nations. December 10, 1948.
[17] *Convention on the Rights of the Child*. Adopted by the General Assembly, United Nations. November 20, 1989.
[18] *International Covenant on Civil and Political Rights*. Adopted by the General Assembly, United Nations. December 16, 1966.
[19] *Sandra Lovelace v. Canada*, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981).
[20] Clatworthy 2003a:20-22.
[21] Erickson, Mavis. *Where are the Women: Report of the Special Representative on the Protection of First Nations Women's Rights*. Ottawa: Indian and Northern Affairs Canada, 2001: 22-23 and 31.
[22] An event occurring on or after April 17, 1985 and delegated by the Registrar to field officers to enter into the Indian Register.
[23] Erickson 2001: 23.

STATUS, MEMBERSHIP, CITIZENSHIP, KINSHIP, GENDER & RACE: FEDERAL LAW & FIRST NATION IDENTITY[1]

Wendy Cornet, B.A., LL.B.

I. INTRODUCTION

Legal definitions of Indian status, band membership and First Nation citizenship can affect personal identity and the enjoyment of individual human rights. Collectively, federal and First Nation laws have created many different legal classes of people of First Nation descent. This complexity can result in arbitrary results. These in turn can have negative effects on human dignity, personal freedom and self-esteem.

The complexities of current legal definitions of Indian status and band membership under the *Indian Act*, also have a negative impact on the ability of governments to effectively plan the delivery of vital programs and services such as health and education.

In some ways, the legal concept of "Indian" under the *Indian Act* reflects societal myths about race and about "Aboriginality" or "Indianness" as categories of race. There has been confusion about the difference between "racial" and "cultural" identities. Many people view the legal concept of Indian status as a foreign notion imposed on First Nations people. Many people of First Nation descent reject the term "Indian" and prefer the term "First Nation". Individuals may find that the law does not accommodate their own idea of their cultural identity.

This paper examines human rights and governance issues arising from these current approaches. The author suggests that a change in thinking is required to move towards laws more consistent with human rights.

II. FEDERAL LAW AND FIRST NATION IDENTITIES

The notion of "Indian" in the sense of a "North American Indian race" is an idea created by people and does not necessarily accurately reflect culture or identity of the people to which it is applied. Applying this term to the many diverse cultures, nations and language groups of North America is a striking example of how colonialism and other social forces can create racial categories.

The notion of "Indian" lumps a diverse array of distinct peoples indigenous to North America into one legal and racial category and ignores their distinct cultural and political identities. The goal of ensuring the equality and cultural rights of First Nation peoples is not well served by the continued use in statutes of the racial term "Indian". This goal would be better served by use of First Nation concepts of citizenship and the use of criteria such as culture and family relationships (kinship) as well as descent in defining First Nation citizenship.

Historically, the legal category of "Indian" was the basis for specialized legal treatment. It brought both positive and discriminatory impacts for the rights of First Nation people. More recently, Canadian law has recognized the need for specialized legal treatment of "Indians/First Nations" as peoples, not races, in order to protect their fundamental cultural, social, economic, civil and political rights as nations and peoples.

The *Indian Act* continues to provide a legal framework to define individuals in and out of identities such as "band member" and "Indian". Federal law applies an objective standard of "Indianness"; an either/or type classification system based on the circumstances of a person's birth.

The federal rules now governing Indian status and band membership rely heavily on descent-based criteria, with rigid cut-off rules to address situations of Indian-non-Indian parentage. In the case of Indian status, for persons born after April 16, 1985, descent is the only criteria, apart from adoption and some limited exceptions. The simplicity of descent-based criteria makes administration of entitlement easier than systems relying on factors such as cultural knowledge or degree of connection to a community. However, this simplicity is traded off for the complexity of delivering diverse government services and programs through varying criteria of Indian status, band membership/First Nation citizenship and reserve residency for eligibility or funding purposes. This is a challenge for both federal and First Nation governments.

