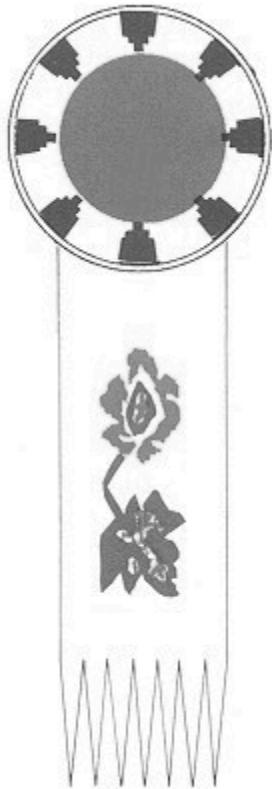


Native Women's Association of Canada



IMPLEMENTING
BILL C-31

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A
SUMMARY
OF THE ISSUES

~ 1988 ~

Including a Chronology of Events
Surrounding Bill C-31 Issues

An NWAC Overview

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1. Implementing Bill C-31: A Summary

a) Background: The situation leading to Bill C-31

During the socially conscious years of the 1960's and '70's, the Indian Act, and particularly the sexually discriminatory section 12(1)(b) of the Act, came under attack at the national and international level. In 1970, the Report of the Royal Commission on the Status of Women in Canada recommended amending the Indian Act to allow Indian women who marry non-Indians to maintain their status and transmit status to their children. Section 12(1)(b) was challenged in the Supreme Court of Canada under the Canadian Bill of Rights and, while the 1973 decision did not strike down this provision, there was a heightened public awareness of the injustice it perpetuated. The situation was also brought to the attention of the Human Rights Committee of the United Nations. By 1979, all federal political parties supported removing discrimination from the Indian Act and had resolved to do so.

Despite the almost universal consensus on the need to amend the Indian Act, a bill was not introduced into Parliament until June of 1984, just ten months prior to the coming into force of section 15 of the Canadian Charter of Rights and Freedoms (section 15 guarantees sexual equality and non-discrimination in Canadian law and would have rendered the offensive portions of the Indian Act unconstitutional). The 1984 bill died in the Senate. One year later, on June 28, 1985, Parliament passed Bill C-31, An Act to Amend the Indian Act, thereby removing the provisions which, for over a century, had legalized discrimination against Indian women.

b) Bill C-31: The Government's Intentions

While the motivating force behind legislation to amend the Indian Act, and certainly the timing, can be largely attributed to the government's need to bring the act into accord with the Canadian constitution, the following three principles were articulated as the objective of the amendments:

- (1) to remove all discrimination from the Indian Act;
- (2) to restore Indian status (within the meaning of the Indian Act) and band membership rights to persons who lost them; and,
- (3) to allow Indian bands the right to determine their own membership.

c) Bill C-31: Summary of Major Provisions on Reinstatement

The Indian Act now contains a new section (Section 6) which outlines who is entitled to be registered as a status Indian in the federal Indian register. Following is a summary of this section:

- ❑ Section 6(1) (a) - (e) covers all those already registered, along with people who previously lost status through sexual discrimination and enfranchisement.
- ❑ Section 6(1)(f) provides for the first-time registration of children with two parents with status or entitled to status.
- ❑ Children with only one parent who is entitled to be registered under section 6(1) can apply for registration under section 6(2).

All status Indians are now categorized as falling under section 6(1) or 6(2) of the Indian Act. The major distinction between 6(1) and 6(2) status is that people classified in the latter category cannot transmit their status to their children. The following scenario depicts a very simple but clear example of the impact of the new classifications. A woman who lost her status upon marriage to a non-Indian man can apply for reinstatement and regain her status under section 6(1); her children are then classified as having 6(2) status, but her grandchildren are not entitled to status.

Second generation descendants must have both parents registered under section 6(1) or (2), or at least one parent with 6(1) status, in order to be registered. This also applies to the registration of future generations, thereby establishing a cut-off point for determining status, as well as creating two distinct classes of Indian status - one which allows the direct transmission of status to children, and one which does not.

Through Bill C-31, the Indian Act was amended to ensure that no one gains or loses status through marriage, and individuals who lost status through sexual discrimination and enfranchisement can apply to regain their status. The new Act abolishes the concept of enfranchisement, the term used to describe termination of Indian status because at one time Indian people were required to renounce their status in order to gain basic democratic rights, such as the right to vote in federal and provincial elections, and even to obtain a university education. While the overtly discriminatory provisions have been removed from the Indian Act through Bill C-31, the new system of distinguishing between and classifying types of Indian status means that discrimination has been maintained.

d) Bill C-31: The Implementation Process

The onus is on individuals who lost status under the former act, or who might be eligible for first-time status, to apply to the Indian Act Registrar. Government pamphlets claim "this is not a complicated process", however, "particularly complicated circumstances... could require extensive research or involve inquiries for additional information or clarification of details".

e) **The Reinstatement Process: What Actually Happened**

The reinstatement process is not working according to plan. The most pervasive problem experienced by applicants for reinstatement has been in meeting the Department of Indian and Northern Affairs' standards for documentation - extensive research and requests for additional information are routine. Applications held in limbo pending further documentation comprise, by far, the largest portion of active files. By June of 1987, requests for further documentation had been made to 17,082 applicants.

