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# 1

## The Search for Consensus: A Legislative History of Bill C-31, 1969–1985<sup>1</sup>

Gerard Hartley

### 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 criteria for defining "Indian" under the Act. 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 or husband's status. Therefore Indian women who married Indian men retained their legal status, whereas 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, however, 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 Aboriginal women viewed section 12(1)(b) as a blatant form of discrimination. However, when Aboriginal women's groups began their long campaign in the early 1970s to pressure the government to amend the *Indian Act*, Canadians were generally unaware of and uninterested in their plight. But by the early 1980s, the problem of discrimination against Indian women was widely condemned in Canada and no longer considered acceptable in a society that valued equal rights and equal treatment for everyone.

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 by examining the origins of the debate over Aboriginal women's rights in Canada in the early 1970s. It then traces the emergence of competing viewpoints within the Aboriginal community on "membership issues",<sup>2</sup> the evolution of government thinking on *Indian Act* policy, and the influence of Aboriginal viewpoints on federal policy considerations. It also examines the rationale for Bill C-31 and Aboriginal people's views of the bill.

The primary impetus for Bill C-31 was the creation of an equality provision in the Canadian Charter of Rights and Freedoms and a United Nation ruling in 1981 in favour of Sandra Lovelace, an Aboriginal woman who had lost her status under

section 12(1)(b). However, after years of consulting with Aboriginal leaders on how to amend the *Indian Act*, the federal government failed to achieve a consensus in the Aboriginal community and passed Bill C-31 in 1985 without the consent of these leaders. This paper will examine why Aboriginal groups opposed Bill C-31.

## **Lavell-Bedard Case: the Origins of the 12(1)(b) Debate, 1969-1973**

In 1971, an Ojibway woman from Manitoulin Island named Jeannette Corbière Lavell launched a legal challenge against section 12(1)(b) of the *Indian Act*. When it first began, Indian leaders paid very little attention to the case. But once 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 Aboriginal women's groups and many of Canada's largely male-dominated Aboriginal associations. The case also set the stage for the long and contentious 12(1)(b) debate that culminated in Canada's 1985 *Indian Act* amendment, known as Bill C-31.

Lavell's case began in a York County court in June 1971 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 through section 11 of the *Indian Act*. Section 12(1)(b), however, fully disinherited Indian women of their Indian rights and benefits, including their rights to band membership, to inherit on-reserve property, and even to live on-reserve.<sup>3</sup>

The lower court judge dismissed Lavell's arguments, stating that the matter should be dealt with by Parliament, not by the courts. Undaunted, Lavell appealed her case to the Federal Court of Appeal in October 1971, and won. The Federal Court of Appeal ruled that the *Indian Act* contravened the Bill of Rights because it denied Indian women equality before the law and ordered that 12(1)(b) be repealed.<sup>4</sup>

Following Lavell's victory, a second legal challenge was launched 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. The Supreme Court of Ontario ruled in Bedard's favour by declaring section 12(1)(b) inoperative, but declined to rule on the question of whether the entire *Indian Act* should be repealed.<sup>5</sup>

While many Aboriginal women celebrated the Lavell and Bedard rulings, 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," and therefore resented Lavell and Bedard's efforts to bring about changes to the *Act*. One Indian woman told Bedard: "You have made your bed—now lie in it."<sup>6</sup>

Generally, however, Indian attitudes were rooted in much 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 the destruction of the Indian way of life. In many ways, this reaction stemmed from the psychological impact of a 1969 federal policy proposal that had sought to end the federal government's special relationship with the Indian people.<sup>7</sup>

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*. The proposed policy was a reflection of Prime Minister Trudeau's promise of a Just Society, with its emphasis on equality and the protection of individual rights, and his general mistrust of collective rights. Indian leaders, however, 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 the survival of the Indian people.<sup>8</sup>

This fear galvanized the Indian movement in Canada and led to a resurgence of Indian organizations. Indian leaders across Canada joined together to create a powerful new lobby association called the National Indian Brotherhood (NIB) to "negotiate from strength with the federal government." The unity achieved among Indian leaders in the aftermath of the White Paper was unprecedented in the history of Indian-White relations in Canada.<sup>9</sup>

Through the NIB, the Indian people vehemently opposed the White Paper. But the most effective response to the government came from the Indian Association of Alberta (IAA) whose 24-year-old president, Harold Cardinal, published a widely-read condemnation of the White Paper entitled *The Unjust Society*—a mocking reference to Trudeau's Just Society promise. Cardinal warned that the White Paper was just another federal policy amounting to "total assimilation of the Indian people, plans that spell cultural genocide."<sup>10</sup>

In June 1970, the Alberta Chiefs presented the Trudeau government with their own policy proposal, called the "Red Paper," which rejected outright the White Paper, asserting that: "Retaining the legal status of Indians is necessary if Indians are to be treated justly. Justice requires that the special history, rights and circumstances of Indian people be recognized." As a result of these pressures, the Trudeau government jettisoned its proposed policy and publicly promised not to make changes to the *Indian Act* without the consent of the Indian people.<sup>11</sup>

The 1972 Lavell-Bedard rulings brought back many fears for Indian leaders. While the White Paper had failed to end special status for Indians or repeal the *Indian Act*, many in the Indian community believed that the Lavell-Bedard cases might succeed where the White Paper had not. With the objective of

preventing abolition of the entire *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, hoping to avoid being forced to revise the *Indian Act*.<sup>12</sup>

Lavell and Bedard, then, were up against both the Government of Canada and a multitude of powerful, well-funded, and politically-organized Indian associations. The two women did receive strong support from a women's group known as Indian Rights for Indian Women (IRIW); however, this organization was less efficient and less influential than the NIB, the IAA, or any of the other Indian associations. The group did not formally incorporate until 1974, and was therefore unable to intervene on behalf of Lavell and Bedard. Instead, Lavell and Bedard were defended before the Supreme Court by the Native Council of Canada (NCC), a national organization for Métis and Non-Status Indians, on behalf of IRIW.<sup>13</sup>

The Lavell-Bedard cases were heard jointly before the Supreme Court of Canada in February of 1973. Lawyers for Lavell and Bedard argued that the *Indian Act* discriminated against Indian women and that the discriminatory provisions should be struck down by the Bill of Rights. The federal government argued that the Bill of Rights could not overrule an Act of Parliament and that the *Indian Act* protected the special status of Indian people. Lawyers for Indian groups argued that the legal banishing of Indian women who married non-Indians was simply following Indian custom in that women traditionally go to live with the men they marry. The *Act's* inequalities, they maintained, were necessary to protect Indian land and culture. Indian leaders acknowledged the need for *Indian Act* revisions, but asserted that such changes should be made by Parliament, not by the judiciary.<sup>14</sup>

