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The Drive for Citizenship: Impacts of Bill C-31 Membership Model, 1985-1996

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The Drive for Citizenship: Impacts of Bill C-31 Membership Model, 1985-1996

by

John T Ward, BA

Thesis submitted to the
Faculty of Graduate and Postdoctoral Studies
In partial fulfillment of the requirements for the
Masters of Arts degree in History

Department of History
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Abstract

The Drive for Citizenship: Impacts of Bill C-31 Membership Model, 1985-1996

John T. Ward

Georges E. Sioui

2008

Bill C-31, an Act to Amend the *Indian Act*, was passed by the Canadian Parliament on June 28, 1985. It was intended to bring the *Indian Act* into line with the provisions of the Canadian Charter of Rights and Freedoms, in part by allowing the reinstatement of Indian Status to women who had lost it after marrying non-Aboriginal or non-Status men. It followed from the efforts of Native women Jeannette Lavell and Sandra Lovelace in court appeals over sexual discrimination in the *Indian Act*. Yet there were many negative reactions to the bill.

Bill C-31 introduced rules governing who could be registered as "Indian." It also contained new rules with respect to children born on or after April 17, 1985. This paper argues that these rules discriminate against children with one parent who is not recognized as "Indian" under the new rules.

The primary purpose of the bill was to allow Aboriginal people to create their own criteria for managing the membership of bands. However, it caused a number of conflicts and failed to produce the results Aboriginal community hoped for. There were concerns about the increase in the Aboriginal population as people returned to reserves and inadequate funding to meet the needs arising from such population growth. Many Native persons viewed the bill as a mechanism for assimilation and argued that they should have sole responsibility over the regulation of their own memberships.

Recent research on Bill C-31 is limited, in that many authors ignore the personal experiences of those who helped create and were affected by the legislation. For the most part, the literature tends to stress the growth of the Native population following the bill's implementation. A more thorough analysis would yield a greater understanding of the bill's impact on First Nations rights and self-determination.

This thesis will incorporate an array of primary sources, including summary reports, scholarly studies, statistics, interviews and personal commentaries. An analysis of secondary sources will also reveal the current state of research on the topic, and show how this thesis provides a new perspective by considering matrimonial real property, blood quantum, court cases and legal Status.

I dedicate this thesis:

To my Mother, Louise Brazeau, who has always been the light of my academic career and continues to support my endeavors; and to Dr. Robert Smith, Headmaster of Heritage Academy.

– Dyslexia is part of who I am and what I have become.

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It is a pleasure to thank the many people who made this thesis possible.

It is difficult to overstate my gratitude to my MA supervisor, Dr. Georges Sioui. With his enthusiasm, his inspiration, and his great efforts to explain things clearly and simply, he helped to make Aboriginal History fun for me. Throughout my thesis-writing period, he provided encouragement, sound advice, good teaching, good company, and lots of good ideas. His continued guidance has become the foundation of my thesis research.

I would like to thank the many people who have taken their time to teach me Native legality, socio-cultural customs and evolving methodological frameworks in History. My Headmaster, Dr. Robert Smith, was my mentor both physically and academically, and always said, "aim for gold or A+." His encouragement has led me to university to become the man I am today. My introduction to Aboriginal History came as a direct result of knowing Dr. Jan Grabowski, who encouraged my early interest in this new historical field. His comments and lectures provided a deep passion that gave me the desire to pursue humanitarian issues within a historical context. During my final undergrad year I proceeded to work under the guidance of Dr. Georges Sioui. His door was always open and from these informal meetings, I began to take my next academic step forward into Aboriginal History with Dr. Sioui as my supervisor.

I am indebted to my many colleagues for providing an intellectually environment in which to learn and grow. I am especially grateful to Raymond Hatfield, who provided personal reflection on the effects of Bill C-31; Barbara Craig, for her help in the early stages of my research and her permission to use her LLM thesis and publications on Bill C-31, as well as her private archives; Dan Beavon, whose methodological approach to my thesis and countless discussions of blood quantum and section 6 of the *Indian Act* have become essential in my thesis.

I am grateful to Francine Laramée for her friendly smile and positive outlook on life since I arrived at the History department in May 2002. I would also like to thank the countless librarians, especially Alan Fleichman, head librarian for the Human Rights Centre, who helped me with my legal methodology and endless legal questions and concerns.

Furthermore, I would like to thank all the libraries, archivists and donors of sources pertinent to my thesis. The following research centres have substantially contributed to my source list: Indian and Northern Affairs Canada in conjunction with the University of Ottawa, the Human Rights Documentary Centre, the Media Resources, Morisset Library and Brian Dickson Law Library, and Carleton University Library, for their government database and United Nations reports.

Lastly, and most importantly, I wish to thank my parents, Louise Brazeau and Gerald Ward. Their continuing support by providing a loving environment aided me in my success. Of course, my sister, Susan Ward, has also challenged my philosophical determination as a dyslexic ready to take on the world by researching what interests me.

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List of Acronyms

AMC: Assembly of Manitoba Chiefs

BQ: Blood Quantum

CHRC: Canadian Human Rights Commission

CMS: Canadian Métis Society

FLQ : Front de libération du Québec

IAA: Indian Alberta Association

ICCPR: International Covenant on Civil and Political Rights

INAC: Indian and Northern Affairs Canada

IRS: Indian Residential Schools

NBAPC: New Brunswick Aboriginal Peoples Council

NCC: Native Council of Canada

NDP: New Democratic Party

NIB: National Indian Brotherhood

MNC: Métis National Council

NNWA: National Native Women's Association

ONWA: Ontario Native Women's Association

RCAP: Royal Commission on Aboriginal Peoples

WICEC: Woodland Indian Cultural Education Centre

The thesis topic that has been selected is Bill C-31, a unique piece of legislation created to amend the *Indian Act*. Bill C-31 originated as a response to the United Nations' claim that Canada was in violation of human rights, following a court case brought about by Sandra Lovelace. The significance of Bill C-31 is the ongoing social and psychological torment it caused among First Nations peoples by blocking them from regaining Indian Status as well as denying them adequate access to social and cultural interaction on reserves, which they need to reunite families and to properly engage in communal events.

There is ample primary source data on Bill C-31. Of particular interest are files developed by key employees of the Department of Indian and Northern Affairs (INAC). In addition to a summary of the legal definition of Bill C-31 and the reason for which it was implemented, this paper will take a unique approach by incorporating information from: other legal sources, which will construct the chapters. By providing an in-depth review to cover issues related to band membership, economic stability, social affairs, psychological distress and demographics.

The primary research will provide little-known facts as well as both negative and positive responses to Bill C-31. These chapters will incorporate a number of primary sources including summary reports, internal government reports, studies, statistical data, interviews, personal commentaries, and surveys of those affected by Bill C-31. In addition, an analysis of secondary sources will reveal the current state of research on the topic, and how this study provides a new methodological approach in comparison to other works published after June 1985.

Evelyn Ballantyne, president of the Opasquiak Aboriginal Women's group in Manitoba, expressed the discontent of many Aboriginal people over Parliament's implementation of Bill C-31 in June of 1985:

Bill C-31 has created a number of political and therefore social divisions between: one, those with both Status and band membership; two, those with Status but who have only conditional band membership; three, those who are band members but who do

not have the right to Status; and four, those who are not entitled to Status and band membership. To put it more simply, Bill C-31 has created further division within the Native community.¹

Amendments made to the *Indian Act* in 1985 allowed for the reinstatement of Indian Status to those who had lost it under previous versions of the Act. The primary perceived benefit of the bill was to allow First Nations to create their own criteria for controlling membership. The bill also reinforced native women's rights, including the right to retain Status if they chose to marry non-Native or non-Status men. In addition, the bill contained new rules with respect to children born on or after April 17, 1985.

Although Bill C-31 was aimed at granting greater control to Aboriginal people when it came to internal affairs, the bill caused a number of conflicts and failed to produce the results the Aboriginal community had hoped for. For example, many First Nations saw the bill as a mechanism for assimilation by systematically reducing the Indian population to mere numbers of existence they argued that "their treaties state that only they [the Aboriginal people] have the right to determine membership."² In reality, the bill interfered with Aboriginal rules for self-determination, and Aboriginal peoples' desire to survive and thrive.

This study will examine the impact of Bill C-31 on Aboriginal communities in Canada in the context of women who faced discrimination. The thesis will seek to answer a number of key questions regarding the bill and its objectives, legal implications and impact. What were the initial intentions of the federal government in creating this piece of legislation? Who actually created the legal terms in the text of the bill? With whom did the federal government consult about the legislation? Was the *Indian Act* positive or negative towards Native women? What was the main driving force behind the bill? How did the federal government manage the unforeseen economic and financial responsibilities tied with sections 6(1) and 6(2)? Finally, why was Bill C-

¹ *Impacts of the 1985 Amendments to the Indian Act (Bill C-31)*. The Hon. Tom Siddon, P.C., M.P., (Ottawa: Minister of Indian Affairs and Northern Development, 1990), 27.

² *Ibid.*, 26.

31 important to consider in developing matrimonial property rights solutions? These questions concerning legal arguments are especially essential in providing the information on why Bill C-31 failed to fulfill its purpose of eliminating sexual discrimination within the *Indian Act*.

The author has conducted a comparative analysis of newspapers from Aboriginal and non-Native communities from the three geographical areas of eastern, central and western Canada. The following newspapers were selected by geographical locations and involvement in representing Aboriginal communities: *Alberta Native News*, *Tekawennake: Six Nations - New Credit Reporter*, *Wawatay News*, *Hi-Shilth-Sa*. Non-Native sources include the *Vancouver Sun*, *Winnipeg Free Press*, *Globe and Mail*, and *Montreal Gazette*. This paper looks at coverage during a snapshot period of the June 28, 1985 to December 28, 1985, followed by the same period ten years later to gauge longer-term responses. Newspaper coverage includes editorial commentaries in addition to more objective reporting. A number of key questions will focus on the relationship between Aboriginals and non-Indians in respect to their understanding of Bill C-31. Additional emphasis will be placed on the methodological framework in an overview of stories and editorial comments from both First Nation persons and non-Indians.

Chapter 1: Historiography

The first section of this essay is a brief survey of authors who have examined Bill C-31, with the intention of showing current perspectives on the topic. To date, few authors have focused exclusively on Bill C-31. Relevant literature, including ten books pertaining to the thesis, will be reviewed in conjunction with other sources.

The author has also consulted various articles and government reports for additional insight into how this legislation has affected Aboriginals. As well, these international perspectives are taken into account: Verna Kirkness in *Emerging Native Women* and Stewart Clatworthy's *Impacts of the 1985 Amendments to the Indian Act on First Nations Populations and The Elimination of Sex Discrimination from The Indian Act*.

In *The Seventh Fire: The Struggle for Aboriginal Government*, Dan Smith dedicates only a few pages to the bill as he focuses on representational struggle and Native government. He describes how the changes to the *Indian Act* prevent Indian women from losing their Status if they marry non-Indians. Smith examines how one band, the Sawbridge, launched a federal lawsuit asking that the new *Indian Act*, including its sections on membership, be thrown out. Overall, Smith's analysis is quite generalized in analyzing the bill and its effects.

Another author who unfortunately commits the same error is James Frideres. In *Native Peoples in Canada: Contemporary Conflicts*, he fails to adequately examine the bill or its consequences. The author argues that the bill is aimed at bringing the *Indian Act* in line with the Canadian Charter of Rights and Freedoms. Frideres concludes that these legal distinctions make it easier for the federal government to control the Native population. Overall, this interpretation is quite vague and lacks any effective commentary on the bill. Regardless, this book was chosen because it is used by many professors and academics. It provides insight into an earlier view of Aboriginals. The book has been criticized by First Nations peoples, who accused James Frideres

of publishing inaccurate information. Although this might be harsh, it brings Frideres's credibility into question.

In *First Nations: Race, Class and Gender Relations*, authors Vic Satzewich and Terry Wotherspoon provide an unusual analysis. They argue that the legal definitions set forth by Bill C-31 led to the rise of the category known as non-Status Indians, those who have lost their Indian Status, whether voluntarily or involuntarily. The authors also use statistics to support their arguments, but they fail to ask who actually created the bill and its overall effects on Native communities. The authors label Native and non-Native partnerships as economically-based relationships influenced by political policy.