Arbitrariness in definitions of Indian status and membership/citizenship has long been a concern of many First Nations women and organizations. These concerns include arbitrariness in the form of discrimination based on sex, descent, marital or family status. Aboriginal rights necessarily involve descent criteria to determine entitlement but descent need not be the sole criteria for determining First Nation citizenship. The rigid descent rules that now typify Indian status entitlement and most band membership rules are a relatively recent development. This rigidity has the unfortunate consequence of perpetuating colonial notions of race and also fails to respond to the needs of "biracial" or "multiracial" children. Further, federal laws, policies, funding criteria and the colonial legacy of racial categorization may influence First Nation decision making about band membership.

For many years, Indian status and band membership provisions have supported federal policy goals of forcibly assimilating First Nation people. First Nation women were a key target of assimilative policies until amendments to the Indian Act were passed in 1985. S. 12(1) (b) of the pre-1985 *Indian Act* is perhaps the most infamous example. This provision removed Indian status from any woman marrying a person without Indian status and from her children.

For some time, First Nation people have struggled to reassert control over their personal identities as individuals and over their collective identities as nations or peoples. First Nation women's organizations in particular have fought for fair and non-discriminatory systems of determining Indian status and band membership, whether controlled by the federal government or First Nation governments. Despite the removal of much of the sex-

based discrimination from the *Indian Act*, the concepts of 'Indian' and 'band member' remain problematic and residual sex discrimination is still evident.

The federal government and many First Nations have expressed interest in moving towards a system that recognizes First Nation citizenship as a legal concept in place of the *Indian Act* notion of band membership. A necessary first step for future policy reforms by either the federal government or First Nation governments would be deciding the relevance of "descent" and "race" in defining First Nations identity as well as the relevance of criteria such as cultural knowledge and community connection. A further focus of analysis should be whether any proposed changes would have different impacts for men or women.

III. RACE, GENDER AND "INDIAN" STATUS

A review of Canadian case law reveals a lack of clarity on whether the legal category of "Indian" under the *Indian Act* refers to a racial group or diverse cultural and political entities. This issue needs to be clarified if aboriginal rights are to be understood and analyzed as rights of peoples or nations, and not as "race-based rights". Human rights law would still be able to sanction discriminatory action aimed at individual "Indians" based on their race.

Classifying people into subjective racial categories and discriminating against them is dehumanizing and a violation of human rights. Such a process coming from outside a nation is distinguishable from self-identifying as nations or distinct peoples based on shared attributes which may include kinship ties, language, cultural values, histories and laws. In the latter situation, the people or nation concerned are asserting fundamental rights that are protected by domestic and international law.

Historically, the racialization of First Nation peoples through the *Indian Act* began to eclipse the Crown's recognition of indigenous nations and the treaties it had entered into with them. The legal definition of "Indian" status has evolved from its inception in colonial law in 1850 to the 1985 *Indian Act* amendments from a flexible, broad definition relying on a degree of self-identification and community acceptance to an increasingly narrow definition dependent almost solely on descent-based criteria.

While the current Indian status system does not rely on physical characteristics to classify people as Indian or not-Indian, the Act does almost exclusively rely on descent-based criteria. This can be viewed as a form of race classification. The Act's focus on individual parentage and its exclusion of relationship criteria the current *Indian Act* creates an objective but rigid standard of "Indianness" – one that is determined by federal law alone and applied on a national basis to a diverse group of nations or peoples. This approach unfortunately implies the existence of some trait or characteristics that make "Indians" inherently different from those deemed "not Indian".

The current *Indian Act* reinforces the notion of "Indian" as a racial category in the following ways:

- by specifically referring to "Inuit" as a "race" excluded from the definition of "Indian", section 4(1);
- by relying strictly on descent-based criteria to determine eligibility for persons born after 1985;
- by creating subcategories of "Indianness" – "6(1) Indians" and "6(2) Indians" in common parlance today – with different capacities to transmit Indian status;
- by establishing a system that leads over time to an escalating separation of Indian status from connectedness to the group identity of "band" or First Nation; and
- by separating the determination of "Indian" identity from connection to First Nation land rights.