In the end, 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*. In sum, "the *Bill of Rights* is not effective to render inoperative legislation, such as 12(1)(b) of the *Indian Act*, passed by the Parliament of Canada in discharge of its constitutional function under s. 91(24) of the *B.N.A. Act*, to specify how and by whom Crown lands reserved for Indians are to be used."<sup>15</sup>

The ruling against Lavell and Bedard dismayed Aboriginal women. The challenges facing them following their defeat in the Supreme Court were daunting, and yet, there was also a silver-lining: For the first time, Canadians learned about the problem of discrimination against Indian women. The case was highly publicized in the national media, focusing attention on the treatment of Indian women in Canada. Realizing that the 12(1)(b) problem was now a publicly articulated issue, Aboriginal women's organizations refocused their efforts to bring about changes to the *Act* through political pressure.<sup>16</sup>

## Initial Attempts to Find an “*Indian Act* Consensus,” 1974–77

Although Indian leaders opposed Lavell and Bedards’s efforts to bring about an end to section 12(1)(b), they nevertheless believed that work on modernizing the *Indian Act* should be started. While the leaders did not agree on how to change the *Act*, they made it clear to federal officials that any proposals to do so should emanate from the Indian people. In October 1974, the federal government agreed to a unique policy-making experiment called the Joint NIB–Cabinet Committee. The joint committee created two working groups to deal separately with the areas of Aboriginal and treaty rights and *Indian Act* revisions. But Aboriginal women were left out of the entire process. The NIB steadfastly opposed participation on the Committee by Aboriginal women’s groups, claiming that the issue of discrimination against Indian women was local and should be dealt with by individual band councils.<sup>17</sup>

By 1977, the Joint Committee had made little progress on any of the issues, including *Indian Act* revisions. Meanwhile, the government was coming under increasingly strong public and political pressure to solve the problem of discrimination against Indian women. Pressure to deal with the status of Indian women was not new—section 12(1)(b) had captured national media attention during the Lavell-Bedard case—but several other events occurred in 1977 that caused the federal government a great deal of embarrassment.<sup>18</sup>

After the government exempted the *Indian Act* from the effects of a human rights bill tabled in the spring of 1977, IRIW denounced the government’s actions before the parliamentary committee that reviewed the bill and won the sympathies of many federal politicians. One MP exclaimed that the *Indian Act* is “extremely discriminatory legislation” embodying “blatant cruelty to women.” The government, however, retained the provision exempting the *Indian Act* when it passed the *Human Rights Act* in 1977, thereby standing by its 1970 commitment to Indian leaders that changes to the Act would only be made with their consent.<sup>19</sup>

Aboriginal women’s groups perceived the removal of the *Indian Act* from the reach of the new human rights legislation as a deliberate attempt to deny Indian women the basic human rights enjoyed by other Canadians, just as the government had failed to protect their rights under the Canadian Bill of Rights three years earlier. With seemingly no where else to turn, a Non-Status Indian woman named Sandra Lovelace from the Tobique Reserve in New Brunswick brought her case to the United Nations Human Rights Committee in December 1977. While it took the government a couple of years to send the UN a response to Lovelace’s complaint, officials were still very concerned that discrimination against Indian women in the *Indian Act* was undermining Canada’s international reputation for human rights. Indeed, the Lovelace case soon brought international attention to the problem.<sup>20</sup>

IRIW, meanwhile, was gaining prominence as a national organization for Aboriginal women. IRIW's opposition to the exclusion of the *Indian Act* from the effects of the Human Rights Act and its involvement in making representations to the parliamentary committee reviewing the *Indian Act*, increased its awareness of lobbying techniques and the political process. Since its formation during the Lavell case, IRIW had struggled to gain political clout; unlike many Indian associations, Non-Status Indian women's groups were not funded by the federal government. However, after the sympathetic attention brought to IRIW over the exclusion of the *Indian Act* from the Human Rights Act, the voices of Aboriginal women began to be heard by federal officials.<sup>21</sup>

The Aboriginal women's movement gained further momentum when Canada's Human Rights Commissioner, Gordon Fairweather, began publicly supporting their cause. Fairweather warned officials that if the *Indian Act* was not amended to eliminate discrimination against Indian women, his commission would demand that the government make the changes.<sup>22</sup>

Realizing that the problem of discrimination against Indian women could no longer be ignored, Cabinet announced in the fall of 1977 its commitment "to end discrimination on the basis of sex in the *Indian Act*, with particular reference to section 12(1)(b)." Subsequently, federal officials warned Indian leaders that revising the *Indian Act* to remove "discriminations as regards Indian women" was now the government's "top priority issue." However, in April 1978, frustrated with the lack of progress on the agenda items, the NIB withdrew from the process and the Joint Committee collapsed.<sup>23</sup>

Meanwhile, IRIW held a conference in Edmonton in early April 1978 to "discuss the issue of changing the membership sections of the *Indian Act*." Attended by Indian women from status and non-status organizations across Canada, IRIW's conference developed a detailed policy paper that proposed defining Indian status through a "1/4 blood rule" and restoring "full rights" of both status and membership to Aboriginal women who lost it through past discrimination, and to their descendants "who meet the criteria of 1/4 blood." The quarter-blood definition of "Indianness" would be non-discriminatory because it would allow the Indian "bloodline" to be established through "either the mother or father or both," which meant that the grandchildren of mixed unions would retain their Indian status. IRIW sent its proposals to federal officials and Indian leaders across the country.<sup>24</sup>

Department of Indian and Northern Development (DIAND) officials had serious reservations towards the broad scope of IRIW's proposals. During a meeting with IRIW in early June 1978, Indian Affairs Minister James Hugh Faulkner cautioned that IRIW's status criteria and retroactivity proposals were "broader questions" with far-reaching consequences. Initially, explained Faulkner, "the thing we wanted to deal with was 12(1)(b). And so the quarter blood is a concept that was not one that I expected to come out of this resolution." Faulkner also raised



concerns over IRIW's retroactivity proposals: "If we adopted the quarter-blood rule and applied it retroactively, I think you would have a fairly major influx of Indians, and I think that raises serious questions about the ability of existing bands to respond to that ... It raises some very fundamental questions about who's an Indian."<sup>25</sup>

Later that month DIAND released an *Indian Act* revision proposal that bluntly rejected the concept of retroactivity.