In *Women and the Canadian State: Les femmes et l'État canadien*, authors Caroline Andrews and Sandra Rodgers give a well-researched analysis of Bill C-31 and its impact on Native women in Canada. The authors review Bill C-31 in a four-part debate that shows why the legislation has become a fighting point for Native women's rights. The first part reveals the negative views of Jeannette Corbière-Lavell in her court debut, *Attorney-General of Canada v. Lavell* in 1973. The second part analyzes the interwoven sentiments of Native women who were also disenfranchised by section 12(1)(b) of the *Indian Act*. Their common beliefs were projected under a single collective voice rather than individual opinions when challenging the sexual discrimination clauses in the *Indian Act*. Lavell and her supporters were viewed as Aboriginal women liberators from injustices caused by male-predominant views bent on regulating Indians. The case was seen as "an Indian female victory for individual rights."³ The third section undertakes the task of removing sexual discrimination from amendments to the *Charter of Rights and Freedoms* between 1982 and June 1985. The fourth and final part assesses why native women must use and uphold the Charter to prevent the "erosion of sex equality within the

³ Eds: Caroline Andrews and Sandra Rodgers, *Women and the Canadian State: Les femmes et l'État canadien* (Montreal: McGill-Queen's University Press, 1997), 89.

context of Aboriginal self-government.”⁴ Self-government is viewed as the next evolutionary step for First Nations. However, as the mandates of the majority of Native band councils have not guaranteed reintegration of people affected by Bill C-31, self-government will only add to the already heavy burden felt by Aboriginal women’s advocates and other associations.

Diane Engelstad’s and John Bird’s *Nation to Nation: Aboriginal Sovereignty and the Future of Canada* looks at the complex legal understanding of nationhood and the ideas implied by the term. This book evaluates the role of women from a perspective of national governing capability and leadership, and includes Aboriginal-Canadian relations, indigenous knowledge, solidarity strategies, and the role of women. A key issue is woman’s roles within the community, given the obstacles in a male-predominant electoral system. The struggle for gender equality and recognition has become a top priority for native women.

In *Enough is Enough: Aboriginal Women Speak Out*, Janet Silman illustrates the efforts of the women of the Tobique reserve in New Brunswick in the areas of housing and reintegration as a result of Bill C-31. Silman cites testimony from several women in the Tobique Women’s Group who recount their lives before and after the implementation of the bill. It is about their struggle for equality: access to housing, amendments to the *Indian Act* and the provision of Indian Status to those who have lost it as a result of section 12(1)(b).

In *Indigenous Difference and the Constitution of Canada*, author Patrick Macklem’s main argument is that equality is upheld between the Canadian government and First Nations by constitutional affiliation. Macklem evaluates the treatment of non-Aboriginals and Natives having similar safeguards within the Constitution, and under the Charter. The book argues that Natives are mistreated in comparison to their non-Aboriginal counterparts. The final and enlightening section focuses on Bill C-31 as a negative influence in the work towards a healthy and productive Native society. As the author points out, Bill C-31 threatened the indigenous

⁴ *Ibid.*,90.

difference by regulating membership, which has a significant impact on the survival of Canada's First Nations peoples since a mandate and controlled membership can strength the Native community.

When consulting legal experts in regard to Aboriginal rights within a greater Canadian legal framework, authors often use the word "unfair." Difference within Native customs did non-Aboriginal beliefs have caused and continue to cause friction. Another observation is that, as a result of Bill C-31, Natives have become segregated based on their own understanding of membership and Status, which can be shown by reference to section 6(1) or 6(2), "numerical systems used for identification purposes." This process undermined First Nations' right to co-exist with their fellow Canadians by depriving them of their basic rights to language, education, community and further development, as provided by the Canadian Charter.

In *The Imaginary Indian: The Image of the Indian in Canadian Culture*, author Daniel Francis analyses how Natives are viewed by other Canadians. Social interactions between the two peoples have been too often been influenced by lack of information and that has led to miscommunication and lack of concern for Aboriginal well-being. It is evident, for example, that the general Canadian public may not be aware of the destructive potential of section 6 of the *Indian Act* and of what Bill C-31 signifies.

In *Native Women and Equality Before the Courts*, Irina Blumer evaluates the legal challenges that Native women face in court battles over self-government action. The author highlights sections of the *Indian Act* pertaining to discrimination, sections that do not address the concerns reflected in the amendments of Bill C-31. Negative attitudes towards women showed in discrimination on the reserve. Abuses seemed to be rampant and Aboriginal women's groups faced ridicule even though their intention was to protect the community from greater concerns such as Bill C-31. From a traditional perspective, women were the caregivers and protectors of Native communities. The author reveals that native women wanted to help their communities

move past the injustices caused by the *Indian Act* but were faced with discrimination from both males on-reserve members and government officials.

The focus of Paula Mallea in *Aboriginal Law: Apartheid in Canada?* is on First Nations law in Canada with emphasis on current events. There are two classifications for Indian identity: the *1982 Constitution Act*, which defines Aboriginal Peoples of Canada; and an alternative way to apply Indian identity in the *Indian Act*. This legal definition of "Nativity" has also taken into account the Métis people; Mallea analyzes which order of government best serves the Métis. Mallea suggests that this division between the two Acts, the Constitution and Bill C-31, causes confusion, and she clarifies legal ambiguities such as the jurisdiction under which Métis people live. The review of Bill C-31 within the amendments to the *Indian Act* has caused significant dispute and legal challenges to date. Overall, Mallea describes legal definitions, court cases and Indian identity with respect to rights.

In an unpublished report entitled *Indian Women and the New Indian Act: Still Bottom of the Totem Pole*, author Juliet Robin looks at the avenues to properly study and address the rights of Native women in the *Indian Act*. Robin begins by analyzing the 1985 amendments to the *Indian Act*, which primarily focused on outstanding discrimination causes. She also gives a detailed historical account of women's struggles to obtain rights and interprets current issues with respect to government policy. Robin elaborates on the need to rename the sexual discrimination clause in the *Indian Act* and also discusses the *Canadian Bill of Rights*.⁵ Finally, she suggests that Bill C-31 divided the Aboriginal community in order to implement what some scholars view as self-determination. Although this statement has previously been argued by academics, it still projects a negative stereotype of Aboriginal domestic issues.

Whether Bill C-31 was intended as a government conspiracy to terminate Indian Status this viewpoint has been shared by academics and various Native leaders however, would be hard to

⁵ Robin, Juliet, *Indian Women and the New Indian Act: Still Bottom of the Totem Pole*. Ottawa: University of Ottawa, 1988), 15.

prove, as there is no direct evidence of government intention, which is the primary bias for a conspiracy theory. A mere coincidence The connection is also relevant in a historical context similar to the Bagot Commission approach of 1842-1844, where the residential schools in the 19th and 20th centuries were to facilitate the “gradual civilization” of Indians.⁶ Historians proved that these events contributed to Indian assimilation. The regulation of band membership and poor funding for reserves can be viewed as contributing factors to the overall demise of First Nations peoples.

The emergence of Bill C-31 can be traced through historical records dating back to New France, where it was the custom to remove the matrilineal order of government, thereby interrupting the social-behavioral system of government the upon which Native persons relied. This can explain why Native communities are still plagued with social problems such as addiction, and physical and psychological abuses. Although these problems might seem far removed from the period of 1985 to 1995, the events of colonial policy in New France can be quite relevant. In her article, Verna Kirkness explains the traditional role of First Nations women as leaders in the community, which illustrates the importance of women before European colonial rule. The introduction of European political philosophy has had a lasting influence on First Nations society and has resulted in many social consequences that plague Aboriginal peoples, such as the alteration of indigenous political systems and the halting of social and cultural events, including the removal of religious freedoms. Although Kirkness relies on past historical accounts to shed some light on present-day events, the ongoing trend of government policy, such as band treaty payments, band membership regulation, and judicial interference against Indians, has not changed.⁷

⁶ Olive Dickason, *Canada's First Nations: a history of founding peoples from earliest times* (Don Mills: Oxford University Press, 2002), 227.

⁷ Kirkness Verna, “Emerging Native Women”, *Canadian Journal of Women and the Law*. Vol. 2, No. 2, (1987-88) 415.

In 1985, Stewart Clatworthy examined the amendments to the *Indian Act*, noting that Bill C-31 introduced three main provisions. First, Natives who had lost their Indian Status through previous *Indian Act* regulations were to be reinstated. Second, there would be “gender neutral rules governing entitlement to Indian registration for all children born to a registered Indian parent on or after 17 April 1985.”⁸ Third, First Nations were given the right to establish their own rules for controlling their memberships. Clatworthy examines the changes made to the *Indian Act* as the federal government attempted to bring the Act into conformity with the *Canadian Charter of Rights and Freedoms*. Although he discusses how Bill C-31 was introduced and enforced, much of his report consists of a rehashing of the bill’s official subsections, with very limited analysis. For example, his section on projecting long-term population impacts attempts to foresee the increase in population of registered Indians in Canada. Although this section is extremely detailed, with graphs and charts, the conclusions are subjective.

Interestingly, the author concludes that:

although Bill C-31’s registration rules are projected to result in a larger population entitled to Indian registration for about five more generations, these rules are expected to deny registration to a growing segment of descendents.⁹

Overall, these resources offer only generalized perspectives on Bill C-31. This could be because the bill was passed in only 1985, and a clear understanding of its consequences has not yet emerged. However, by examining the primary sources in detail, one can determine how the bill was created and how it has affected the Native community.

It is worth pointing out that in 1982, Indian and Northern Affairs Canada published a discussion paper, *The Elimination of Sex Discrimination from The Indian Act*, which was a follow-up to the Constitution that would remove all forms of discrimination. Although the paper

⁸ Stewart Clatworthy, “Impacts of the 1985 Amendments to the Indian Act on First Nations Populations,” in *Aboriginal Conditions: Research as a Foundation for Public Policy* (Vancouver: University of British Columbia Press, 2003), 64.

⁹ *Ibid.*, 86.

was published three years before the implementation of Bill C-31, it is evident that the federal government knew the *Indian Act* still permitted sexual discrimination. This was viewed as a problem worth exploring in order to prevent it from becoming an even greater issue. The publication outlines a number of arguments based on patrilineal and patrilocal systems, including what needs to be accomplished for reinstating Indian Status. The action taken by both First Nations and federal government officials as to “how to best amend the Act” was seen as the first positive step forward.¹⁰ However, given the historical context of this publication, the primary focus of both parties was to resolve marriage disputes to revise reinstatement of membership, and to rework the *Indian Act* to suit a 20th century approach to Native identity and survival. Furthermore, the “cut-off” rule was understood as vital for determining Status by limiting the potential increase of Indian populations.

On July 25, 1969, a parliamentary “White Paper” was passed under the then-Minister of Indian and Northern Affairs, Jean Chrétien.¹¹ Prime Minister Pierre Elliot Trudeau stated that he was opposed to any minority’s having unique Status:

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.¹²

He stated that granting special Status to a group is fundamentally wrong in a democratic society.¹³ This led to much disappointment and to a series of protests and demonstrations by a very impoverished Native population. The White Paper further outlined changes that would alter the Status of Aboriginal people. The government announced that it was getting out of the “Indian

¹⁰ *The Elimination of Sex Discrimination from The Indian Act* (Ottawa: Indian and Northern Affairs Canada, 1982), 5.

¹¹ Kathleen Jamieson, *Indian Women and the Law in Canada: Citizens Minus* (Ottawa: Minister of Supply and Services, 1978), 77.

¹² *The Constitution Act, 1982* (Ottawa: Queen’s Printer for Canada, 1982), 4.

¹³ Olive Patricia Dickason, *Canada’s First Nations* (Oxford: Oxford University Press, 2002), 377.

business.”¹⁴ In response to the White Paper, Natives united across Canada and voiced their opinions, which often came into conflict with Chrétien’s legislation. For example response, Aboriginal leaders from Alberta encoded their own legislation to counter-attack the White Paper and created the Red Paper,¹⁵ which argued against any removal of Aboriginal rights to treaty payments by the Department of Indian Affairs and Northern Development.