The cost of obtaining documents, including costs associated with research, travel, and fees for documents finally uncovered, is a serious obstacle for many of the people seeking reinstatement and first-time registration.

In addition to the problems --and resulting delays -- mentioned above, is the fact that the understaffed DIAND reinstatement office cannot possibly keep pace with the number of applications received. In 1985, the department estimated they would be able to successfully process 17,600 applications in the first fiscal year; in actuality only 3,200 were processed.

The long waiting period leads to a situation where many applicants have become discouraged, disheartened, and frustrated with a process in which they must prove their "Indianness" to Ottawa, according to government criteria, and then await a government decision. Even the most straightforward cases often involve delays of over a year.

When the Minister of Indian Affairs and Northern Development tabled his "Report to Parliament on the Implementation of the 1985 Changes to the Indian Act" in June, 1987, two years after the changes became law, only thirty-three percent of the 90,051 applicants for Indian status had been processed.

The government is also taking advantage of a loophole in Bill C-31 to delay some applications. Prior to August of this year, the Registrar ignored a poorly drafted provision in the legislation, known as the "parental death rule", which, when interpreted in the most narrow sense, can be used to disqualify some applicants; in August a moratorium on all applications affected by the death rule was put into effect, and now there is reason to believe that when the moratorium is lifted these applications will be rejected.

The implementation of Bill C-31 has been seriously flawed from the beginning and, as a result, thousands of families continue to suffer undue hardship at the hands of the Department of Indian Affairs.

2. Chronology of Events Surrounding Bill C-31 Issues

- 1970 The Royal Commission on the Status of Women receives briefs from Indian women who lost their status, and recommends the appropriate changes to the Indian Act.
- 1970 Jeannette Corbiere-Lavell, an Indian woman who lost her status when she married a non-Indian, begins her court battle arguing that sexual discrimination found in Section 12(1)(b) of the Indian Act is invalid as a result of the equality provisions of the Canadian Bill of Rights.
- 1973 The Supreme Court of Canada refuses to give the Bill of Rights supremacy over the Indian Act and rules that Section 12(1)(b) is valid.
- 1974 After extensive community organizing in the early 1970's, the Native Women's Association of Canada (NWAC) is Incorporated as a national organization with the mandate to represent the issues and concerns of aboriginal women.
- 1979 Aboriginal women from the Tobique reserve and other areas march to Ottawa to protest the discriminatory sections of the Indian Act and the federal government's reluctance to resolve the issue.
- 1979 The federal government formally pledges to remove the discriminatory provisions from the Indian Act in a national plan of action on the status of women.
- 1980 Canadian women parliamentarians from all parties present a declaration to the federal government urging that negotiations on amending the Indian Act be finalized.
- 1980 The Native Women's Association of Canada establishes its national office in Ottawa.
- 1980 Responding to the mounting pressure for action, the Minister of Indian Affairs and Northern Development allows individual Indian Bands to request an exemption from some of the discriminatory provisions of the Indian Act.
- 1981 As a result of an action initiated by Sandra Lovelace, The United Nations Human Rights Committee finds that Canada breached Article 27, which deals with the rights of minorities, because, as a woman who lost her status, Lovelace was not allowed to be recognized as a member of her band and to enjoy her culture in the community of her band.

- 1982 After hearing testimony from 27 groups, a House of Commons subcommittee on Indian Women and the Indian Act recommends the removal of some of the offending provisions of the Indian Act and the reinstatement of women and registration of first generation children who would have otherwise enjoyed status.
- 1983 The federal government, in its Speech from the Throne, again pledges to remove the discriminatory provisions from the Indian Act.
- 1984 Bill C-47, the government's first attempt to correct the Indian Act, is tabled in the House of Commons 10 days before the summer recess. However, Bill C-47 dies on the order paper when it fails to receive unanimous support in the Senate.
- 1985 As provided for in the Constitution Act, 1982, the equality rights contained in Section 15 of the Charter of Rights and Freedoms comes into force on April 17, 1985.
- 1985 Bill C-31, an Act to Amend the Indian Act, is passed by Parliament on June 28. The program to reinstate and register Indian persons who became eligible for status as a result of Bill C-31 begins the following month.
- 1986 After receiving government funding, the Native Women's Association of Canada begins to provide assistance and advocacy for those making applications for status under the new Act.
- 1987 On June 26, 1987, Minister McKnight tables in Parliament a report on the impact and implementation of Bill C-31. This was required by Section 22 of Bill C-31.
- 1987 In December, the Standing Committee on Aboriginal Affairs and Northern Development begins hearing from aboriginal organizations as part of its review of the Minister's report and the provisions of Bill C-31.
- 1988 During January and February, the Native Women's Association of Canada and its Provincial and Territorial Member Associations are scheduled to make presentations on Bill C-31 before the Standing Committee.