## **DIAND Brings Forward its own *Indian Act* Proposal, 1978**

In late June 1978, Faulkner presented Aboriginal leaders with a package of *Indian Act* amendments which, he asserted, were derived from "over a hundred meetings" with Indian representatives since 1975. Faulkner viewed tribal government as the centrepiece of his amendment package. The system he proposed would allow a band council to "opt-in" to its own charter and negotiate a "constitution for the purposes of local self-government"; however, its authority—consisting mainly of powers to pass by-laws in areas such as education, housing, and social services—remained subject to federal legislation. Faulkner also emphasized that "whatever else happens in relation to the *Indian Act* revision, the provisions discriminating against Indian women, and in particular section 12(1)(b), must be revised."<sup>26</sup>

Establishing a definition of Indian status that did not discriminate against Indian men, women, or children would be the underlying principle of the government's new membership policy. Options included either taking away status from all Indians (men and women) who marry non-Indians or allowing all Indians who marry non-Indians to keep their status; giving or denying status to non-Indian spouses; giving or denying status to all children of mixed marriages (Indian and non-Indian); allowing the children themselves or the band to decide status; and establishing a status cut-off rule whereby "all children of mixed marriages have registered status as long as they are considered to be ¼ Indian."<sup>27</sup>

Faulkner also considered the possibility of making the membership revisions retroactive, because officials realized that retroactivity would continue to be a priority for Aboriginal women. DIAND officials, however, argued that there were "practical and other difficulties" with the concept, such as "increased demands on Indian lands and cost increases which would result from a larger Indian population." Moreover, "It would be a difficult, if not impossible, task to right all the wrongs of past discrimination."<sup>28</sup>

IRIW denounced Faulkner's proposals, asserting that, "We cannot accept the Government's suggestion that the 'practical difficulties' with 'retroactivity' are too great to overcome."<sup>29</sup>

Indian leaders also bristled at Faulkner's proposal, in particular the concept of local Indian government through band charters. The NIB charged that the proposal



“is a far cry from what Indian people are saying in terms of Indian Government.” As DIAND focussed its policy efforts on increasing band authority through a legislative framework, the Indian people began to embrace the notion of entrenching Aboriginal rights in a renewed Canadian constitution. Prime Minister Trudeau’s conferences on constitutional patriation, which began in 1978, had captured the attention of Indian leaders; soon after, constitutional entrenchment of Aboriginal rights became their top priority.<sup>30</sup>

Ultimately, Faulkner’s *Indian Act* proposals were never brought before Parliament. The Liberal government fell in the spring of 1979 before he could even present them to Cabinet, and Canada’s first policy initiative to end discrimination against Indian women fell by the wayside.<sup>31</sup>

## **The 12(1)(b) Problem Becomes a National Debate, 1979–1980**

In July 1979, the Women of Tobique Reserve in New Brunswick rekindled national and international awareness of their cause by organizing a “Native Women’s March” from Oka, near Montreal, to Parliament Hill “to protest housing conditions on reserves and the treatment of native women in Canada.” With enthusiastic support coming from IRIW, the United Church, and Non-Status women’s groups across Canada, the Women’s March garnered a great deal of favourable media attention, especially after receiving a warm reception from the new Conservative Prime Minister Joe Clark who strongly supported their cause. He promised that the government would act quickly to remove the discriminatory clauses from the *Indian Act* and warned Indian groups that “if there is no action on the part of the NIB in the next four or five months to bring amendments [forward], we will have to do it ourselves.”<sup>32</sup>

Prime Minister Clark, however, was prevented from acting on his promise of quick action on the *Indian Act* when the Conservative government fell in December 1979.<sup>33</sup>

Canadian officials then faced international embarrassment in August 1979 when the United Nations Committee on Human Rights found admissible Sandra Lovelace’s 1977 complaint 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 Civil and Political Rights. Subsequently, the UN Committee asked the Canadian government to respond to Lovelace’s complaint. The eyes of the international community were now cast upon Canada’s treatment of Indian women.<sup>34</sup>

In September 1979, Canada responded that while there were “difficulties” with section 12(1)(b), removing it would change the definition of legal Indian status in Canada, which was essential for the protection of Indian culture, language, and lands. Therefore, it argued, the government’s policy was to consult with

the “various segments” of the Aboriginal community before making any decisions on how to amend the *Act*.<sup>35</sup>

This stance provoked harsh criticisms from federal parliamentarians. In July 1980, Flora MacDonald, a Conservative opposition member and outspoken critic of section 12(1)(b), rose in the House of Commons to demand that Prime Minister Trudeau take immediate steps to remove section 12(1)(b), pointing out that the Lovelace case “is the first time that Canada’s record of human rights has ever been questioned in the United Nations.” Trudeau responded that he would not impose a solution on the Indian people; instead, the government would continue its efforts to amend the *Indian Act* with the consent of Indian leaders. He also reminded MPs of his government’s White Paper experience, explaining that “it was not wise even to go in a progressive direction over the heads of the Indian leaders themselves.”<sup>36</sup>

The prime minister had harkened back to the government’s 1970 promise in the wake of the White Paper fiasco that only through the consent of Indian leaders would the *Indian Act* be changed. A consensus within the Indian community on amending the *Indian Act*, however, could not be found and by 1980, the government was still unwilling to make *Indian Act* amendments “over the heads” of Indian leaders. Federal *Indian Act* policy was in a deadlock. However, 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.

## **Solving the 12(1)(b) Problem Becomes DIAND’S Top Priority, 1981–1983**

After returning to power in 1980 and defeating Quebec secessionists in a referendum on sovereignty, Prime Minister Trudeau immediately began to negotiate with the provinces for patriation and amendment of the Canadian constitution. While federal and provincial politicians clashed over how to amend the constitution, Aboriginal leaders fought furiously for the entrenchment of Aboriginal rights. And in the end, they succeeded. When the Canadian Constitution Act came into force in April 1982, recognition of treaty and Aboriginal rights was secured in section 35. Section 35 was perceived as a great victory by Aboriginal men and women. But more significant for Non-Status Indian women was the enshrinement of a new Charter of Rights and Freedoms. Section 15 of the Charter guaranteed that

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

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. Thus, the Charter served notice that the *Indian Act*'s discriminatory membership provision must be changed.<sup>37</sup>