During the controversy of the White Paper, Prime Minister Trudeau did consider Native demands for autonomy. The federal government recognized legal ethnic minorities as having “Citizens Plus” Status.¹⁶ This allowed First Nations peoples to continue receiving their treaty payments and annuities and to keep their hunting and fishing rights, certain exemptions from taxation, and other special rights. When these special rights were asserted, Aboriginal views towards self-determination began to grow. Native activists were no longer afraid to be categorized as “Indians.” Yet the problem regarding the issue of Native Status led to qualms over the status of the Francophone population in Québec. Would they too demand special status? The Trudeau government grew fearful that a segment of the Québec population, loyal to the ideology of the Front de libération du Québec (FLQ), might be angered if First Nations citizens were able to obtain special recognition. In addition, during the late 1960s, the controversial but popular civil rights movement came to Canada, sparking the creation of various Native equal-rights groups. One such group that Aboriginal historians view as the political force that halted the White Paper was the Red Power Movement. By the 1970s, an unprecedented number of Aboriginal organizations emerged, as among them the National Indian Brotherhood (NIB), the Native Council of Canada (NCC), the National Métis Society, (NMS), and the National Committee on Rights for Indian Women. These groups advocated special provisions in language, education, culture, religion and customs, and the eventual steps towards self-determination. Of

¹⁴ “Statement of Indian Policy” tabled by Jean Chrétien, June 1969.

¹⁵ Personal commentary to John Ward by Ray Hatfield. “Director General of Individual Affairs.” Indian and Northern Affairs, August 1, 2008.

¹⁶ Indian Chiefs of Alberta, *Citizens Plus* (Edmonton: Indian Association of the Alberta, 1970), 65.

these groups, Native women activists fought with the federal government more than male-dominated groups; women had more to lose and more to gain.

The government began considering the issue of Native women's rights during the mid-1970s, as the recognition of abuse against women in general began to improve. The passing of Bill C-31 can be traced back to the 1970 Royal Commission on the Status of Women.¹⁷ This report recommended that the *Indian Act* be amended to allow Indian women who married non-Indians to retain their Status and to transmit Indian Status to their children. The government agreed with the report and felt that these recommendations would lead to positive changes in establishing criteria for Indian Status and band membership. This would place females on the same level as males. The *Indian Act* could have been changed to suit the needs of the day and correct any injustices or unfair treatment: if an Indian man married a white woman, she and their children would receive Status; if they divorced and she then married a non-Indian man, then she could pass on her Indian Status to her new husband and children.¹⁸ Documents indicate that the federal government was bent on consulting First Nations peoples for their opinions because there was so much criticism of this issue. The federal view was that this "never-ending crusade" had to come to an end. Discrimination had to be eliminated in order to avert cultural genocide.

¹⁷ *Non QPC documents*, vol. 1/32. doc, 787 and 716. (Department of Indian and Northern Affairs Canada).

¹⁸ Personal commentary: Given the complexity of equality rights, divorce laws and human rights violations, in hindsight, same sex couples may qualify under these provisions. Government policy does not always reflect social concerns immediately.

Chapter 2: Canadian Legal Foundation

Jeannette Corbière-Lavell, an Ojibwa from the Wikwemikong Ojibway community on Manitoulin Island, was a courageous woman who fought in the 1970s to address the plight of Native women in Canada.¹⁹ In 1970, Corbière married David Lavell, a non-Indian. After her marriage she was informed by the Department of Indian Affairs and Northern Development that she was no longer classified as an Indian according to section 12(1)(b) of the *Indian Act* (“...a woman who marries a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11, would lose her Status.”²⁰). This meant that Jeannette Corbière and any children she might have with Lavell would not be permitted to live on a reserve, receive treaty benefits, or inherit family property. Furthermore, women who married non-Indians could not participate in band councils and lost the right to be buried in Aboriginal cemeteries. Native men who married non-Native women were not deprived of these rights.

Corbière-Lavell challenged this case by invoking the *Canadian Bill of Rights*.²¹ In June 1971, Judge B. W. Grossberg ruled against Corbière-Lavell in County Court. The case was appealed and heard again on October 9, 1971 in the Federal Court of Appeal, which ruled in her favour. The federal government appealed that decision, and the case was referred eventually to the Supreme Court of Canada. At the same time, another similar case involving a woman named Yvonne Bédard was before the Supreme Court of Canada. Both women voiced their opposition to the social conditions which plagued their people - especially women, who endured the most suffering through discriminatory practices.²² On August 27, 1973 the court ruled in a majority decision of 5 to 4 that the Bill of Rights did not apply to section (12)(1)(b) of the *Indian Act*.

¹⁹ Sally Weaver, *First Nations Women* (Toronto: Native Women's Association of Canada, 1992), 97.

²⁰ *The Indian Act*, 1970.

²¹ Gérald Beaudoin and Errol Mendes, *Canadian Charter of Rights and Freedoms*, Fourth Edition, (Markham: LexisNexis Canada, 2005), 1186.

²² Kathleen Jamieson, *Indian Women and the Law in Canada: Citizens Minus* (Ottawa: Minister of Supply and Services, 1978), Preface.

Although Corbière-Lavell's and Bedard's efforts had seemingly been in vain, they set the stage for a future court battle to abolish this outdated law.

One of the most significant court cases in this attempt was brought by Sandra Lovelace, a Maliseet of the Tobique Indian band, in 1981. Dissatisfied with the results of her legal dispute with the Canadian government, Lovelace took her case to the Human Rights Committee of the United Nations in New York on July 31, 1981.²³ The Lovelace case was based on breaches of articles 2 (para.1), 3, 23, (paras. 1 and 4) and articles 26 and 27.²⁴ Her grievances were made primarily under Article 27 on minority rights of the ICCPR, which states that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.²⁵

Lovelace claimed that she had been the victim of discrimination based on her sex: she showed she had been denied the purchase of a new home because she no longer had Status membership.²⁶ The United Nations Committee found that Sandra Lovelace was discriminated against because she had lost her Indian Status after marrying a non-Indian on May 23, 1970.²⁷ Furthermore, Lovelace was unfairly prohibited entry into her reserve during the period of her marriage. Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR) judgment by the United Nations states that:

the right of Sandra Lovelace to access her native culture and language in community with the other members of her group in fact has been, and continues to be interfered with, because there is no place but the Tobique Reserve where such a community exists.²⁸

²³ Sandra Lovelace, "Represented by Professor Donald Fleming and Dr. Noel Kinsella," *International Covenant on Civil and Political Rights*; English Communications (No. R. 6, 24) 30 July 1981.

²⁴ *Ibid.*, 11.

²⁵ *Ibid.*, 8.

²⁶ Bryan Schwartz *First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft* (Montreal: The Institute for Research on Public Policy, 1986), 331.

²⁷ Sandra Lovelace, "represented by Professor Donald Fleming and Dr. Noel Kinsella," *International Covenant on Civil and Political Rights*; English Communications (No. R. 6, 24) 30 July 1981, 3.

²⁸ Eds; Shirley Bear, Caroline Ennis, Cindy Gaffney, and Sandra Lovelace (Women of the Tobique Reserve) *Bill C-31: A Comment on the Elimination of Sex-Based Discrimination in the Indian Act*. (Submission for the Standing

Although arguments concerning discrimination on the basis of sex were considered in the final decision of the International Court by the United Nations, they were not the primary underpinning of the verdict. Rather, the court observed that Lovelace was made to suffer a deprivation of cultural rights. The consequent measure of psychological neglect or damage that resulted from forced removal of family members, property rights, and cultural alienation were all tied to Bill C-31.

Women and their children who were categorized under Bill C-31 have faced severe psychological, economic, cultural, and others forms of abuse at the hands of their band councils. As is now well known, the forcible removal of Native children from their family, culture, and environment through the residential school experience had devastating psychological implications. Children unfairly separated from their communities became known as “12(1)(b)s.” The law also caused long-term damage to Native children who were removed and placed into foster homes.²⁹

The problems related to Bill C-31 are not just the denial of ownership of property on reserves, or of annual treaty payments. Key problems include removal from culture, banishment from a parent’s home, and severance of all Indian connections. One might wonder why a multicultural country such as Canada would forcibly separate families, just because a daughter marries a non-Indian. It has been argued that if the government wants to assimilate all Indians, this should be said plainly, as in the 1969 White Paper.

The Honourable Joe Clark, leader of the Official Opposition at the time of the Lovelace case, delved into the matter of Native women’s rights. Particular issues concerning reinstatement of lost

Committee On Indian Affairs and Northern Development) (Advisor: Professor D. J. Fleming: University of Northern British Columbia, 1985), 7.

²⁹ *Ibid.*

Indian rights may arguably have been shaped by his feminist wife, Maureen McTeer.³⁰ He demanded that the federal government take the necessary steps to abolish discrimination in the *Indian Act*, as stated by the Human Rights Committee of the United Nations.³¹ A CTV report of the time stated that “reserves across the country are in bad condition and can’t handle the possible influx of 65,000 women and children.”³² The views towards Indian reinstatement of Status were mixed; politicians argued for a swift change in Indian policy, whereas Native leaders predicted a national outcry as a result based on previous, failed government policy. These two viewpoints shared the common belief that if the government allowed reentry, the new members would surpass the previous inhabitants and greatly affect the quality of life.

In August of 1982, the issue of how to correct the *Indian Act* in order to end discrimination based on sex was referred to a subcommittee of parliamentarians.

In November 1982, the Alberta Council of Treaty Women obtained federal funding for a National Indian Women’s Conference, which paved the way for future changes to the *Indian Act*. Two years later, the Native Women’s Association of Canada presented documents that called for changes to the *Indian Act* in favour of equal rights for women. The work of these women’s groups would soon get the attention of the government, which was in the process of correcting possible injustices. Prime Minister Pierre Trudeau, asked when the government would eventually finalize legislation to end discrimination in the *Indian Act*, stated that:

the government is prepared to do as it said it would in the First Speech from the Throne of this Parliament to abolish that discrimination. I believe it has been abolished by the Charter of Rights but I am open to persuasion to take further steps and these will be further discussed at the First Ministers’ Aboriginal Conference.³³

³⁰ During his parliamentary life, Joe Clark has always challenged, demanded change and criticized the prime minister and government officials over their treatment of Natives. His wife, Maureen McTeer has played a key role by representing women’s rights and challenges both at home and in the workplace. Her philosophical outlook would influence Clark’s policies as both a wife to a politician and as a woman.

³¹ *House of Commons Debate* October. 19, 1981. (Indian and Northern Affairs Canada: Departmental Library Press Services)

³² *CTV Canada AM*, October 20, 1981. (Indian and Northern Affairs Canada: Departmental Library Press Services)

³³ *Ibid*, Vol. 10/32, Doc. 500, National Archives of Canada.

The National Indian Women's Conference led to the proposal of Bill C-47 in 1984, which was aimed at removing discrimination on the basis of sex from the *Indian Act*. Consultations with Native groups and others led to the introduction of, new equality, Bill C-31, on February 28, 1985. According to the Honourable David Crombie, then Minister of Indian Affairs, the "bill recognizes band control of membership, abolishes disenfranchisement, restores Status and band membership immediately also upon application, to the children of those who lost Status."³⁴

According to federal information, it was clear that INAC supported the control of membership by Band Councils³⁵ and that Bill C-31 would remove sexual discrimination against Native women under the *Indian Act*.³⁶ Unfortunately, the government failed to compensate any of the "12(1)(b)s" who opted to go back to their reserves.

The *Canadian Charter of Rights and Freedoms* became law on April 17, 1982. Section 15 was introduced three years later, after the government had time to update its laws.³⁷ It reads:

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.³⁸

Although the purpose of section 15(1) was the "right to equality," difficulties arose in providing equality to all women regardless of political differences.³⁹ Insight into the definition of "discrimination" is clearly given in the court case of *Andrews v. Law Society of British Columbia*. The Andrews decision had merit for Bill C-31 victims then challenging government policy and legal representation:

³⁴David Crombie, *Press Conference*, February 28th, 1985, "Non QPC Document, vol. 17/32," doc. 571.

³⁵ Kerry Abel and John Leslie, *Native Policy Since 1945* (Ottawa: Department of Indian and Northern Development, 2001), 20.

³⁶*Ottawa Citizen*, "Indian Act Bias Against Women to be Removed," by Jim Robb, October 20, 1981.

³⁷ National Aboriginal Women's Summit, *Understanding Section 15 of the Charter of Rights: An Information Paper* (Corner Brook: Native Women's Association of Canada, June 20-22, 2007), 3.

