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What is Bill C-31

N.A.

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What is Bill C-31?

Bill C-31, or a Bill to Amend the Indian Act, passed into law in April 1985 to bring the Indian Act into line with gender equality under the Canadian Charter of Rights and Freedoms. It proposed modifications to various sections of the Indian Act, including significant changes to Indian status and band membership, with three major goals: to address gender discrimination of the Indian Act, to restore Indian status to those who had been forcibly enfranchised due to previous discriminatory provisions, and to allow bands to control their own band membership as a step towards self-government.

Indian status - gender discrimination

Under the Indian Act, an Indian woman who married a non-Indian man (whether non-Aboriginal or non-status) would lose her status. If she married an Indian man from another Indian band, she would cease to be a member of her own band and become a member of her husband’s band. Legally, her status would become conditional on her husband’s status. Whether marrying an Indian man or non-Indian man, an Indian woman may be separated from her own family and community, as well as her connections to her heritage. The Indian Act amendments of 1951 went further in codifying provisions regarding Indian status that discriminated against Indian women. Section 12(1)(b) removed status of any woman who married a non-Indian, including American Indians and non-status Aboriginal men in Canada. Section 12(1)(a)(iv) introduced the double mother clause, wherein an Indian child would lose status if both their mother and grandmother acquired Indian status as a result of marriage, regardless of whether their father or grandfather had status. Under the 1951 amendments, if an Indian woman’s husband died or abandoned her, she would be forcibly enfranchised and lose Indian status, since once she married her husband, her status became conditional on his status. At this point, she would no longer be considered a member of her husband’s band, and would lose rights to live on those reserve lands and have access to band resources. Nor would she necessarily retroactively become a member of her previous band. She would be involuntarily, though lawfully, enfranchised, losing her legal Indian status rights and family and community connections. Her children could also be involuntarily enfranchised as a result. Compulsory enfranchisement disproportionately affected Indian women, since Indian men could not have their status forcibly terminated except through a lengthy and involved legal process.

Two court cases directly challenged the discriminatory sections of the Indian Act. Jeannette Corbiere Lavell married a non-Indian in 1970, and brought action in 1971 against subsection 12(1)(b), charging that it violated the equality clause in the 1960 Canadian Bill of Rights on the grounds of discrimination by reason of sex. She lost her case at trial, but won on appeal. The results of this case were revisited by the case of Yvonne Bedard. Bedard lost her status when she married a non-Indian in 1964. She separated from her husband and attempted to return to her reserve to live in a house inherited by her mother. She found that she, and her children, was no longer entitled to live on reserve, as they no longer had Indian status and could not inherit reserve land. Her band gave her a year to dispose of the property and, fearing eviction, she brought legal action against her band. Bedard won the case based on the legal precedent set by the Lavell case. The cases were joined in appeal to the Supreme Court of Canada. In 1973 Bedard and Lavell lost their cases the "marrying out" rule of the Indian Act was upheld.

Despite the result from the Supreme Court, the Bedard and Lavell cases brought visibility to the gender discrimination of the Indian Act. The early 1970s saw major political action from both Aboriginal and non-Aboriginal women's groups to pressure the Canadian government to change the law. This action was catalysed when Sandra Lovelace took her case challenging the Indian Act to the United Nations Human Rights Committee. Lovelace, a Maliseet woman from Tobique in New Brunswick, had married an American man and moved away from her reserve community. When the marriage ended some years later, she and her children attempted to return to her reserve to find that they were denied access to housing, health care, and education as a result of the Indian Act status provisions. Lovelace joined the political
action in the early 1970s, and took her case to the Supreme Court of Canada in 1974. When the Supreme Court upheld the Indian Act, Lovelace took her case before the UN Human Rights Committee, which, in 1981, found Canada in breach of the International Covenant on Civil and Political Rights. In 1982, the Canadian constitution was amended to include the Canadian Charter of Rights and Freedoms. Section 15 of the Charter states that 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 disability". Section 15 motivated the Canadian government to address the discriminatory sections of the Indian Act, influenced by Lovelace vs. Canada. It wasn't until April 17, 1985 that Bill C-31 was passed, which finally revised Indian status to address the gender discrimination of Act.

The Indian Act of 1985 abolished enfranchisement and restored status to those who had had status removed through enfranchisement. It ended Section 12(1)(b), the "marrying out" rule, and 12(1)(a)(iv), the double mother rule. It also terminated status of those who had acquired Indian status only through marriage, rather than descent. This revision resulted in 127,000 individuals having status restored, and 106,000 losing status.

The revised Section 6 of the Act, "Persons Entitled to be Registered," introduced two classes of Indians:

6(1) - those who can pass Indian status to their children;
6(2) - those who have Indian status, but cannot pass their status to their children unless the other parent is also has status.

Prior to 1985, Status Indian men could pass their status to their wives, and as a result of the 1985 Indian Act, their children are considered 6(1). However, if women had "married out," their children are considered 6(2)s and cannot pass on their status, creating a "second-generation cutoff." These revisions have been critiqued for only deferring the termination of Indian status by a generation, rather than adequately addressing the legal issues with the ways that legal status is determined and conferred.

**Band membership**

Under social pressure to grant greater self-government to Aboriginal peoples, the 1985 Indian Act was amended to included revisions that formally separated Indian status from band membership, granting bands responsibility for developing and managing their own membership, while Indian status remained in the control of the federal government. Bands taking over membership are required to develop a membership code to submit to INAC, as well as submit a list of all people included on the band membership list.

It is worth pointing out that INAC provides funding to bands only for Status Indians, not for band members. As a result, despite the fact that bands can determine their own membership, the amount of federal resources that they can have access to is dependent on federally determined criteria.

The reinstatement of status to thousands of individuals meant that thousands of individuals qualified for the rights and benefits conferred by Indian status, inciting concerns that already strained band resources would receive additional burdens. For instance, in British Columbia reserve housing is limited because reserve sizes are extremely small, and waiting lists can take years. If reinstated individuals also required housing, the housing lists would become exponentially longer. The separation of Indian status from band membership was an attempt to reduce the likelihood that a band would deny membership to those who had their status reinstated, though this revision did not come with any additional federal resource allocations to support reinstated individuals or bands in adding to their membership.

**Recommended reading:**