A ruling against Canada in the Lovelace case only heightened the government's sense of urgency to rid the *Indian Act* of its discriminatory provisions. The United Nations Committee on Human Rights' ruling on the Lovelace complaint, released in July 1981, found that Canada was in violation of Article 27 of the Covenant on Civil and Political Rights—a provision that protects minority rights. The ruling stated that 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. Because Lovelace had lost her status before Canada's ratification of the Convention in 1976, the Committee did not rule on whether section 12(1)(b) violated Lovelace's equality rights.<sup>38</sup>

The Lovelace ruling's greatest significance was its impact on government policy thinking on the retroactivity issue. Canadian officials now believed that the policy to eliminate discrimination against Indian women would have to include, at a minimum, reinstatement of women affected by section 12(1)(b).<sup>39</sup>

The government formalized its consultation process by referring the matter of how to amend the *Indian Act* to a parliamentary committee. On August 4, 1982, the Standing Committee on Indian Affairs and Northern Development (SCIAND) was mandated to study and recommend how the *Indian Act* might be amended to remove its discriminatory provisions. SCIAND was also asked to review the legal and institutional factors related to the issue of self-government.<sup>40</sup>

Shortly after the August 4 all-party agreement, Indian Affairs Minister John Munro released a discussion paper presenting some of the membership policy options being considered by the government. The primary objective of the new *Indian Act* policy would be to create a new system of defining status that did not discriminate "on the basis of sex or marital status." The new policy would also consider the rights of the children born of marriages between Indians and non-Indians and the reinstatement of individuals affected by past discrimination.<sup>41</sup>

Munro's paper provided options for dealing with questions concerning whether the government or individual bands should determine status and/or membership, rights of the children of mixed unions, rights of non-Indian spouses, and reinstatement; but it made no recommendations.<sup>42</sup>

SCIAND began its deliberations on September 1, 1982. As a reflection of DIAND's priorities, the terms of reference instructed the Standing Committee to deal with discrimination against Indian women before dealing band government issues and report its findings to Parliament before October 27, 1982. Consequently, SCIAND created the Subcommittee on Indian Women and the *Indian Act* to review the discrimination issue separately from self-government. The Assembly of First Nations (AFN)—the newly established Indian association formed out of the NIB—the Native Women's Association of Canada (NWAC), and NCC were all appointed as ex officio members. The AFN convinced the Subcommittee to

deal with its first report by September 20 so that it could begin to examine the “broader implication” of Indian self-government.<sup>43</sup>

When Munro appeared before the Subcommittee on September 8, he warned that “time is running out ... we now have to take into account the requirements of the Charter of Rights and Freedoms.” He admonished the Subcommittee for cutting short its review of the discrimination issue: “It is surprising, to say the least, that the committee has decided, without significant consultation, to throw this burning issue in with all others related to band government.” The government did not oppose the principle of band control of membership, but its immediate priority was to end discrimination against Indian women, he argued.<sup>44</sup>

In his testimony, AFN’s National Chief David Ahenakew argued that the *Indian Act* should not be amended before the constitutional entrenchment of the right to self-government: “First, we have to secure our right place in Canada, the rights of our First Nations. Then we would deal with the discrimination against women, by having each First Nation assume its just responsibility by determining its own citizenship.”<sup>45</sup>

The next day, NWAC’s president Jane Gottfriedson argued that Aboriginal women’s rights must not be kept in abeyance while Indian leaders and federal and provincial governments sort out the meaning of Aboriginal constitutional rights. “We are willing to consider band control of membership, but whatever you decide in this area we want reinstatement first.” The NWAC supported Aboriginal self-government, Gottfriedson asserted, but explained: “If band control of membership means Indian women must suffer under federal discriminatory legislation for another five or twenty years while you hash out the meaning of Indian government, we will not accept this.”<sup>46</sup>

Like the NWAC, the NCC demanded immediate reinstatement of all individuals who lost status through discrimination; the issue of band membership and Aboriginal self-determination, the group argued, should be dealt with later. IRIW recommended full reinstatement of all Indian women affected by the *Indian Act*’s discriminatory provisions and their descendants “up to one-fourth Indian blood”; after this, “local band government should determine membership.”<sup>47</sup>

On September 22, 1982, the Subcommittee on Indian Women and the *Indian Act* tabled its report which recommended repeal of section 12(1)(b), reinstatement of women who lost status and their children’s right to status and membership, and allowing bands to decide on the residency and political rights of non-Indian spouses. The NWAC and the AFN both publicly supported the Subcommittee’s report. The AFN felt that the Subcommittee had supported the right of the Indian people to determine their membership while the NWAC praised it for adopting the group’s “bottom line position” on reinstatement.<sup>48</sup>

With the first Subcommittee’s hearings complete, the Special Committee on Indian Self-Government began its hearings in December 1982, and until fall of 1983 travelled to every region of the country, hearing from 567 witnesses

during 215 presentations. On the membership question, witnesses unanimously supported First Nations control of band membership, but disagreed on whether this should occur before or after Aboriginal women and their children were reinstated. The NWAC, for example, stated: “[Our basic position is that] ... Indian governments determine their own membership, but only after all of those so entitled have been listed or relisted on their band lists.” Meanwhile, Indian bands rejected the notion of automatic reinstatement to band membership. The AFN maintained that: “It is up to the Indian governments across the country to resolve that and to put into place some just means of making sure that there is reinstatement or whatever it is they want to do.” Several Aboriginal groups recommended a “two-tier” membership system that would allow reinstatement to a general band list, while still allowing bands to decide whether to admit these individuals as band members. Status would remain under the control of the federal government.<sup>49</sup>

The Special Committee’s final report (named after the Committee’s chairperson Keith Penner) was tabled on November 3, 1983. As its overarching themes, the Penner Report endorsed the establishment of a “new relationship” with Indian First Nations and the entrenchment of Aboriginal self-government in the Constitution. On the question of membership, the Penner Report 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 the 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.<sup>50</sup>

While the Special Committee consulted Aboriginal groups between December 1982 and November 1983, the federal government waited for its final recommendations before bringing forward new proposals to amend the *Indian Act*. 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. Moreover, the report’s recommendations suggested that federal *Indian Act* amendments should not interfere with Indian government. Officials fully expected opposition to amendments from Indian groups, especially from the AFN, but with the Charter deadline looming, the Canadian government was ready to act.<sup>51</sup>

## **Bill C-47: Canada’s First Attempt to Implement a Non-discriminatory Membership Policy, 1984**

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.