³⁸ Gérald Beaudoin and Errol Mendes, *Canadian Charter of Rights and Freedoms*, Fourth Edition, (Markham: LexisNexis Canada, 2005), 1496.

³⁹ Honourable Bertha Wilson, *Women and the Canadian Charter of Rights and Freedoms* Biennial Conference "Healing the Past, Forming the Future" (Vancouver: National Association of Women and the Law, February 20, 1983), 5.

Discrimination is a distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of society.⁴⁰

The Andrews decision acknowledged several noteworthy points, such as the possibility of replacing myths and stereotypes with real cultural significance.⁴¹ In the Lavell Supreme Court case, the concept of equality is outlined by the defence. There is a wide range of references to equality, such as legislation in the *Indian Act*, provisions, court cases and articles stated from the Charter and Constitution. The *Indian Act* has a primary responsibility to the welfare of Indian persons, as demonstrated in *Attorney General of Canada v. Lavell*, which supports the Andrews decision on sexual discrimination's being strongly grounded in the *Indian Act*. Furthermore, section 15 stipulates four fundamental rights: the right to equality before the law; the right to equality under the law, the right to equal protection by the law and the right to equal benefit of the law.⁴² These four rights support the further development of equality for native women.

In, section 28 of the Charter reads: "Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons,"⁴³ although section 28 can be considered more beneficial to women, as "biological differences do not operate to the disadvantage of women".⁴⁴

⁴⁰ *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

⁴¹ Honourable Bertha Wilson, *Women and the Canadian Charter of Rights and Freedoms* Biennial Conference "Healing the Past, Forming the Future" (Vancouver: National Association of Women and the Law, February 20, 1983), 5.

⁴² *Ibid.*

⁴³ Gérald Beaudoin and Errol Mendes, *Canadian Charter of Rights and Freedoms*, Fourth Edition, (Markham: LexisNexis Canada, 2005), 1499.

⁴⁴ *Ibid.*, 1012.

Chapter 3: Bill C-47 and Bill C-31

In order to better comprehend the origin of Bill C-31, one must look at its predecessor, Bill C-47, which was introduced in June 1984 by David Crombie, then Minister of Indian Affairs and Northern Development. The purpose of this legislation was to end sexual discrimination against Indian women and their children. Bill C-47 was to reinstate Indian Status and band membership to all disenfranchised and non-Status Indians. Five articles will be reviewed here to give a critical analysis of Bill C-47 and, in retrospect, of Bill C-31. These articles include: Douglas Sanders, *Indian Status: A Woman's Issue or an Indian Issue?*⁴⁵; Paul Driben, *As Equal as Others: non-Status Indians need both recognition and an economic basis for Status*; P. Kirby, *Marrying Out and Loss of Status: The Charter and New Indian Act Legislation*; Sharon McIvor, *Aboriginal Women's Rights as 'Existing Rights'*; and Michael McDonald, *Indian Status: Colonialism or Sexism?*. The causes and reasons regarding Bill C-47 will be compared to those of Bill C-31.

Sanders evaluates the differences between Bill C-47 and Bill C-31, pointing out that the latter became a suitable replacement for the former and a positive step towards self-government. However, Bill C-47 offered a greater role for Indian women by upholding their Status requirements. When Sanders reviews the division between federal political caucuses and First Nations associations when dealing with either sexual equality in the *Indian Act* or the steps towards self-government.⁴⁵ These are both important issues, as women's groups were in favour of removing the sexual discrimination embedded in the *Indian Act* while male-predominant groups favoured self-government. Although sexual discrimination was not a key issue for male-predominant organizations such as the National Indian Brotherhood (NIB), women were keepers of their culture, protecting their social views and political responsibilities. If the NIB received full or partial governing powers, then perhaps people such as Sandra Lovelace would not have been permitted band membership or other, similar, inherent rights.

⁴⁵ Sanders Douglas, "Indian Status: A Woman's Issue or an Indian Issue?" *Canadian Native Law Reporter*, Vol. 3, No. 3, (1984), 39.

Driben describes non-Status Indians as “too Indian to be white and too white to be Indian, they are Canada’s Aboriginal political football, caught in a constitutional and cultural no man’s land.”⁴⁶ Driben gives a detailed analysis of the relationship between Bill C-31 and Bill C-47, with various approaches to understanding both pieces of legislation in terms of economic Status. Bill C-31 was to be an improvement over its predecessor Bill C-47 by allowing band councils to govern their own memberships. Although Driben’s outstanding methodological approach concludes that discrimination still resides in the *Indian Act* and is therefore entrenched in Bill C-31.

These two bills were enacted to accommodate an infraction on equality based on the *Canadian Charter of Rights and Freedoms* and the Constitution. A review of both Bill C-47 and Bill C-31 may determine the differences between these two bills. An analysis of Constitution articles can also help with these sensitive issues of gender discrimination, human rights violations and legal representation. The article by P. Kirby, *Marrying Out and Loss of Status: The Charter and New Indian Act Legislation* explores the issue of “equality” by reviewing both the Bliss and Lavell court cases.⁴⁷ These cases both refer to equality before the law, which directly relates to Bill C-31 where individuals use this definition from the Charter to support their discrimination arguments. Kirby also indicates that both the Charter and the Constitution may have legal responsibilities tied to the *Indian Act* since the *Indian Act* governs Indian peoples but is given just cause (power) by the Charter and the Constitution. Finally, he compares the similarities as well as the differences between Bill C-47 and Bill C-31, which lead to his concluding remarks, as two distinct bills that were designed to use a similar approach for amending the *Indian Act*.

⁴⁶ Paul Driben, “As Equal as Others: non-Status Indians need both recognition and an economic basis for Status. Policy Options, Vol. 6, No. 5, (June 1985), 7.

⁴⁷ P. Kirby, “Marrying Out and Loss of Status: The Charter and New Indian Act Legislation” *Journal of Law and Social Policy*, (1985), Vol. 1, 79.

In *Aboriginal Women's Rights as Existing Rights*, Sharon McIvor stipulates that, "Aboriginal women's rights have existed from time immemorial and are existing rights under the Canadian Constitution."⁴⁸ Although this argument has merit, the protection of Native women's rights under the Constitution is a question that the author has chosen to follow up as she refers to the Sparrow decision. Also, McIvor asserts that discrimination still resides in the *Indian Act* because the attempts to adjust Bill C-31 failed. Furthermore, in order to properly correct the injustices that occurred to Native women, McIvor concludes that children affected by Bill C-31 would have to get the *Indian Act* overhauled by the Charter in order to remove sexual discrimination once and for all.

Michael McDonald's *Indian Status: Colonialism or Sexism?* comments on the "individual versus collective rights" debate surrounding the passage of Bill C-31. As in any legal review, McDonald analyzes sections 15, 25 and 35 of the Constitution, as well as Bill C-47. This research process enables a productive overview of key events, such as the Lovelace case, with respect to the United Nations' review of the legal implications. In addition, McDonald's theoretical approach towards Bill C-31 contributes greatly to his new viewpoint "from a socio-philosophical, rather than a socio-economic, perspective." In the end, McDonald agrees "in favour of greater equality for Indian women."⁴⁹

When assessing the original motives of Bill C-47, debating the importance of self-government power and reforming sexual discrimination within the *Indian Act* are two vital issues regarding the outcome of the bill. Bill C-47 "died on the Order Paper" as the Senate members did not allow the bill to be passed. It would take the next government to enable Bill C-31 to become enacted, thereby allowing councils to regulate their own membership. This political move closely resembled self-government powers. Though this somewhat satisfied the United Nations, Native

⁴⁸ Sharon Donna McIvor, "Aboriginal Women's Rights as Existing Rights" *Canadian Women Studies*, Vol. 15, No. 2/3, (1989), 34-38.

⁴⁹ McDonald, Michael, "Indian Status: Colonialism or Sexism?" *Canadian Community Law Journal*, Vol. 9, (1985), 23.

women who fought for reentry into reservation or communities were once again denied. The following reviews of Bill C-47 will enable a proper understanding of issues concerning the basis for this bill and why it has not passed. This information on self-regulation of band membership has led politicians to rework the meaning of Bill C-31 and remove sexual discrimination within the Indian Act as a revision policy in good standing with the United Nations.

In 1982, the repatriation of the *Constitution* and the *Charter of Rights and Freedoms* soon followed, based on outlining the rights of individuals when faced with various types of discrimination, such as the basis of race, religion, or sex. However, as a result of the Lovelace case, the government had a deadline of three years to retrofit the judgment of the United Nations sub-committee on Indigenous Rights to allow Indian women who lost their Status due to the provision embedded in the *Indian Act* to regain Status. The Lovelace decision was based on sexual discrimination because Lovelace married a non-Status Indian and consequently lost her Status and all inherent benefits. Bill C-47, if passed, may have altered history by possibly settling the issues flowing from section 6 of the *Indian Act*.

On June 18, 1984, Bill C-47 was introduced to amend the *Indian Act* by removing sexual discrimination, since there were “thousands of people who may be eligible for reinstatement to Indian bands.”⁵⁰ The objectives of Bill C-47 were:

- for no one to lose or gain Status or Band membership because of marriage;
- for Status and Band membership to not be determined on the basis of sex;
- for no one to lose Status or membership without their consent;
- for children of marriages between Indians and non-Indians, to one-quarter Indian blood, to have Status and band membership in the Indian parent’s band;
- for no one to lose Indian Status because of the amendments; and
- for non-Indians and non-band member spouses or children to have the right to reside on-reserve with the Indian band member. Other rights can be accorded through Band Council resolutions.⁵¹

Bill C-47 was to be enacted in order to abide by the U.N.’s court ruling and prevent a humiliating Canadian defeat at the U.N. However, in order to pass this bill, the government had

⁵⁰ *NON QPC documents*, vol.12/32, doc. 932 (Department of Indian and Northern Affairs Canada).

⁵¹ *Ibid.*, 725 (Department of Indian and Northern Affairs Canada).

to rely on two conditions for NIB support: control of band membership, and a significant economic contribution to offset the returning Native persons. There were two negative factors associated with the NIB requests: 1) the government was not keen on allowing band councils to regulate band membership, since this was viewed as a self-government power that could be adjusted to suit internal needs; and 2) the government set aside 290 million for returning members. The truth remains that this proposed amount was undisclosed and could be changed or altered by a succeeding government. The government at the time wanted to accommodate native women like Lovelace, but was not able to compromise with the NIB since the NIB wanted power to regulate membership.⁵²

At the time, the NIB was not in favour of Bill C-47 since a massive influx of non-Status Indians would return to the often already over-populated reserves with little-to-no additional economic assistance. Reinstatement of membership would be regulated by INAC, thereby giving all potential applications a better chance of being accepted. Although the end results would prove to be beneficial to Indians who had lost their Status, and to reunite families, this approach was not seen as positive by First Nations. The NIB wanted leverage or some sort of legally binding power, such as the ability to control their own membership. This requisition of power was also seen as potentially granting self-government power, which the government was not willing to commit to at the time. The primary reason for which Bill C-47 failed was that it did not take into account the third principle, which reflected on Indian self-government.⁵³ As a result, Bill C-47 was not passed, and many non-Status women and their children would not regain their Status.

This section will focus primarily on Bill C-31 with the federal government's ratification of the United Nations' Lovelace decision up until the introduction of Bill C-31. An analysis of this hasty three-year legislation will reveal the unfortunate and ongoing legal challenges flowing from within the *Indian Act*. Why did the government rush to improperly modify the *Indian Act*

⁵² *Ibid.*

⁵³ *NON QPC documents*, vol.14/32, doc. 1161 (Department of Indian and Northern Affairs Canada).

after the Charter of Rights and Freedoms was enacted? Attempting to answer this question will provide a strong basis for reviewing key events leading up to the implementation of Bill C-31. After much debate and countless hours of negotiation between government officials and the NIB, Bill C-31 was given force of law by INAC on April 17, 1985. It was not until June 28, 1985 that this new bill was integrated into official government policy. Although the time period between Bill C-47 and Bill C-31 was merely three years, a series of talks on equality issues took place between NIB and INAC. However, in the end, Bill C-47 was not able to receive the needed support or recognition from the NIB. Therefore, Indian women's rights would continue to be violated until three years later, in June 1985, when Bill C-31 had gathered support within the NIB. INAC wanted to quickly negotiate and submit Bill C-31 to the legislative power. The NIB was going to allow women like Sandra Lovelace back onto reserves along with their children, and in return, band councils would be able to regulate their own band memberships. INAC agreed with these new arrangements, which would meet the United Nations' requirements while relieving any negative views about Canada and granting women and their children re-entry onto reserves.