The *Indian Act* now traces descent through both maternal and paternal ancestors with Indian status. Because the elimination of sex-based discrimination dramatically increased the number of persons entitled to Indian registration, the federal policy goal of controlling the number of "Indians" is now met by degree of descent rules. The reference point for degree of descent is a legally defined group of individuals recognized as Indians (or 'charter' group of Indians). These rules begin to operate in the first generation of Indian and non-Indian parentage and lead to disentitlement if there are two successive generations of Indian and non-Indian parentage.

There is still residual sex discrimination in the determination of Indian status. The children of women who married out prior to 1985 (and were reinstated under the 1985 amendments) are treated differently than the children of men who married out prior to 1985. The children of women who married out prior to 1985 are registered under s. 6(2) while the children of men who so married out, are registered under s. 6(1). This means that successive generations of intermarriage results in termination of Indian status one generation earlier for women than for men who married out prior to 1985. There also remain problems related to federal policy on children with unstated paternity born to First Nation women.

IV. ENTITLEMENT TO BAND MEMBERSHIP

Under the *Indian Act* diverse First Nations, as "bands", are subject to a more or less uniform system of local governance and reserve land regulation.[2] The recognition of distinct "band" entities and brief references to custom bands and treaties is the closest the *Indian Act* comes to recognizing diverse indigenous cultural or political entities.

Prior to 1985, all band members were deemed to belong to the category of "Indian". Indian status remains determined solely by the federal rules set out in sections 6 and 7 of the *Indian Act*. Band membership continues to coincide with Indian status for bands not taking control of their membership rules. First Nations who do assume control over their membership codes may develop rules different from those determining Indian status. For these First Nations, band membership can mean something different than Indian status.

The vast majority of First Nations appear to rely heavily on descent-based criteria as a pre-condition to entitlement either because their membership rules are governed by the Indian Act, or because their own membership codes rely on descent-based criteria.

Some First Nations restrict eligibility criteria to specific descent rules. Others establish criteria including demonstrated knowledge of the nation's language, customs and traditions; length of residence among and social and cultural ties to the nation; existence of close family ties within the nation and also adoption.

First Nations have established different cut-off dates for determining the charter group from which descent would be traced to determine the eligibility of future generations. Different approaches have been taken to the relevance of Indian status to eligibility for band membership.

The separation of Indian status from band membership and the differing approaches by First Nations to defining band membership results in a complex array of legal rules; rules which determine access to many important legal rights and benefits. Indian status determines eligibility for several significant social programs such as non-insured health benefits. Band membership determines eligibility for many political and civil rights on reserve such as voting in band council elections and the right to hold an individual land allotment. Loss of capacity to transmit Indian status or band membership to children due to "out-marriage" affects women more than men, as rates of Indian/non-Indian parenting are considerably higher for females than males, both on and off reserve.[3]

The combined effect of rigid, yet differing descent-based rules for Indian status and band membership creates a complex legal and policy environment for federal, provincial and First Nation governments. This complicates the planning and delivery of government services and programs on and off reserve. The separation of Indian status from band membership is creating an increasingly incoherent system that fails to reflect the family relationships of First Nations people on and off reserve. Moving to a legal system based on recognizing nations and First Nation citizenship could provide an opportunity to rationalize at least some of these overlapping legal statuses and funding criteria.

V. EQUALITY, "DIFFERENCE" AND LEGAL IDENTITIES

Each individual has the personal right to shape their identity to the extent they are able. However, the capacity to assert this individual freedom can be affected by the broad powers of government when it creates legal categories of identity to determine rights and entitlements.

Citizenship, band membership and Indian status are all legal categories that involve defining some people in, and some out, along with the rights and benefits attached. The idea of "Indians" and "bands" are products of European colonial law. The legal creation of "Indians" necessarily leads to identifying "non-Indians". This is sometimes called "the problem of difference".. This problem of identifying difference is seen in issues relating to entitlement to Indian status as well as band membership and First

Nation citizenship. It is also a part of the process of deciding when such distinctions amount to discrimination.