First, on March 5, Munro tabled the government's official response to the Penner Report in the House of Commons. Cabinet rejected the notion of enshrining self-government in the Constitution. Instead, the government would introduce framework legislation to establish Indian government. Indian band government legislation, Munro argued, would be a first step in changing the government's relationship with Aboriginal peoples.<sup>52</sup>

Second, on March 8, Prime Minister Trudeau announced that *Indian Act* amendments to end discrimination against Indian women would, in the near future, be brought forward because the current membership provisions conflicted with the Charter and UN covenants. The main components of the proposed amendments included: providing status and membership rights to future children and grandchildren of mixed unions; and allowing "those who lost status and membership as a result of the discriminatory provisions of the Act" and their first-generation children "to be reinstated." In other words, the second-generation descendants (grandchildren) of mixed marriages born *after* the amendments would be eligible for legal status and band membership, whereas those born *before* the amendments, namely the grandchildren of women affected by 12(1)(b), would not be eligible.<sup>53</sup>

Indian leaders were greatly alarmed by the reinstatement proposal, angrily rejecting it in any form. "They're intruding on First Nations government's jurisdiction again. We've made the position very clear. Correct your injustices and stay the hell away from our affairs," exclaimed David Ahenakew of the AFN. NWAC asserted that DIAND's reinstatement proposal didn't go far enough to include all the victims of past *Indian Act* discrimination.<sup>54</sup>

In response to the reaction of Indian leaders, Trudeau withdrew the government's proposed amendments "indefinitely" in May, saying that he wanted to "avoid any suspicion of paternalism" and "grant Indians more time to heal an internal split over the protection of women's rights." While legislators waited and hoped that Aboriginal groups would sort out their differences over how to address the discrimination problem, the AFN and the NWAC met in Edmonton from May 16 to 18 to listen to each other's concerns and attempt to formulate a common position, especially on the dicey issue of reinstatement. Both groups realized that to meet its Charter requirements the federal government would, sooner rather than later, act on its own to amend the *Indian Act* if Aboriginal leaders could not come to an agreement. The NWAC and the AFN succeeded in establishing a consensus, but it was one that cost the AFN much of its support from western Indian leaders.<sup>55</sup>

The main components of what became known as the Edmonton Consensus 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. As explained by AFN representative Gary Potts: “A general list is the list that is primarily kept by Ottawa of people of Indian status,” but who may not be “allowed active participation within the community structure.”<sup>56</sup>

The IAA, however, was furious that the AFN had accepted any form of reinstatement and left the conference in protest. Most of the chiefs from Manitoba and Saskatchewan also opposed the deal, which they demonstrated by abstaining from voting on the AFN resolution endorsing the Consensus.<sup>57</sup>

Although the AFN would have preferred to “settle the whole business” in the context of self-government, Potts admitted “pressure is being created by the fact that the federal government is bringing in legislation to remove the 12(1)(b) discrimination clauses.” The NWAC’s Marilyn Kane also acknowledged that government pressure to find some consensus was an important factor in reaching a compromise. She referred to the Consensus as an “interim measure” and was pleased that the AFN “at least agreed to reinstate women to a general list,” emphasizing that the NWAC had always supported the right of First Nations to determine their membership. IRIW, who were not invited to the meeting, totally rejected the concept of the general list.<sup>58</sup>

On June 18, 1984, a little more than a week before Parliament adjourned for summer recess, the Liberals introduced Bill C-47, *An Act to Amend the Indian Act*. The main components of the bill were:

- Status and membership would not be determined on the basis of gender;
- Indian status would not be lost or acquired through marriage;
- 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;
- 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.

DIAND estimated that approximately 30,000 “Non-Status” women and 40,000 children would be eligible for status and membership under Bill C-47. However, the quarter-blood descendants of “12(1)(b) women,” would be eligible for neither status nor membership. Also, bands would not be able to control membership; both reinstated women and their children would be automatically transferred to band lists after a two-year waiting period.<sup>59</sup>

When asked why bands were not provided with control over membership, Munro explained: “it was decided that if we’re going to conform with the United Nations stipulations that we agreed to, as well as our own charter, we would have to ensure not only that those re-instated women got on the general list, we would have to ensure they got on the band list as well.”<sup>60</sup>



On June 26, 1984, three days before summer recess, SCIAND began its review of Bill C-47. During his brief appearance, Munro asserted that, in view of the Lovelace ruling, denying reinstatement to band membership would make a “mere mockery” of the government’s objective of “finally doing away with this discrimination” against Indian women. He defended the government’s position on restricting reinstatement to first-generation children by arguing that the second-generation individuals were too “remote from the culture of the Indian community.” As well, if “you do include grandchildren, and do it on the same basis that we are recommending to the people who lost their status plus their children ... then you are running into a horrendous cost.” Furthermore, stated one of Munro’s officials:

The question of reinstatement, the question of dealing with unfairness that may have existed in the past, has been seen not as a matter that the government must deal with because of the Charter but as a matter for policy which the government should deal with as a matter of fairness.<sup>61</sup>

As a reflection of their Edmonton Consensus, AFN and NWAC made a joint presentation that demanded the reinstatement of “all generations who lost status as a result of discrimination” and denounced the bill’s encroachment “on the fundamental Aboriginal right of each First Nation to define its own citizenship.” Both groups recommended that people of Indian ancestry affected by past discrimination must be entered unto “general band lists” to be administered by DIAND and that bands must control the “active band lists.”<sup>62</sup>

When asked by a SCIAND committee member to explain the difference between “general band lists” and “active band lists,” AFN National Chief David Abenakew summarized it as follows:

[The Penner Report] recommended First Nations control over reinstatement to a general list. The AFN proposes to go further than that—and the Native Women agreed with us, on May 17, 1984. They propose the removal of all discrimination, including Section 12(1)(b), the reinstatement in the general list of all generations who lost status or were never registered, the recognition of First Nations’ control of and jurisdiction over citizenship. Bands will then determine who gets on active band lists. Bands only will determine the residency of non-Indians and non-members.<sup>63</sup>

On June 27, 1984, Munro tabled Bill C-52, the government’s Indian self-government legislation. Yet, Bill C-52 never made it past the first reading in the House of Commons.<sup>64</sup>

After some minor amendments, Bill C-47 received third reading in the House of Commons on June 29, 1984, the last sitting day of the thirty-second Parliament. MPs expressed reservations towards Bill C-47, due in part to the short three-day period allotted to SCIAND to review the bill. They were also loath to block it, however, feeling that to do so would amount to denying Indian women an “historic occasion” to achieve equality.<sup>65</sup>

After its third reading, the bill required unanimous consent for it to be passed in the Senate. However, two senators denied unanimous consent and Parliament

adjourned for the summer and Bill C-47 died on the Senate Order Paper when an election was held that September.<sup>66</sup>

After the years of controversy over Aboriginal women's rights and with the imminent deadline of the Charter's equality provision, it may seem surprising that the government waited until the last few days of the parliamentary session to introduce Bill C-47. But it appears that the government was still reluctant to amend the *Indian Act* "over the heads" of Indian leaders. Although Canadian officials no longer expected to achieve a consensus within the Aboriginal community, the angry reaction towards the Liberal amendment proposals was sufficient to make Trudeau temporarily retract them in May 1984.