However, Bill C-31 would become an ongoing problem for First Nations. Any Aboriginal person born after April 17, 1985 would lose Indian Status if they were the offspring of an Indian woman and White man. Prior to the introduction of Bill C-31, the AFN supported the reinstatement of Indian women and their children. However, in return for its support, the AFN wanted to be able to regulate its own band memberships. On April 17, 1985 Bill C-31 became a law of the federal government because of political pressure from the United Nations.⁵⁴ There were several fundamental changes:

- all men and women were to be treated equally;
- all children were to be treated equally regardless of whether they were born in or out of wedlock or whether they were natural or adopted;

⁵⁴ Sandra Lovelace "represented by Professor Donald Fleming and Dr. Noel Kinsella," International Covenant on Civil and Political Rights; English Communications No. R. 6, 24. 30 July 1981.

- nobody would lose Status upon marriage;
- Indian Status would be restored for those who had lost it through discrimination or disenfranchisement;
- first-time registration of children (and in some cases, descendants of subsequent generations) of those whose Status was restored would be allowed;
- the registration of children born out of wedlock if either parent was a registered Indian, regardless of their date of birth, would be allowed.

The negative attributes of Bill C-31 would be imposed on First Nations, with devastating effects. It would seem that the concluding actions of the NIB in regulating power over band membership would be viewed as a threat to cultural survival. Many women and their offspring would, therefore, not rejoin families on reserves. However, statistical data indicates that, as a result of Bill C-31,

First Nations population residing both on and off reserves experienced high rates of population growth throughout the 1980-1995 period. Much of this growth occurred during the 1985-1990 period and resulted from the reinstatement and registration provisions of the 1985 Indian Act (Bill C-31). Although this factor will continue to contribute to First Nations population growth in both the short and medium terms, its contribution to future growth is expected to be greatly reduced.⁵⁵

Indeed, demographic forecasting indicated by the Research and Analysis Directorate, Indian and Northern Affairs Canada, shows the potential decline and eventual complete legal disappearance of the Native Peoples by 2097. Since these facts are based on research conducted in 1995, the methodological approach is intended for political science studies rather than historical approaches. Although the information may not be recent, the relevance of forecasting can provide some insight into the potentially negative aspects of Bill C-31.

The implementation of Bill C-31 was to remove sexual discrimination and allow women and their children access to band membership. Various authors and government critics indicate that the problems were passed onto the band councils. Therefore, did Bill C-31 become legitimately enacted or did the government of the day only want to save face on the international stage when

⁵⁵ Stewart Clatworthy, *Implications of First Nations Demography Final Report* (Winnipeg: Four Directions Consulting Group, August 5, 1997), i.

the United Nations looked down on Canada? Bill C-31 was a means of refurbishing Canada's image of a just country free of discrimination and equal to all people regardless of sex, religion, language and so on, as proclaimed in the highly publicized Charter of Rights and Freedoms.

At the E-Dbendaagzuig "Those Who Belong" Conference, speaker Dean Janvier of the Assembly of First Nations described the White Paper as similar to financial contributions which brought about the NIB and other native organizations.⁵⁶ According to Janvier, the White Paper was the "beginning of the end" for First Nation Peoples because it was an assimilation tactic, which can be compared to Bill C-31 on that issue. The end result points to assimilation and no new admission to band membership, thus fulfilling mid-nineteenth century Indian policy projections of a population in Canada with no more Indians, excluding Métis and Inuit.⁵⁷ The government may not intentionally seek assimilation legislation or other avenues leading to extinction but the provision within the Indian Act pertaining to Bill C-31 can aid in the ultimately cost by denying Native children their inherit right as "Indians" and keepers of Indigenous members of Canada.

Although self-government is mentioned in this thesis as a side note, it is a relevant issue. The decision to grant such a right to band councils was viewed as conducive to self-government because the government had to choose between what the Bill of Rights promised versus the legally-binding decision of the band council.⁵⁸ Since self-government was not clearly defined, the government was not willing to grant political power without defined parameters.

Bill C-31 also affected band membership. Members who had lost their band membership due to past sexual discrimination were permitted to regain membership. In addition, bands were permitted to control their own membership on their own terms if they respected two principles:

⁵⁶ E-Dbendaagzuig, "Those Who Belong" Conference, speaker Dean Janvier of the Assembly of First Nations, Marriott Hotel, Toronto, April 16, 2007.

⁵⁷ Personal Commentary from Dan Beavon, Director of Individual Affairs, "economic effects, what happens to returning members," Indian and Northern Development Affairs, by John Ward, May 5, 2005.

⁵⁸ Barbara Craig, *The Chapter of rights and freedoms and the Indian Act: before and after Bill C-31* (Ottawa: University of Ottawa Press, 1986), 51.

first, that the majority of band electors agree to take control over their own membership and set official protocol as to who could be a member; second, that members agree that anyone who had been rejected due to past discrimination would be accepted under the new rules. Bands were also given new powers to pass by-laws. For example, the band could determine who was permitted to live on the reserve and what provisions or benefits could be extended to children of band members living on the reserve.

The different classifications of Native persons can be clarified by examining the reinstatement policy of returning Mohawks at Kahnawake. Between 1985 and 1997, Mohawks from the Kahnawake Reserve revealed that their population had grown to 1690 due to the reinstatement of Bill C-31.⁵⁹ The exact number of people residing on Kahnawake cannot be determined; however, in 1997, the number of on-reserve Mohawks was 6,624.⁶⁰ The primary increase was between 1985 and 1997 as additional band members were reinstated; however, the busiest period was 1986 to 1991, when the population increased by two thirds.⁶¹ Appendix 1 provides a larger comparison from 1981 to 1996. This population growth caused a significant financial impact on the reserve, and strained resources. Although the number of newly registered natives will continue to rise, the population will eventually steadily decline. This issue got the attention of First Nations groups such as the Assembly of First Nations (AFN), which viewed Bill C-31 as an unofficial government policy to abolish Natives' Status and rights. The characteristics of *Bill C-31* have been compared to other similar government policies such as the White Paper as in C-31 if not altered can lead to the removal of the majority of First Nations except that of Métis and Inuit. Appendix 2 uses a stigmatic numerical system to display the complexity of organizing current members.⁶²

⁵⁹ Stewart Clatworthy, *Population and membership Projections Mohawks of Kahnawake* (Winnipeg: Four Directions Consulting Group, November 9, 1998), 15.

⁶⁰ *Ibid.*, Model 4 Total.

⁶¹ *Ibid.*

⁶² *Ibid.*, 11.

Although the population would continue to grow as a result of out-marriage, the end result would cause the potential extinction of 6(1) members from the Mohawks of Kahnawake Reserve. Therefore, without a substantial 6(1) population, 6(2)s would become the dominate gene group, which in turn would temporarily increase and then gradually decline with mixed marriages.

As band councils got power to control membership, they were able to implement bylaws, as municipalities could, in regulating members, such as determining whether a reserve is wet or dry. In one particular case, control of liquor became a significant legislative power, which resulted in a reserve becoming dry.⁶³ One could argue a positive step for reducing alcoholism and dysfunctionality that plague reserves. Bands were assigned the power to prohibit the use or production of intoxicants such as alcohol and other types of substances. On October 23, 1985, Chief Staats organized a public debate over this new band power at his Ohsweken Community Hall.⁶⁴ During the meeting, a representative from INAC was questioned about keeping the native people in the dark.⁶⁵ In June, a Manitoba court agreed that this prohibition of liquor was discriminatory.⁶⁶ Therefore, INAC had the sections on liquor prohibition removed from the *Indian Act*.

In her research, McIvor reviews the population of Native women involved in criminal activity, in particular females in prison. McIvor's research focuses on the Pine Grove Correctional Institution for women in Saskatchewan, where 95% are of Indian background. This could stem from Saskatchewan's large Native population or from its being a centralized location for rehabilitation. Yet if Aboriginal women comprise of 1% of the Canadian population, why does Pine Grove have 95% Aboriginal women?⁶⁷ This overpopulation of First Nation persons in correctional institutions is a trend indicated in the author's research. The fact remains that with

⁶³ Tekawennake: Six Nations - New Credit Reporter "Band powers increase by Bill C-31," vol. 11, Ed. 28, 1.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ D. McIvor, *Native Women's Perspective: Women and Law, International Perspectives* (Montreal: National Association of Women and Law, 1988), 6.

an already heavily burdened network of rehabilitation institutions, these Native person may negatively impact on their communities once they leave prison. Moreover if a native woman could take care of her children or infants at the time of incarceration, the state would find an alternative environment.

The government failed to conduct the necessary research when it came to economic, social, and psychological distress. This might have been averted if Bill C-31 had been properly supported by all contributing members, which would have provided the necessary infrastructure for dealing with returnees, a major concern among Elders. Another shocking statistical analysis regarding Native re-instatement was conducted by Sharon McIvor. As a member of the Native Women's Association, McIvor demonstrated that, out of 14,000 Aboriginal women and 40,000 children who regained their Status, only a mere 2% were able to be readmitted to reserves with full rights.⁶⁸

The Department of Indian Affairs and Northern Development supported the section which dictated rules about membership and band management. As a result of Bill C-31, the government seemed unwilling to cover any of the economic costs associated with section 12(1)(b). The people who were granted permission to reenter were not demanding total financial compensation. For the most part, these returnees only wanted to repair cultural ties and return to their community. A disturbing question that has been asked by various authors, government officials and even associations is why would, the government fund bands even though the majority of these communities did not allow reintegration of members. When the United Nations declared the *Indian Act* as producing discrimination based on sex, the government was forced to revise the *Indian Act* to eliminate this discrimination. Furthermore, in order to resolve the re-entry of 12(1)(b)s, this task was undertaken by local band councils. Also, the question remains:

⁶⁸ Paula Mallea, *Aboriginal Law: Apartheid in Canada?* (Brandon: Bearpaw Publishing, 1994), 20.

was the government trying to save face in light of international pressure, or to simply save money?

Other problems with Bill C-31 were raised by the Union of Ontario Indians. They informed Minister David Crombie that the bill did not give the band full control over membership. In addition, the Union argued that the bill failed to specify a “commitment to increase resources, both physical and financial, to those bands who reinstate band members and thereby increase membership and suffer consequential strain upon band resources.”⁶⁹ It is apparent that much of the dispute over the bill resided in financial strain and government neglect for properly implementing necessary community infrastructure.

When trying to understand the implication of Bill C-31, a number of key reports issued by the Ministry of Indian Affairs and Northern Development must be analyzed. A summary report was issued by the Honourable Tom Siddon, who was acting minister at the time, entitled *Impacts of the 1985 Amendments to the Indian Act (Bill C-31)*. The objective was to determine the impact of Bill C-31 and to create a base of information that could be used by both the federal government and the Aboriginal community to improve relations and services. According to the report, total program expenditures between 1985 and 1990 amounted to \$338 million dollars.⁷⁰

The exact accumulated cost attributed to Bill C-31 may not been known for some time, given various reasons including these two: band councils who regulate their own membership are not responsible for reporting their numbers to Indian Affairs; and as per an internal briefing note sent to Indian Affairs, “The general public may not be aware of the increased cost to the taxpayer of providing services to an expanding Status Indian population.”⁷¹ Research on Canadian newspapers, including the *Vancouver Sun*, the *Winnipeg Free Press*, the *Globe and Mail* and the *Montreal Gazette*, has indicated that the general Canadian public is only vaguely aware of Bill

⁶⁹ *Non QPC Document*, vol. 18/32, doc. 598. (Department of Indian and Northern Affairs Canada).

⁷⁰ *Ibid.*

⁷¹ *Non QPC documents*, vol. 1/32, doc. 787. (Department of Indian and Northern Affairs Canada).

C-31 or of Indian Status issues. Headlines that read, "More Millions for Natives" give a false representation of an already confusing topic that non-Canadians might not be able to understand. A side note from this report revealed that the typical profile of a Bill C-31 registrant was an educated female who had graduated from high school.⁷² Most of these registrants sought "Status for reasons of cultural belonging, personal identity and correction of injustice."⁷³ A report entitled *Correcting Historic Wrongs* reveals that many of these registrants faced bureaucratic obstacles and that the government failed to anticipate the number of Aboriginals who would pursue Status under the new bill.⁷⁴ The government failed to conduct a risk analysis, which would have identified potential problems and unnecessary delays for Bill C-31 registrants.