Canadian equality rights theory treats legal distinctions that harm human dignity and personal autonomy as violations of fundamental human rights. The purpose of Canadian anti-discrimination law is to disallow legal distinctions that impose real disadvantage. It also provides remedies or relief when harm results from negative stereotypes attached to a personal characteristic or characteristics. For example, when a person is denied a benefit under the law, because of a personal characteristic such as sex or race, and in a way that implies the person is of less value, there is discrimination. When the result of applying stereotypes and disadvantage is impairment of a person's dignity as a human being, discrimination is usually found to exist as a matter of law.

Laws and government decisions which impair human dignity can negatively affect self-esteem and the process of identity formation in young people. Policy makers should consider the impact on young First Nation people of having to find their place in a confusing array of legal statuses somehow related to their family histories. Some legal categories may overlap when applied to a particular individual. Multiracial children must deal with a race-conscious society. Children of First Nation descent must also cope with , and find their way in, a legal system that establishes multiple categories of First Nation people.

The key focus of policy reform should be on moving away from legal categories that racialize people into categories and subcategories. Instead, policy could promote the development of First Nation controlled legal systems that define citizenship in ways reflecting First Nation cultural identities while respecting the fundamental dignity and equality of First Nation men, women, and children. This may require recognizing kinship rules more in tune with the contemporary needs of First Nation families.

The arbitrariness of descent-based criteria could be alleviated by moving away from strict either/or classifications. We need to recognize the inherent nature of human relationships as dynamic, evolving and interconnected. Legal distinctions between "Indian" and "not-Indian" under the *Indian Act* do not necessarily reflect real differences in people.

VI. NOTIONS OF CITIZENSHIP

Internationally, citizenship is a legal status that brings with it a specific political identity and specific rights and obligations. The definition of citizenship and its rights and responsibilities are controlled by the government of the nation in question. Citizenship is determined by specific events (such as being born in a certain territory or being born to parents with a particular citizenship or meeting the requirements of a naturalization process). Citizenship is not usually determined by qualities inherent in a person.

Canadian law provides three means of acquiring Canadian citizenship: 1) being born on Canadian soil; 2) being born to at least one parent with Canadian citizenship; and 3) if not automatically entitled by birth (either by place of birth or by blood) through

"naturalization". The notion of band membership bears some resemblance to the concept of citizenship. Traditionally, entitlement to band membership and Indian status have been determined by the specifics of the parents' entitlement to band membership and Indian status. Since the 1985 amendments to the *Indian Act*, First Nations have been able to take control of their membership rules and use other criteria in addition to or as an alternative to descent.

First Nation codes that focus on the concept of citizenship rather than 'band membership' can determine access to civil, political, social and accompanying cultural rights within First Nation communities. Accordingly, First Nation citizenship, like band membership, raises difficult policy issues involving personal identities. Citizenship and band membership codes necessarily involve establishing rules for the inclusion or exclusion of individuals. First Nation lawmakers could seek to reduce arbitrariness through codes that focus on relationships, connection to community and descent and by continuing dialogue within their communities on citizenship issues.

There has been strong interest in moving away from the *Indian Act* concept of "bands" and "band membership" to a more respectful terminology of "Nation" and "First Nation citizenship". First Nation representatives have said that the system of 600 plus bands imposed by the *Indian Act* does not reflect the traditional political organization of First Nations in Canada. While indigenous nations are understood to often encompass more than one *Indian Act* band, there is a noticeable trend, particularly in federal legislation, to equate the legal term "band" with "First Nation". The term First Nation citizenship today is often used to refer to the same unit as band membership.