The Edmonton Consensus of May 1984 was an historic occasion in that it was the first time Aboriginal women and Indian leaders had formally agreed on the highly contentious issue of reinstating women affected by past discrimination. The government, however, rejected the two main tenants of the Consensus: reinstatement of all generations affected by past discrimination; and adding these individuals to a general band list. Government officials believed that the primary objective of Indian policy was to fulfill Canada's obligations under the Charter and the UN covenants. They viewed reinstatement beyond the first-generation children unnecessary to fulfill these obligations; moreover, Munro argued that it was too costly. The general band list was rejected because officials believed 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 Bill C-47. Nevertheless, the Liberals failed to pass Bill C-47 into law. The bill satisfied neither Aboriginal women's groups nor Indian associations. As the clock ticked towards the April 1985 deadline for bringing its legislation into line with the Charter's equality provision, officials took note of Aboriginal criticisms of Bill C-47 and began re-evaluating their policy options. The federal election in the fall of 1984 brought to office a new government that was willing to make one more effort to achieve a consensus within the Aboriginal community.

### **Bill C-31: Canada Adopts a New *Indian Act* Policy, 1985**

During the 1984 election campaign, Conservative Leader Brian Mulroney promised that the Tories would deal with the problem of discrimination against Indian women on "an emergency basis." When the Conservatives took office in September 1984, they had only six months to act on this issue. Once the Charter's equality provisions came into effect in April 1985, officials believed that the *Indian Act's* membership provisions would likely be struck down by the courts. Finding a consensus among Aboriginal groups, especially towards the reinstatement issue, was still the greatest obstacle to amending the *Indian Act*. Nevertheless, David Crombie, the new Minister of Indian Affairs, soon gained popularity within the

Indian community and was optimistic that by consulting widely with Aboriginal groups, a workable solution could be found.<sup>67</sup>

Crombie rejected Bill C-47 as a solution to the “12(1)(b) issue.” Bill C-47, he argued, flew in the face of the Penner Report and the principles of self-government, which Crombie fully endorsed, because it did not respect the “integrity of Indian communities to determine their own membership.” Crombie set out to develop an amendment package that struck a balance between the rights of Aboriginal women to equality and of Indian bands to self-government, a dichotomy often characterized as individual versus collective rights. In a CBC interview broadcast in October 1984, Crombie outlined the three principles that would form the basis of his government’s new amendment proposals:

One, clearly, that the discrimination must be gotten rid of immediately. Secondly, that the concept and the idea of reinstatement is something that we must consider and accept. Thirdly, that in doing so we must recognize and affirm the integrity of Indian communities to be able to determine their own membership.<sup>68</sup>

Over the next few months, Crombie later contended, he consulted with over 300 “chiefs and councils, [and] many other groups—Indian, Status Indian, Non-Status Indian communities” across the country for suggestions on how to amend the *Indian Act* to end discrimination against Aboriginal women.<sup>69</sup>

On February 28, 1985, Crombie tabled Bill C-31, DIAND’s new legislation to amend the *Indian Act*. The main points of Bill C-31 were:

- Removing all discriminatory provisions.
- Preventing anyone from gaining or losing status through marriage.
- Restoring status and membership rights to people who had lost them through past discrimination.
- Restoring status, but not membership, to the first-generation children of those who had lost them through past discrimination.
- Providing band control over membership for the future.
- 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 any of their rights.<sup>70</sup>

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

- 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.
- 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)

**Table 1.1: Registration Scheme Under Bill C-31**

Parent 1		Parent 2		Child
6 (1)	+	6(1) or 6(2)	=	6(1)
6 (1)	+	non-Indian	=	6(2)
6 (2)	+	6(1) or 6(2)	=	6(1)
6 (2)	+	non-Indian	=	non-Indian

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. Therefore, the grandchildren of 12(1)(b) women would not be entitled to Indian status.<sup>71</sup> **Table 1.1** further illustrates the transmission of Indian status under Bill C-31.

Bill C-31 formally separated legal status and band membership for the first time. The federal government would continue to control legal status; however, bands would have the right to determine their own membership for the future, in accordance to their own rules, if they chose to do so. Band control of membership 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.<sup>72</sup>

DIAND officials estimated that the amendments would apply to approximately 22,000 individuals affected by past discrimination and approximately 46,000 first-generation descendants of these people. They also estimated that the Bill C-31 amendments would cost between \$295 million and \$420 million over a five-year period.<sup>73</sup>

During a press conference on the day Bill C-31 was tabled, Crombie maintained that the basic principles of his bill were the elimination of discrimination, restoration, and band control of membership. Overall, Crombie was satisfied with the new bill. “I think it draws a balance, an acceptable balance between individual and collective rights and I think it passes the test of fairness.”<sup>74</sup>

After Bill C-31 was read for a second time in the House of Commons, it was referred to SCIANC for detailed review. Unlike with Bill C-47, Crombie ensured that the Standing Committee was given ample time to hear from all women’s groups and Indian associations and bands who wanted to present their views on Bill C-31. When Crombie appeared before the Committee, he cautioned that

legislation rarely redresses “past wrongs” and that attempting to remove all of these could create “new injustices and new problems.” Crombie also expected that some parliamentarians and Aboriginal groups would raise concerns that the children of reinstated women were not being given automatic membership rights, but he argued that to do so would make a “mockery out of band control of membership.”<sup>75</sup>

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), where Aboriginal bands and organizations from across Canada presented their views on the bill. It soon became apparent that Bill C-31 was in for a rough ride—very few of these groups supported Crombie’s amendments.