The passing of the bill created a number of important changes for the Status of the Native population. Statistics indicate that by June 1990, approximately 73,983 applications had been received;⁷⁵ 55% of these applications resulted in reinstatement, and the Native population thus grew by 90% after the passage of the bill. Another issue was more delays in processing. A huge backlog of registrants was created due to the high number of people who applied immediately after the passing of the bill. Rose Marie Blair-Smith, a member of the Council for Yukon Indians, stated that a backlog resulted from too many registrants being unable to produce the necessary documentation. Another complaint, filed by Linda MacDonald of the Yukon Native Women's Association, stated that "[many] elders were born and married long before the arrival of non-Native people....family histories were passed on orally and sometimes given greater zeal by the use of place names given to various geographical locations."⁷⁶ This lack of documentation led to many registrants being unfairly denied Status. In 1991, survey data indicated that out of

⁷² *Impacts of the 1985 Amendments to the Indian Act (Bill C-31)*. Hon. Tom Siddon, P.M., M.P., (Ottawa: Minister of Indian Affairs and Northern Development, 1990), 2.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Highlights of Aboriginal Conditions 1991, 1986 Demographic, Social and Economic Characteristics* (Ottawa: Department of Indian Affairs and Northern Development, 1995), XV

⁷⁶ *Impacts of the 1985 Amendments to the Indian Act (Bill C-31)*. Hon. Tom Siddon, P.M., M.P., (Ottawa: Minister of Indian Affairs and Northern Development, 1990), 9.

603 registered Indian bands in Canada, women consisted of 51% of First Nation persons.⁷⁷ Even among the ten largest bands, women made up 51.5% of the net population.⁷⁸ Appendix 3 provides an overview of statistics related to female registrants.⁷⁹ This statistical analysis reveals trends with regards to gender.

According to government reports, Bill C-31 also affected a number of programs, including housing, healthcare, administration, enforcement of matrimonial real property. One of the most affected areas was housing. Approximately \$91 million dollars was added to the regular reserve housing fund. New units had to be constructed for the newly reintegrated band members on reserves that accepted Bill C-31 reentries and their families to offset a housing shortage. Many bands were overwhelmed with the demand for new houses and were unable to provide affordable shelter. The insufficient infrastructural resources required for building additional housing units was inadequate.⁸⁰ This caused major delays and resulted in poor or no housing, adding to an existing backlog in applications. Bill-31 caused turmoil within First Nations organizations, due to “undelivered government commitments at that time.”⁸¹

Another affected area was health care. The report states that “over 56% of all registrants (on and off-reserve) made use of non-insured Health Benefits.”⁸² An increase in health care costs was estimated at \$103 million dollars.⁸³ Survey data indicates that many were aware that health benefits were paid for by the government. For Bill C-31 registrants, health care changes were a positive step forward. However, band administrators faced an overwhelming influx of inquiries due to the changes in the healthcare system. They complained about the amount of time spent

⁷⁷ *Aboriginal Women: A Demographic, Social and Economic Profile* (Ottawa: Department of Indian Affairs and Northern Development, Summer 1996), 4.

⁷⁸ *Ibid.*

⁷⁹ *See Appendix 4.*

⁸⁰ Wendy Grant-John, *Consultation Report on Matrimonial Real Property* (Ottawa: Indian and Northern Affairs Canada, March 7, 2007), 12.

⁸¹ *Ibid.*

⁸² *Impacts of the 1985 Amendments to the Indian Act (Bill C-31)*. Hon. Tom Siddon, P.M., M.P., (Ottawa: Minister of Indian Affairs and Northern Development, 1990), 3.

⁸³ *Ibid.*

answering inquiries about services and benefits, filling in forms, and dealing with healthcare applications. Aboriginal service providers “resented the action of government in imposing more numbers on limited human and financial resources and often displayed this resentment through unfair treatment of Bill C-31 registrants.”⁸⁴ For band councils and administrators, the new registrants symbolized the federal government’s infringement upon their ability to govern themselves. Health care and other related issues resulting in strained resources are key areas that band members desire a greater control over.

The key socio-ideological impact that Bill C-31 was known for in regard to health care on the reserve communities was on the communication between Natives and INAC. Many Aboriginals did not believe that the bill was in their best interests. Many were upset they had not been consulted during the formulation of the bill’s legislation and policies. The positive reactions were often associated with free services, such as dental care and housing access, that were granted to the new band members. Later, surveys indicate that many respondents were fearful of the future and that Bill C-31 could lead to the destruction of the reserve system.⁸⁵ Some band members were upset with the fact that new members would be joining communities and people with whom they had had little contact. First Nations were forced to provide housing for these new individuals. Government surveys by INAC in 1985 indicate fear that there would be a massive influx of new band members who simply wanted to return to the reserve in order to take advantage of housing services,⁸⁶ which were already suffering shortages. Furthermore, this undue pressure caused many band members and councils to criticize the bill for failing to provide a contingency support plan for risks that could potentially occur after the bill’s passing. Another problem on the reserve was related to false perceptions and rumours regarding

⁸⁴ *Ibid.*

⁸⁵ *Impacts of the 1985 Amendments to the Indian Act (Bill C-31)*. Hon. Tom Siddon, M.P., (Ottawa: Minister of Indian Affairs and Northern Development, 1990), 28.

⁸⁶ *Ibid.*, 40.

additional funds for extra health services. Many band members believed that Bill C-31 registrants were given preferential treatment for programs and services.⁸⁷

The need for post-secondary education also increased after Bill C-31. The post-secondary Student Support Program provided financial support in the form of grants for tuition, books, travel and living expenses. The program even included instructional support to assist natives in meeting entrance standards. Many new band members were educated females who wanted to pursue professional careers. Thus, there was an increase in enrolment in college and university programs. This led to higher expenditures for education in the amount of approximately \$71 million dollars. According to statistics, the average grant for each Bill C-31 student was \$7,800. These costs were not anticipated by either the government or the bands. Many of those who were in the process of being granted Status held off on pursuing their educational career until they received approval from the registrar.

Improving education has always been a primary concern for First Nation communities, as well as for INAC. In order to rectify past injustices, an intensive study was taken to enhance the educational curriculum. In Wendy Grant-John's report of matrimonial real property, she describes a methodology for re-education that involves a sound pedagogical framework written to incorporate reentries. Grant-John explains:

because INAC funded school systems on reserve, a stipulation of the funding should include that children be taught about treaties, matrimonial laws, Indian Acts, Bill C-31, and local by-laws.⁸⁸

Another group affected by *Bill C-31* were off-reserve Native communities. A number of case studies were completed by the department of Indian Affairs and Northern Development in 1990.

The general reaction to the bill among off-reserve communities was quite similar to that of

⁸⁷ *Ibid.*, 42.

⁸⁸ Wendy Grant-John, *Consultation Report on Matrimonial Real Property* (Ottawa: Indian and Northern Affairs Canada, March 7, 2007), 311.

people living on reserve.⁸⁹ The primary difference was that Bill C-31 registrants living off-site experienced less access to reserve-based services. Since many natives wanted to take advantage of free health care and housing, newly registered Indians sought to return to a reserve close to a community where they lived. The case study points to one example where a registrant encountered difficulty accessing the Post-Secondary Student Support Program because administration for this service had been delegated to the band administration.

Despite the objective of Bill C-31 to remove discrimination, many Natives felt that new forms of prejudices had been created. The bill allowed bands to control their own membership. This gave bands the power to “restrict eligibility for some rights and benefits that used to be automatic with Status.”⁹⁰ The bill also failed to eliminate all forms of gender discrimination. Women who had lost their Status through marriage before 1985 were unable to pass their Status on to their children, while men who had lost their Status prior to the bill were able to do so. Another argument put forth runs as follows:

Status used to guarantee the right to membership in a band and the concomitant rights to vote for chief and council, to run for public office on reserve and to receive all benefits accorded other band members. While these rights still exist for those granted Status under Bill C-31, they are not necessarily guaranteed, as they are dependent on membership and residency requirements that may now be decided by bands.⁹¹

This argument indicates how the government was unable to satisfy all stakeholders affected by the bill. In attempting to give greater control to bands, they in effect opened the door to other forms of discrimination, such as limited membership and incorporating blood quantum criteria. The government tried to fix its human rights violation of sexual discrimination law that continued even though the primary purpose of Bill C-31 was to remove this discriminatory clause. Governmentally, policy advisers believed that modifications to the *Indian Act* (such as

⁸⁹ *Ibid.*, 52.

⁹⁰ *Ibid.*, 4.

⁹¹ *Ibid.*, 7.

classification of people, 6(1) and 6(2)) would ensure a positive outcome. However, this noble initiative caused new problems and concerns, namely, segregation by alienating natives into classifications [i.e. 6(1)s should remain with 6(1)s and 6(2)s remain with 6(2)s]. However, the children of two 6(2)s would be 6(1)s, while the children of a 6(2) who marries a non-Status Indian would be non-Status. This said, one might argue that, if left unchanged, Bill C-31 could negatively affect First Nation population growth.

Many First Nations People complained that Bill C-31 did not live up to their expectations. In a survey, one Aboriginal person stated that the bill “created a new class of citizen and continues to discriminate against and assimilate our people.”⁹² Many natives saw the bill as dividing bands rather than unifying them. Also, some perceived the new legislation as protecting individual rights while threatening collective rights.

The Ontario branch of the Native Women’s Association (ONWA) complained that the bill caused confusion. It therefore issued a statement, which argued that Bill C-31 drew lines and divided families, thus deviating from the principle of equality.”⁹³ The Québec Native Women’s Association, (QNWA) suggested a further amendment to the *Indian Act*, dealing with section 11.⁹⁴ It called for the addition of a registrar, which would record all children and grandchildren of Native women who had lost their Status (12(1)(b) people), due to the unfortunate circumstances of the *Indian Act*.⁹⁵ After the passing of Bill C-31, Aboriginals have come to realize that this amendment to the *Indian Act* could be viewed as beneficial, because it gave the right to regulate band membership. However, the main concern here is that of Native women’s

⁹² *Ibid.*, 5.

⁹³ *Ibid.*, 7.

⁹⁴ Gail Stacey-Moore, s “Consultant on Aboriginal Affairs, on Boards of Directors to Québec Native Women’s Shelter of Montréal,” *Amendments Proposed to the New Indian Act by the Québec Native Women’s Association* (Montréal: Women and Law, International Perspectives, 1989), 2.

⁹⁵ *Ibid.*

reinstatement to Status. They viewed this amendment as a way to please the First Nations leaders and the United Nations.⁹⁶

Native women's groups began lobbying the government over Indian Status. These groups supported a unique ideology: Aboriginal feminist consciousness.⁹⁷ First Nations women had experienced social, economic and physical abuse by their male counterparts.⁹⁸ Aboriginal women activists, as well as and various movements and associations were therefore not just fighting for their rights, but for those of the entire community, since women were traditionally the "keepers" of Aboriginal society. Their presence within the community has been regarded highly by right activists and lobbyist like Sandra Lovelace.⁹⁹ It has been the responsibility of women to attend to the needs of children, other women, men and elders.¹⁰⁰ This task is regarded as an essential aspect of preserving Aboriginal identity and society.¹⁰¹

By 1986, a year after Bill C-31 was passed there loomed a sense that not all Natives who qualified for Indian Status would be officially recognized. The following year, the Native Council of Canada theorized that out of about 600,000 Native applications, only, 100,000-120,000 firmly believed that they were Aboriginal or had a vibrant link to their ancestral past.¹⁰² Out of this estimated figure, only 100,000 non-Status Natives regained their legal rights as

⁹⁶ *Bill C-31 & The New Indian Act* "Guidebook #2: Protecting your Rights" (Ottawa: Native Council of Canada, 1986), 1.

⁹⁷ Joyce Audry Green, *Exploring Identity and Citizenship: Aboriginal Women, Bill C-31 and the Sawridge Case* (Edmonton: "PhD Thesis," University of Alberta, Fall 1997), 80.

⁹⁸ *Ibid.*, 81.