The Royal Commission on Aboriginal Peoples concluded that First Nations have the right to determine their membership as an element of their inherent right of self-government subject to two requirements: 1) to ensure no discrimination between men and women, and 2) there should be no reliance on minimum blood quantum as a "general pre-requisite" for citizenship.[4]

The types of band designed membership rules described in Stewart Clatworthy's studies differ in some important ways from the legal definition of Canadian citizenship. Band membership and Indian status are largely determined by descent from persons with Indian status or band membership, regardless of where a person is born. Band membership can be extended to persons not entitled to it by birth if the band membership rules so provide. Descent has also been a relevant factor for passing on Canadian citizenship, and cut-off rules have been used regarding children of Canadian citizens born abroad. Gender-based discrimination in the operation of such rules has been found unconstitutional.[5] However, unlike Canadian citizenship, birth in a First Nation's territory such as a reserve typically does not confer band membership. Given the small numbers of people of First Nation descent, such rules could undermine the passing on and the survival of First Nations cultural values.

First Nation citizenship could speak to notions of political membership, cultural affiliation and family relationships rather than colonial notions of race. Legislation based

on nation recognition in place of band terminology could respect the right of First Nations to self-government and self-determination.

VII. CONCLUSION

The number and complexity of legal statuses for First Nation people have grown over the years. New forms of discrimination in definitions of Indian status and band membership have replaced old ones. The various legal statuses for First Nation people under Canadian law - such as "Indian", "band member" and "treaty beneficiary" - overlap but do not always coincide.

Arbitrariness could be reduced by focusing more on relevant relationships between people. This would mean First Nations examining their current ideas about kinship within their nation and determining how these are relevant to citizenship. Such a focus may involve taking account of factors such as degree of participation in the life of the community, residence, community acceptance, contributions to the First Nation, or support of family or other community members. Other objective factors might be knowledge or knowledge of the nation's language. Such factors could be used as alternative criteria for people not meeting descent-based criteria. While some First Nations have already done this, rigid descent criteria still appear to be used by most First Nations.

First Nation people must cope with layers of legal identities beyond their control but vital to their lives. Understanding these rules and falling within the recognition they offer can be important. It can mean the difference between being able to reside on reserve or not, being able to buy a house on reserve or not, having access to post-secondary education, employment training and other programs. The legal rules governing Indian status and band membership create unnecessary burdens for administrators and leaders of First Nations, and confusion and conflict for First Nation individuals.

At a broader level, the concepts of Indian status and band membership themselves are problematic. The legal notion of "Indian" continues the idea of a universal "Indian" race and undermines recognition of the distinct nation status of the diverse First Nations of Canada. Similarly, the notions of "band" and "band membership" do not support recognition of First Nations as nations.

Some alternative policy choices to revise the Indian status and band membership provisions under the current *Indian Act* could include:

1. Focus on eliminating residual sex discrimination in the existing system including addressing policy issues respecting a) " unstated paternity", b) discriminatory treatment of the <u>children</u> of Indian women who "married out" before 1985 with respect to Indian status and band membership and c) discriminatory treatment of children of female "illegitimate" children with respect to band membership;
2. Recognize two legal sources for Indian status entitlement by amending s. 4.1 of the *Indian Act* so that 1) all persons with band membership as determined by

bands would be deemed "Indians" for all provisions of the *Indian Act* and other federal purposes such as funding formulas 2) persons without band membership would continue to be eligible for Indian status according to federal law;

3. Eliminate the concept of Indian status and use band membership/First Nation citizenship as the primary legal status for federal and constitutional matters relating to First Nations;
4. Replace Indian status and band membership systems with First Nation citizenship codes as determined by First Nation laws.