Generally, Aboriginal 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. IRIW, for example, feared that band control of membership will “shift the discrimination down to the reserve level” and demanded that children of 12(1)(b) women be registered under section 6(1) and that the children and grandchildren of these women be given automatic membership rights. The Women of Tobique Reserve contended that Crombie’s proposed amendments, at best, “merely transpose the effects of discrimination to another generation” because they do not allow the children of reinstated women born before the bill was passed to enjoy the same rights as the children of Indian men and non-Indian women born during the same period.<sup>76</sup>

Marilyn Kane of the NWAC rejected Bill C-31’s legal distinction between status and membership arguing that it created more divisions within the Indian community. Committee members were reminded that the NWAC, “in concert” with AFN, had proposed the previous year that all people of Aboriginal ancestry be added to a general band list “with a connection to the appropriate band.” When asked by Keith Penner to explain the meaning of the general band list, Kane replied that a person on a general band list “would also have the right to reside in the community, would have the right to own property, to request loans to build a house, to die there.”<sup>77</sup>

Kane was also asked about her views on self-government. Ultimately, she stated, recognition of First Nations government in the Constitution is “what Aboriginal groups are after.” But 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. “Once that happens, we will be able to re-establish ourselves as our government. We are not talking about the perpetuation of the *Indian Act* system.” Other Aboriginal women’s groups were even more apprehensive towards self-government. While they supported it in the long term, they believed that the government’s primary goal should be full restoration of status and membership rights to victims of past discrimination, and their descendants.<sup>78</sup>

Indian associations were also critical of Bill C-31; in fact, some of these groups completely rejected it. The most common criticism was that the Bill did not provide bands with total control over membership. Nevertheless, the AFN took a moderate view of the Bill. Regional Vice Chief Wally McKay, for example, stated that Crombie's "legislation is acceptable to the First Nations as a transitional step, but not as any substitute for constitutional recognition of an inherent right of the First Nations." Like the NWAC, the AFN felt that the Bill did not conform to the principles of the Edmonton Consensus because it neither fully reinstated "all citizens" of all generations affected by past discrimination nor provided them with "a connection with the appropriate band." But "at the same time, bands must have absolute control over the exercise of active membership lists."<sup>79</sup>

However, many Indian associations were harsh in their criticisms of Bill C-31, not only objecting to the principle of providing reinstated women with an automatic right to membership, but also fearful of the impact that new band members could have on reserve land and resources.<sup>80</sup>

Some of the most negative reaction—and the most concern over the potential for large numbers of returning members—came from Alberta bands. A representative of the Sarcee Nation of Alberta, dismissing the government's premise of employing a legislative solution to the discrimination problem, angrily asserted: "I do not think we are prepared to talk about any changes in Bill C-31. We totally reject it ... So we are not prepared to compromise on any section." The Treaty Six Chief Alliance from northern Alberta warned that if the government imposed the reinstatement policy on to its communities, "we expect that violence will occur." The Indian Women of Treaties 6, 7, and 8 also warned: "it is going to be hell bursting open at the seams ... Band membership is a matter for the band to decide, and one in which only the band should rule."<sup>81</sup>

The priority for these groups was the constitutional recognition of First Nations government, not amending the *Indian Act*. Instead of Bill C-31, recommended the Four Nations of Hobbema, the government should introduce a constitutional amendment to recognize Indian government.<sup>82</sup>

SCIAND's review of Bill C-31, then, demonstrated that Crombie's bill satisfied neither Aboriginal 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. Indian women demanded full restoration of their status as well as 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. Nonetheless, the AFN and the NWAC attempted to present a common position by arguing that those affected by past discrimination should be reinstated to a general band list with a "connection to the appropriate band." While NWAC believed that reinstated individuals should have automatic rights to live, own a house, and die on-reserve, the AFN asserted that "bands must have absolute control over the

exercise of active membership list.” The NWAC and the AFN’s viewpoints on the membership issue, therefore, appeared to differ on whether or not those affected by past discrimination should have automatic band membership rights.

Crombie had failed to achieve a 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; the government had accepted some minor amendments recommended by SCIAND, but no major changes were made to the bill’s registration and membership provisions. Crombie again expressed his unwavering conviction that Bill C-31 was an appropriate solution to the 12(1)(b) problem. He believed that it was: “a careful balance between two just causes, that of women’s rights and that of Indian self-government. ... No one gets 100 percent of what they sought, but each group gets something that is vitally important to them. There was no other fair path to take.”<sup>83</sup>

He acknowledged, however, that Bill C-31 did not address the long-standing desire by the Indian people for self-determination. But 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.<sup>84</sup>

## 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. Aboriginal 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 Indian 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 Aboriginal women’s groups also supported the principles of Aboriginal self-government, most Indian women believed that the process for achieving self-government should occur only after the full restoration of their status and membership rights.