⁹⁹ Personal Commentary by Sandra Lovelace-Nicholas, "Retired Women's Political Activists," organized at the Human Rights Monument, Ottawa, *Stop the Discrimination! Aboriginal People United Against Bill C-31*, reported by John Ward, June 27, 2005.

¹⁰⁰ *Ibid.*, 82.

¹⁰¹ *Ibid.*

¹⁰² Joan Holmes, *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), 13.

Aboriginals.¹⁰³ However, these First Nations citizens did not qualify under the revised *Indian Act* because there were unable to provide proof of family entitlement¹⁰⁴

Between July 1, 1985 and March 31, 1987, INAC had contributed \$25 million towards the reintegration of people classified under section 12(1)(b) of the *Indian Act* as newly reinstated Indians.¹⁰⁵ These people were able to regain their Status and become full members in their community.¹⁰⁶ As for the other members classified under that section, their band councils did not allow them to regain their Status; thus, they were left out. The cost of regaining Status as a result of either disenfranchisement or primarily Bill C-31 was shown in the annual INAC reports. An estimated figure of \$2.5 million between 1985 and 1986 and \$9.2 million between 1986 and 1987 gives a preliminary glimpse at funding.¹⁰⁷ Also, there was a population assessment predicting that, between 1986 and 2011, the Indian population would increase from 403,000 to approximately 721,000.¹⁰⁸ This figure is shocking, given the small amount of funding that was allocated in the initial two years after the implementation of Bill C-31. In March of 1987, a study commissioned by INAC regarding bands and reserves demanded that native communities receive the proper funding for developing their membership system. The greatest demand for this funding came from British Columbia, where eighty bands had received only \$1,276, 880 and from the Northwest Territories, which had only three bands, received \$25,500 in total.¹⁰⁹ These figures do not add up when trying to calculate the individual amount corresponding to reserves or bands. The end result would indicate that each province was assigned a set limit in conjunction with the size of the resident population. A study by INAC had found that 490 bands

¹⁰³ Produced by Brenda Chambers, speaker: Nelly Carlson, "Aboriginal Women's Rights Advocate" *Indians Enough?: The New Caste System of the Future*, (Kelowna: Venturing Forth, 2004, Season 4, Episode 3).

¹⁰⁴ Joan Holmes *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), 13.

¹⁰⁵ *Report to Parliament: Implementation of the 1985 Changes to the Indian Act* (Ottawa: Indian and Northern Affairs Canada, 1987), 17.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*, 21.

¹⁰⁸ Shirley Loh, *Population Projections of Registered Indians, 1986-2011* (Ottawa: Indian and Northern Affairs Canada, 1990), 71.

¹⁰⁹ *Report to Parliament: Implementation of the 1985 Changes to the Indian Act* (Ottawa: Indian and Northern Affairs Canada, 1987), C-5.

have collectively obtained \$6.5 million for constructing and improving membership regulatory system.¹¹⁰

Other problems related to the bill concerned delays and controversial decisions on entitlement. According to the Native Council of Canada, “fewer than 15 percent of the persons who had applied for registration were registered.”¹¹¹ INAC was processing only 33 applications per day. Although INAC added more staff, funding was cut for Native associations involved in the implementation work.¹¹² Much of the delays were due to the confusion surrounding the meaning of *Bill C-31*. Often, registration officials would inadvertently reject an applicant. Statistics indicate that during 1986, one in every six applicants was rejected. This also led to a large number of appeals and protests by the rejected applicants. Another problem related to understanding the new bill was related to children out of wedlock when the male father or the mother did not identify the offspring. That child would not receive membership, but were dealt with under a separate section of the Act. Confusion over these children led to frequent delays and unfounded rejection of their applications. The Native Council of Canada condemned INAC for its improper handling of the application process even though children who had been adopted into non-Native communities would have difficulty gaining Status or membership later on in life. Statistics indicate that there was a higher number of applications than registrations. Based on this evidence, it is apparent that the federal government was ill-prepared to deal with the changes to the *Indian Act*. It neglected the financial obligations required to maintain the registration process. Also, it failed to prepare for the large number of appeals occurring following the introduction of the bill. This lack of preparedness is undoubtedly one of the great failures of *Bill C-31*.

Although *Bill C-31* intended to remove the sexual discrimination faced by native women, it failed to adequately address the needs of these women and of Aboriginal people as a whole.

¹¹⁰ *Ibid.*, 12.

¹¹¹ *Bill C-31 & The New Indian Act* “Guidebook #2: Protecting your Rights” (Ottawa: Native Council of Canada, 1986), 3.

¹¹² *Ibid.*

Sandra Lovelace made it clear that Bill C-31 failed completely to eliminate social injustices faced by Aboriginal women.¹¹³ In addition, Lovelace stated that the government was ill-prepared and not fully aware of consequent circumstances, such as the need for adequate funding in order to effectively implement Bill C-31. The government failed to effectively consider the economic consequences of altering the *Indian Act*. In addition, the inability of the government to effectively consult with Native communities prevented Bill C-31 from having the positive effects it was intended to have. Why was the government so ill-prepared to deal with the influx of applications? How could the government have better dealt with amendments to the *Indian Act*? It seems the government attempted to rush this legislation into place. It failed to have a clear plan with knowledgeable officials managing the registration process. Predicting potential events is more matter of a political science methodology (and not often for historians) but there must have been some government officials that could see a huge problem coming. D.N. Sprague, former First Nations professor at the University of Manitoba offers a new perspective on Bill C-31 by analyzing the protocols, rules and regulations that are embedded within the *Indian Act*. Sprague provides a mathematical equation in determining membership by percentage and determining who is eligible for Status and under what sections.¹¹⁴ In addition, the government should have addressed the financial questions appropriately before initiating the process. Better guidance from above would have improved the systematic reviews of applications. It is possible that the government expected a greater financial response from the First Nations community itself; however, Aboriginal people were not responsible for initiating the amendments to the *Indian Act*. Thus, the federal government needed to take the necessary steps to ensure that enough funding was available to launch the process.

¹¹³ Personal Commentary by Sandra Lovelace-Nicholas, "Retired Political Activists," organized at the Human Rights Monument, Ottawa, *Stop the Discrimination! Aboriginal People United Against Bill C-31*, reported by John Ward, June 27, 2005.

¹¹⁴ D.N., Sprague, "The New Math of the New *Indian Act*: $6(2) + 6(2) = 6(1)$ " *Native Studies Review*, Vol. 10, No. 1, (1995), General Overview.

In a recent demonstration in Ottawa on June 28, 2005, organized by the NWAC, resentment over Bill C-31 was discussed by a series of guest speakers. The speakers all confirmed that the Bill continued to impede progress with regards to women's rights. One Mohawk speaker, Ellen Gabriel, told supporters that Native women faced "discrimination with the flick of a pen."¹¹⁵ The speaker went on to argue that:

We thought government twisted, modeled, reshaped our goals for equality and created greater chaos not just for women but for everyone in our community. It seems to be that because women opposed, that it was from this that the government created Bill C-31.¹¹⁶

The demonstrators concluded that the bill failed in all efforts to remove discrimination and promote Aboriginal self-government. In addition, many argued that the bill left communities in a deficit due to the number of unanticipated returnees. Natives blame the government officers from INAC for their lack of preparedness and failure to provide support when needed.

¹¹⁵ Personal Commentary with Ellen Gabriel, "*Ottawa Protest of Bill C-31*" on June 28, 2005 by John Ward.

¹¹⁶ *Ibid.*

Chapter 4: Section 6 of the *Indian Act*

¹¹⁷This chapter examines section 6(1) and 6(2) of the *Indian Act* with respect to women and their legal rights in the light of Bill C-31. These two sections are well known within the Aboriginal community since a majority of people have been affected by Bill C-31. This is why some Natives would refer to themselves as either 6(1) or 6(2)'s when describing their Status within their community. The following definition of 6(1) and 6(2) provides an explanation:

- 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.¹¹⁸

Although these two sections are similar in how they are numbered, there are a few differences. This bill was originally intended to give Status back to women who had lost their right to Indian Status by marrying a non-Indian. Their children would be categorized as 6(2) by the Department of Indian Affairs regardless of whether the father was a 6(1) or a Status Indian; all children born out of wedlock would be non-Status Indians. This was also true for "children who have one parent that is not recognized as Indian under the new rules."¹¹⁹ Children born after June 15 or April 15, 1985 would be labeled 6(1) if both parents had Indian Status and 6(2) if one parent had Indian Status but the other was a non-Status Indian.

This process of labeling people might seem crude; Status and non-Status (or self-proclaimed) Natives might not sense ethnic differences amongst each other even though in the government's eye, non-Status and self-proclaimed Natives are not fully "Indian." This view flows from

¹¹⁷ A nearly forgotten legal footnote in an 1869 amendment to the *Indian Act* gave native women the right to protect their indigenous Status without disenfranchisement: "members of the Grand Council also desire amendments to Section 6 of the Act of 1869 so that Indian women may have the privilege of marrying when and whom they please; without subjecting themselves to exclusion or expulsion from their tribes and the consequent loss of property and the rights they may have by virtue of their being members of any particular tribe. The Indians' request went unheeded." In Kathleen Jamieson, *Indian Women and the Law in Canada: Citizens Minus* (Ottawa: Advisory Council on the Status of Women, Ministry of Supply & Service Canada, 1978), 30.

¹¹⁸ Stewart Clatworthy, *Re-assessing the Population Impacts of Bill C-31* (Winnipeg: *Four Directions Project Consultants*, February 26, 2001), 17.

¹¹⁹ Conference, "AMC to Engage Manitoba First Nations in Developing Solutions to MRP On-Reserve", Guest Speaker Keely Ten Fingers, Radisson Hotel Winnipeg, November 22, 2006. Website Site: <http://www.manitobachiefs.com/women/women.html#sectWomen>. Accessed: August 2, 2007.

government policy, which does not reflect the true feelings of Aboriginals. As Fred McDonald asks, "People aren't made to be treated as cattle so why label them as cattle?"¹²⁰ An odd but valid statement: 6(1)s should remain only with other 6(1)s or 6(2)s in order to reproduce a 6(1) offspring. To further illustrate this complex concept, see appendix 4. After the implementation of Bill C-31, Indians would be categorized by Status at birth, taking on either 6(1) or 6(2) as part of their ethnic identity. This concept might seem foreign to non-Natives, who refer to themselves by their surname. The added serial numbering could elicit an odd response. In a personal commentary, Dan Beavon, Director of Special Research at the Department of Indian Affairs and Northern Development, provides insight into this somewhat complex topic: he predicts through his research that 6(1)s would eventually, become 6(2)s, thereby becoming non-Status. A detailed explanation of the various numerical classifications embedded in section 6 of the *Indian Act* will help to further evaluate this act. Although this thesis primarily focuses on sections 6(1) and 6(2), a systematic review of all the different sub-sections is necessary. This is a detailed list of the subsection of Section 6(1); however, Section 6(1)(b) will not be included because it assesses new band councils established in 1985. The additional subsections will clarify the meanings of the different sections.

Section 6(1)(a), applies to all persons actually registered (or entitled to be registered) as of April 16, 1985, including those who were entitled to registration from birth as well as those (women) who acquired registration through marriage to an Indian male under the provisions of the 1951/56 Act;

Section 6(1)(c), applies to those persons who became entitled to registration under Bill C-31 because they were removed from the Register as a result of their (or their mother's) marriage to a non-Indian prior to April 17, 1985;

Section 6(1)(d), applies to men (and their wives and children) who became entitled to registration under Bill C-31 because they were removed from the Register through "voluntary" disenfranchisement;

¹²⁰ Personal Commentary with Fred McDonald, "governmental policy vs. Indian identity" to John Ward, April 21, 2005.

Section 6(1)(e), applies to persons (men and women) who became entitled to registration under Bill C-31 because they were removed from the Register for residing outside of Canada for more than five years prior to 1951, or for joining a profession or obtaining a university degree prior to 1920.