Historically, First Nation women have been subject to various forms of discrimination in regard to Indian status and band membership entitlement. Any initiative to examine law and policy relating to Indian status and band membership will require a gender-based analysis to address the various layers of discrimination to which women and children reinstated under the 1985 amendments to the *Indian Act* have been made subject – including discrimination based on sex, race, marital status and family status. To address concerns about the need to protect against new forms of sex discrimination in future laws, the *Canadian Human Rights Act* could be amended to ensure a fuller application to First Nation laws, pending the development of First Nation human rights codes consistent with international human rights norms. An interpretive clause to take account of the need to balance individual rights with collective aboriginal, treaty and self-government rights would likely be required. The addition of new responsibilities would require additional resources to ensure that access to the Human Rights Commission's complaint process by First Nation people is more than theoretical. Locally accessible mechanisms to deal with conflicts over membership or citizenship decisions are also needed such as mediation, tribunals and courts.

A fundamental rethinking of the role and purpose of federal legislation in this area is needed. This might mean new legislation or a treaty process recognizing First Nations without racializing the individuals and diverse nations concerned.

There could be advantages to ultimately eliminating the federally created legal statuses of "Indian" and band membership and moving to recognize First Nations' concepts of citizenship. Returning to the use of one primary legal status to identify beneficiaries of rights in relation to First Nation lands and self-government would reduce the multiple combinations of Indian status and band membership within the same families.

First Nation people as a whole are not well served by a legal category like Indian status which has contributed to the myth of a single biologically based North American Indian race. In addition, the growing divergence between those entitled to Indian status and those entitled to band membership will be an increasing challenge for governments charged with delivering programs and services to First Nation people whether on or off reserves.

ENDNOTES

[1] This paper is a revision and updating of an unpublished paper by the author entitled "First Nation Identities and Individual Equality Rights: A Discussion of Citizenship, Band Membership and Indian Status", January 2003.
[2] However, there are opportunities to opt out of the *Indian Act* reserve land system and establish a First Nations designed land management regime under the *First Nations Land Management Act*, S.C. 1999, c.24.
[3] Ibid.
[4] Report of the Royal Commission on Aboriginal Peoples, Vol. 5, Chap. 3.
[5] *Benner* v. *Canada* [1997] 1 S.C.R. 358.

BILL C-31 - WOMEN'S PROFILES: A PERSONAL IMPACT

Clara Gloade, President, Nova Scotia Native Women's Association

I. INTRODUCTION

In 2005, the Nova Scotia Native Women's Association (NSNWA) completed a research project entitled "Bill C-31 Women's Profiles: A Personal Impact".[1]

This presentation is based on interviews conducted in 2005 with 18 First Nation women on the impacts of Bill C-31 on their lives. These interviews represent a form of oral history, a way for women to tell their stories and their experience of the history of *Indian Act* impacts both before and after the 1985 amendments to the *Indian Act*. We hope to give more insight into how the 1985 amendments to the *Indian Act* ("Bill C-31") have affected native women in Canada and how "Bill C-31" continues to affect the women who were reinstated to Indian status under it.

When the government of Canada passed section 12(1) (b) in the *Indian Act* taking away the birthright of many Native women, there was no consultation with Native people. Section 12 (1) (b) meant that Native women who married a non-Native would no longer be considered an 'Indian' within the meaning of the *Indian Act*. You know that God himself made us Indians, but the Government of Canada considers itself above the divine law and what God has given native women, only the Government of Canada apparently can take away. The Government of Canada also holds itself above the supreme law of the land from time to time, when it passes laws not conforming to basic human rights standards.

Imagine yourself in the place of these First Nations women. Imagine being told that if you fell in love and married a non-First Nation man, the Government of Canada can take away your birthright, can take away your identity and what few rights you have as a First Nation person and be labeled 'non-status' with the implication that you are neither an Indian nor a white person.

First Nation women who 'married out' could no longer live on the reserve. Some were told if they tried to live on reserve as non-status Indians, they would be charged with trespassing. Yet, a man in the same situation could marry anyone he wished and that person would actually gain Indian status. These men enjoyed all the benefits of Indian status, as did their children. First Nation women and their children lost these benefits.