After years of consultations with Aboriginal leaders, a consensus on how to amend the *Indian Act* to end discrimination against Indian women eluded federal officials. Instead of an *Indian Act* 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 of that policy were that the discriminatory provisions of the *Indian Act* must be removed, 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. Federal officials felt that they had to proceed with amending the *Indian Act* for fear that the discriminatory registration provisions would be struck down by a challenge under the Charter of Rights and Freedoms. Thus, the federal government abandoned its policy of not amending the *Indian Act* without a consensus in the Aboriginal community and provided its own solution to the problem of ending discrimination against Indian women by enacting Bill C-31 "over the heads" of Aboriginal leaders. In the end, Canada's 1985 *Indian Act* amendment pleased neither Aboriginal women's groups nor Indian associations and continued much of the controversy and divisiveness that began with the Lavell-Bedard case 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. The author wishes to thank Erik Anderson for his insightful comments on early drafts of the paper and for the opportunity to develop it into an article. Special thanks are also due to Aileen Baird, my diligent colleague at Public History, for her invaluable editorial suggestions on both the paper and the article.
- 2 Prior to the 1985 *Indian Act* amendment, the term “membership provisions” meant registration under the Indian Act as well as membership in an Indian band. Most Registered Indians were also members of an Indian band prior to Bill C-31, therefore, “membership provisions” was a generic term that referred to all the pre-1985 *Indian Act* provisions that deal with Indian status and band membership.
- 3 Leone Kirkwood, “20 lawyers heard as Lavell case opens before overflow crowd: Reasonable that Indian family’s status should be decided by male spouse, Supreme Court told,” in *Globe and Mail*, February 23, 1973, p. 13; Sally Weaver, “First Nations Women and Government Policy, 1970–92: Discrimination and Conflict” in Sandra Burt, Lorraine Code, and Lindsay Dorney, eds., *Changing Patterns* (Toronto: McClelland & Stewart Inc., 1993) pp. 97–98; Katherine Dunkley, “Indian Women and the *Indian Act*: a background for parliamentarian,” (Ottawa: Library of Parliament, March 1981) pp. 2–5; Kathleen Jamieson, *Indian Women and the Law in Canada: Citizens Minus* (Ottawa: Ministry of Supplies and Services, 1978) p. 1.
- 4 Weaver, “Indian Women, Marriage and Legal Status,” p. 14; Jamieson, *Indian Women and the Law in Canada*, p. 80; Kirkwood, “20 lawyers heard as Lavell case opens before overflow crowd: Reasonable that Indian family’s status should be decided by male spouse, Supreme Court told,” in *Globe and Mail*, February 23, 1973, p. 13; “Indian rights for Indian women: Debates moves into court,” in *Ottawa Citizen*, February 23, 1973, p. 35; Rudy Platiel, “In one corner, the Bill of Rights, in the other, the *Indian Act*,” in *Globe and Mail*, February 22, 1973, p. W6; Lilianne Ernestine Kroswenbrink-Gelissen, *Sexual Equality as an Aboriginal Right: The Native Women’s Association of Canada and the Constitutional Process on Aboriginal Matters, 1982–1987* (Germany: Verlag Breitenbach Publishers, 1991), p. 80.
- 5 Bédard v. Isaac et al. [1972] 2 O.R. 391–397 (OSC); “Two women lose appeal: *Indian Act* biased but valid, court says,” in *Globe and Mail*, August 20, 1973, p. 11; Weaver, “First Nations Women and Government Policy, 1970–92, pp. 97–98; Weaver, “Indian Women, Marriage and Legal Status,” final revised paper for Professor K. Ishwaran, ed., *Marriage and Divorce in Canada* (Toronto: McGraw-Hill Ryerson, 1978) p. 16; Weaver, “Proposed Changes in the Legal Status of Canadian Indian Women: The Collision of Two Social Movements” (Department of Anthropology, University of Waterloo, 1973) pp. 13–14; Jamieson, *Indian Women and the Law in Canada*, p. 82.
- 6 Weaver, “Indian Women, Marriage and Legal Status,” p. 19; ““Our reserves belong to us”, Cardinal says: Indian leader predicts violence if women push too far,” in *Globe and Mail*, February 22, 1973, p. W7; Guy Demarine, ““Male chauvinism’: Treaty Indians don’t want whites on reserves,” in *Ottawa Citizen*, February 22, 1973, p. 41; Kroswenbrink-Gelissen, *Sexual Equality as an Aboriginal Right*, pp. 80–82.
- 7 Harold Cardinal, *Rebirth of Canada’s Indians* (Edmonton: Hurtig, 1977) pp. 109–110.
- 8 “Ottawa plans to abolish treaties, move out of Indian affairs in 5 years,” in *Globe and Mail*, June 26, 1969, pp. 1–2; “Indian leaders surprised by move,” in *Globe and Mail*, June 26, 1969, p. 3; Canadian Press, “Indian press Ottawa for policy change,” in *Globe and Mail*, June 27, 1969, p. 45; J.R. Miller, *Skyscrapers Hide in the Heavens: a History of Indian-White Relations in Canada* (Toronto: University of Ontario Press, 1991) p. 224; Weaver, “Proposed Changes in the Legal Status of Canadian Indian Women,” p. 9; Cardinal, *Unjust Society* (Vancouver: Douglas & McIntyre, 1999) pp. 90–99, 111–119; Weaver, “Indian Women, Marriage and Legal Status,” p. 11.
- 9 Miller, *Skyscrapers Hide in the Heavens*, p. 224; Weaver, “Proposed Changes in the Legal Status of Canadian Indian Women,” p. 9; Cardinal, *Unjust Society*, pp. 90–99, 111–119; Weaver, “Indian Women, Marriage and Legal Status,” p. 11; Presentation by the NWAC on Bill C-31, Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 28, 1985, no. 28, pp. 69–70.

- 10 Cardinal, *Unjust Society*, pp. 107–119.
- 11 Rudy Platiel, “‘Won’t force solution,’ Trudeau tells Indians,” in *Globe and Mail*, June 5, 1970, p. 1; Cardinal, *Rebirth of Canada’s Indian*, p. 108; Miller, *Skyscrapers Hide in the Heavens*, pp. 230–232; Roger Gibbons, “Historical Overview and Background,” in J. Rick Ponting, ed., *Arduous Journey: Canadian Indians and Decolonization* (Toronto: McClelland and Stewart, 1986) pp. 32–34; Jamieson, *Indian Women and the Law in Canada*, p. 81.
- 12 Cardinal, *Rebirth of Canada’s Indians*, pp. 108–113; Jamieson, *Indian Women and the Law in Canada*, p. 84; Weaver, “Proposed Changes in the Legal Status of Canadian Indian Women,” p. 14; Cardinal, *Unjust Society*, pp. 90–99; Krosvenbrink-Gelissen, *Sexual Equality as an Aboriginal Right*, pp. 82–83; “‘Our reserves belong to us,’ Cardinal says: Indian leader predicts violence if women push too far,” in *Globe and Mail*, February 22, 1973, p. W7; Guy Demarine, “‘Male chauvinism’: Treaty Indians don’t want whites on reserves,” in *Ottawa Citizen*, February 22, 1973, p. 41.
- 13 Krosvenbrink-Gelissen, *Sexual Equality as an Aboriginal Right*, pp. 85–88; Weaver, “Indian Women, Marriage and Legal Status,” p. 19; Weaver, “First Nations Women and Government Policy, 1970–92,” p. 97–100.
- 14 Cardinal, *Rebirth of Canada’s Indians*, pp. 108–113; Kirkwood, “20 lawyers heard as Lavell case opens before overflow crowd: Reasonable that Indian family’s status should be decided by male spouse, Supreme Court told,” in *Globe and Mail*, February 23, 1973, p. 13; Jamieson, *Indian Women and the Law in Canada*, pp. 79–88; “Indian rights for Indian women: Debates moves into court,” *Ottawa Citizen*, February 23, 1973, p. 35; Weaver, “Proposed Changes in the Legal Status of Canadian Indian Women,” pp. 13–14.
- 15 Dunkley, “Indian Women and the *Indian Act*” pp. 2–5; “Two women lose appeal: Indian Act biased but valid, court says,” in *Globe and Mail*, August 20, 1973, p. 11; Jamieson, *Indian Women and the Law in Canada*, p. 85.
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