II. NOW DO YOU CALL THIS JUSTICE?

In the early 1980's, the Canadian government decided to look at changing this discrimination under the *Indian Act*. They got this idea only after years of struggle by some brave First Nation women like Sandra Lovelace, the late Mary Two Axe Early and Jeanette Lavelle to get their rights back. These women managed to shame Canada into

acting, after a United Nations Human Rights Committee criticized Canada for its treatment of this issue.

When Bill C-31 was being developed, I was working with the Native Women's Association of Canada. Many, many women worked hard to develop recommendations to amend the *Indian Act*. However, the federal government again went ahead and did what it thought best for us, without input from native women's organizations!

Bill C-31 gave back rights to those women who lost it by marrying non-natives but also created new classifications to determine who would have Indian status in the future. Therein lays the problem facing us today. The federal government has again asserted its jurisdiction to separate communities and families by controlling who is entitled to Indian status by creating categories such as s. 6(1), 6(2) and non-status.

Bill C-31 left several important issues unresolved and it introduced new problems. Fundamental social and political questions about what it means to belong to a community and who has the right to determine membership. One of the most significant deficiencies of Bill C-31 is the impact of the 'second-generation cut-off rule', which results in the loss of Indian status after two successive generations of Indian-non-Indian parentage.

This discriminatory act has done more harm than good. For example, the women who lost their status and regained it must name the fathers of their children in order for the children to have Indian status. Another problem is that women reinstated by Bill C-31 can only pass on Indian status to their children. Their grandchildren are treated differently than the grandchildren of men who married out prior to 1985. Bill C-31 affects decisions on who to marry because of the Act's impacts on the transmission of Indian status. As a result of this legislation, First Nation women are unable to pass on Indian status to their grandchildren but non-First Nation women who married First Nation men before 1985, can pass on Indian status to their grandchildren.

In conducting our interviews with women affected by the *Indian Act*, both before and after the 1985 amendments, we found many are very bitter about their experiences and want their stories told. These women have suffered for years and have experienced financial and emotional losses as a result of the *Indian Act's* treatment of Indian status. Here are some samples of what we heard:

> "When I married a non-native in May 1969, I don't think I fully understood what I lost in the line of rights, benefits and identity. Being young and probably not properly informed on the issue, I just thought that I would have a better life off the reserve." (Roseanne Sylvester)

> "There is still a stigma attached to being a Bill C-31, you're treated differently." (Blanche Marshall Mousseau)

In our interviews with reinstated women, they said they are still being treated in a discriminatory way - now because of their status as persons reinstated under Bill C-31. We found reinstated women having difficulties getting adequate housing for themselves and their children because First Nations are not obliged to spend monies on them. In some cases, the women interviewed said they were told that they would not be welcome on reserve if they a married non-native man and of threats to remove them if they do something the community does not approve of. My own conclusion is that lack of Indian status will make it more difficult for children of women registered under s. 6(2) to acquire band membership under band controlled codes and to remain on reserve. Yet, brothers and sisters registered under s. 6(1) because of when they were born or for other reasons will be treated differently. This imposed federal legislation has imposed additional hardship on reinstated women and their families.

Our research has produced recommendations for compensation to those who were reinstated. The federal government has paid compensation to several other groups for discriminatory laws and policies, such as the Japanese citizens who were interred during World War II. There is broad public support for the improvement of poor social conditions on reserves and recognition of the role of federal policy in shaping the poor conditions that First Nations people now experience.

The negative effects of Bill C-31 still plague our communities. Since Bill C-31 was passed, there have been hundreds of people affected by continued discrimination including gender-based discrimination in relation to membership and Indian status issues. This legislation needs to be seriously re-examined and amendments need to be made to ensure women are finally treated fairly. For generations to come, First Nation people will be negatively affected by this flawed legislation. The federal government should not have the power to decide Indian status. It is completely unjustified in the contemporary world. We should recall the three guiding principles that were supposed to guide the development of the 1985 amendments: removal of discrimination; restoring status and membership rights; and increasing First Nations control over their own affairs.

The more we examine Bill C-31 and its effects on First Nation peoples in Canada, the more we realize how little our situation has changed after all.

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