Section 6(1)(f), applies to persons, both of whose parents are (or would be) entitled to registration under Bill C-31, including persons born prior to April 17, 1985 who became eligible for registration as a result of the changes introduced by Bill C-31, as well as persons born on or after April 17, 1985 who have two Registered Indian parents.¹²¹

It is vital to fully comprehend the different classifications of section 6 when determining individual categorization. Those natives who have been directly affected by this classification have challenged the government on grounds of discrimination and gender inequality. Many of these court cases have sought the help of the legal system, thus causing a major problem for 6(2)s who married non-Status First Nation persons and whose children thereby become non-Status. This ongoing dilemma would be known as the “double mother clause” or the second generation cut-off rule.¹²² This discriminatory factor associated with the *Indian Act* came from Section 12(1)(a)(iv), which was branded as the “double mother rule.” Section 12(1)(a)(iv) revokes Indian Status of children once they turn 21 if both their mother and grandmother did not receive Status prior to marriage.¹²³ Often, these children would be considered an outcast, which severs ties to their family and community – a place of knowledge, history and heritage. An Aboriginal without a sense of his / her background has no direction forward.

An Indian born of a marriage entered into on or after September 4, 1951 lost entitlement to registration at the age of 21 years if his/her mother and paternal grandmother were not recognized as Indian before their marriages.¹²⁴

Bill C-31 has caused a series of ripple effects. A few of these include non-eligibility for band membership as well as Indian Status and self-government. These two governing attributes could

¹²¹ [The inheritance rules contained in Section 6 of *Bill C-31*, are effectively the same as a gender neutral version of the “double mother” clause contained in the prior Act] Stewart Clatworthy, *Re-assessing the Population Impacts of Bill C-31* (Winnipeg: *Four Directions Project Consultants*, February 26, 2001), 6.

¹²² *Ibid.*

¹²³ Juliet Robin, *Indian Women and the New Indian Act: Still Bottom of the Totem Pole* (Ottawa: University of Ottawa, 1988), 2.

¹²⁴ Indian Registration and Band Lists Directorate, *The Indian Act Past and Present: A Manual on Registration and Entitlement Legislation* (Ottawa: Indian and Northern Affairs Canada, 1991), 4.

help in the struggle for Native rights by either accommodating non-Status members or removing legislation such as Bill C-31 and the *Indian Act*.

There has been a wide range of studies on the impacts of Bill C-31 such as the report entitled, *Manitoba First Nations population will not be eligible for band membership and/or Indian Status*. Given the extent of eventual population decline after Bill C-31 and the fact that self-government or (self-determination) is unlikely to happen, the end results are not promising for Manitoba Natives. First Nations in Manitoba will likely be reduced to a group of non-Status Indians or otherwise be finally integrated into mainstream non-Native society as enfranchised Indians – doing away with their “citizens plus” Status, as termed by Harold Cardinal.

When reviewing the reasoning of Aboriginals, there are three main issues that need to be addressed: elimination of gender-based inequity; reinstatement of Status and membership rights to all who qualify; and acknowledgement that band councils have authority over their own membership. Though, these three issues outline the causes for concern regarding Status and membership, reinstatement would create negative consequences for Natives trying to obtain Status. These amendments will be analyzed in greater detail to review the outcomes and challenges that lie ahead. There are many positive attributes that First Nations have received as a direct result of Indian Status, band membership, treaty annuities, access to specialized healthcare, post-secondary education and other types of social and cultural benefits. Any of these provisions will aid in the further development of each Native person, since these benefits are available to Status Indians and band members. The benefits for Indians include tax exemptions, non-insured health benefits, post-secondary education assistance, on-reserve housing, hunting and fishing exemptions, as well as the right to travel freely across the Canadian-US border (Jay Treaty). Yet, there are a wide range of negative aspects of Bill C-31 when determining who may be granted Status or membership. Bill C-31 carried a few amendments that needed to be reviewed such as the second generation cut-off rule, which would remove 6(2)'s, a second-class Status created by

the Bill. This would seem to eventually guarantee the complete extinction of Status Indians because they cannot pass on their Status to their offspring.¹²⁵ These control tactics seriously damage Native reserves due to family divisions and loss of identity.

Parents of First Nations children, even non-Indians, referred to as out-marriage over two successive generations will end the possibility of any further Indian registration to be passed onto a third generation.¹²⁶ An “out-marriage” occurs when an Indian marries a non-Indian or non-Status Indian spouse. Therefore, due to the regulations stipulated in Bill C-31, the children born to single Native women who could not identify or name the father would not be able to obtain their inherent rights to Indian Status.¹²⁷ The immediate causes for concern would not be witnessed until the 6(1)s had their own children after 1985. One in this second generation of Natives after Bill C-31 would mostly likely be considered 6(2) if one parent was a non-Indian. These children may not have access to their reserves, which would have been known as home. Once First Nation Status is revoked, as seen in the second generation cut-off rule in appendix 5, all benefits associated with Status would be extinguished. The question therefore remains: Why did the government enact this bill if only two generations later, a repeat in circumstances would arise? The government of the day wanted to amend a problem as fast as possible with little-to-no funding attributed to the potential increase of returning members. The potential damaging affect of Bill C-31 would come in the near future, as fewer Natives would become Status members, thereby causing a serious negative population decline with past members unable to acquire

¹²⁵ Wayne Beaver, “Alderville First Nation Councillor” *A Brief History of the Federal Government’s Policy of Assimilating Indians* Ogemawahj Tribal Council’s National Conference (Toronto: Marriott Hotel, April 16, 2007), 9.

¹²⁶ Stewart Clatworthy, *Re-assessing the Population Impacts of Bill C-31* (Winnipeg: *Four Directions Project Consultants*, February 26, 2001), 17.

¹²⁷ Produced by Brenda Chambers, speaker: Heather Houle, “Business Student” *Indians Enough?: The New Caste System of the Future*, (Kelowna: Venturing Forth, 2004, Season 4, Episode 3).

Status or membership. This decline of Native peoples would not count the Inuit people or the Métis if they choose to remain non-treaty members.¹²⁸

There has been some progress in reinstating lost Status for Indian women who have married non-Status men. Women who have been granted Status as a result of Bill C-31 would become known as 6(1) if they had inherent rights to treaty payments; however, this right may not be passed down to their offspring, the 6(2)s. Meanwhile, non-Status women who married Status men were able to pass on their Status to their children due to Bill C-31. As a result, non-Status women become 6(1), their Indian husbands 6(1) and the children 6(1) as well. If an Indian woman could not provide accurate information regarding the father's Status, then the newborn would lose any chance of obtaining Status. This statement is similar to that of First Nations children who were adopted. They would grow up without any Status or special privileges. In order for these children to regain access to their Status, a lengthy process would ensue. However, due to either inaccurate data or lack of technical knowledge, obtaining Indian Status would prove difficult if not impossible. These five points will provide insight into the lengthy process of reinstating to Indian Status. Obtaining Status can aid in the healing process and ability to live as an Indian in Canada. An example of how reinstatement ordeals can affect a family is the experience of Leonard Gilbeau of the Aroland Band. Gilbeau has applied for Status because of Bill C-31. Finally, after sixty years of misguiding information, loss of benefits and severed cultural ties, he has gained his Status; Stu Cummins reveals: "receiving his Status now comes too late to change much of his life. But tears come to his eyes as he mentions that his children and grandchildren will belong somewhere."¹²⁹

¹²⁸ Produced by Brenda Chambers, speaker: Patrick Brazeau, "Congress of Aboriginal Peoples" *Indians Enough?: The New Caste System of the Future*, (Kelowna: Venturing Forth, 2004, Season 4, Episode 3).

¹²⁹ Stu Cummins, "After 60 years: Aroland man gets Status" *Wawatay News*, Vol. 11, No. 8, August 1985, 2.

These five points will provide additional information on reinstating Status, also referred to as recovering forgotten identity. Identity equals living as a human being, which in turn fuels a drive for existence and acknowledgment. Moreover:

- the number of First Nation Children registered under 6.2 continues to increase;
- the reinstatement process is complicated, forcing many to give up (some applications have taken over ten years to process);
- the burden of proof falls on the mother and often the father is unwilling or unable to declare paternity;
- the cost of the long-form birth certificate (\$50) required for registration stops many women from registering their children for Status even if the father has Status; and
- the third principle gave the bands control over membership, which created a class of “Indians” who have regained their Status but have no band membership. The reinstatement without the ability to return to the First Nation is also a form of discrimination.¹³⁰

To further describe the short-term and long-term challenges resulting from Bill C-31, which processes can only be achieved after the second generation cut-off rule with respect to the 6(2)'s children. As previously mentioned, Aboriginal children who are listed as either 6(2) or non-Status Indians are faced with little prospect of inheriting treaty rights or any other special rights, such as health benefits, education, hunting and tax exemptions. This type of categorizing is not just for children born after 1985, but for all First Nations persons. Furthermore, present research and forecasting figures rely on statistics for children being denied treaty claims due to their Status requirements.

This section will consider section 6 of the *Indian Act*, and discuss it in regard to band membership. The various parts of section 6 result in a wide range of either positive or negative outcomes, such as 6(1)s' passing their Indian Status, 6(2)s' obtaining Status if one parent is 6(1), or, if married to a non-Status, having non-Status children. There are two critical requirements in order to be recognized as an Indian in Canada: family lineage and band membership. Registration in a band membership directory allows INAC to keep a record that may be of use at a later time. There are, of course, Status Indians residing off-reserve and this may be for either

¹³⁰ Website: www.turtleisland.org/news/news-c31.htm Accessed: October 9, 2007.

personal or economic reasons. With tight financial constrictions on reserves, Aboriginals may face their own challenges because of such circumstances as marriage by classification or financial repercussions because of overpopulation in communities. This may cause them to forfeit their band membership and perhaps their Indian Status if no changes occur. This table provides a visual depiction and gives a response to the challenges faced by many 6(2)'s and their own children. These parenting groupings are in a grid pattern that shows the Indian Status process for Section 6 of the *Indian Act* (appendix 6).¹³¹

Complications arise for a majority of families, when a non-Status man marries a 6(1) woman: their children are either 6(2) or non-Status. In a taped conversation, Ellen Gabriel, a Bill C-31 activist, relives confusion surrounding her children's different Statuses.¹³² Some had Status where others did not because they were born after 1985. These divisions among family members caused a great deal of mental and emotional strain on family relations.¹³³ Classification of Status is an essential aspect of Indian claims to benefits, because Status can lead to financial assistance. This is a major issue for 6(2)s who might not be able to pass on their Status.

¹³¹ Eds., Jerry White, Susan Wingert, Dan Beavon and Paul Maxim, *Aboriginal Policy Research: Moving Forward, Making a Difference*, Vol. IV (Toronto: Thompson Educational Publishing, 2007), 247.

¹³² Personal Commentary with Ellen Gabriel, "Ottawa Protest of Bill C-31" on June 28, 2005 by John Ward.

¹³³ Produced by Brenda Chambers, speaker: Patrick Brazeau, "Congress of Aboriginal Peoples" *Indians Enough?: The New Caste System of the Future*, (Kelowna: Venturing Forth, 2004, Season 4, Episode 3).

Chapter 5: Blood Quantum and Band Membership

This thesis has borrowed the legal concept of blood quantum, which has been already implemented in American Indian policies and reservations. Blood quantum, also known as blood count, has become widely used throughout the mid-western and southern states of the US and has been used in a Canadian context to determine percentage of Indian blood. However, this process of regulating membership is still in its infant stages. This subsection will focus on blood quantum requirement and the relationship to band membership.

The purpose of blood quantum is to determine and regulate the percentage of Indian tribal blood. The ratio of blood deems whether band membership can be passed on. The correct amount of blood is dependent on each band council, which sets its own requirements and limits. The definition of blood quantum is:

where a person's eligibility for membership is determined on the basis of the 'amount of Indian blood' that the person possesses in relation to a minimum standard (most typically 50%)¹³⁴

Band membership information will be evaluated in terms of blood quantum and five books and five articles will be examined. The purpose is to better review materials written on this complex and often misunderstood topic. These books include: Gerald Alfred's *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*; Erik Zissu's *Blood Matters: Five Civilized Tribes and the Search of Unity in the 20th Century*; Alexandra Harmon's *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound*; Kimberly TallBear's *Native-American-DNA.coms: In Search of Native American Race and Tribe* and Circe Sturm's *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma*.

¹³⁴ Eds: White, Jerry P. White, Paul S. Maxim and Dan Beavon *Aboriginal Conditions: Research as a Foundation for Public Policy* (Vancouver: UBC Press, 2003), 79.

The articles that have been chosen include: Eva Maria Garrouette's, "The Racial Formation of American Indians: Negotiating Legitimate Identities Within Tribal and Federal Law"; Robert Robson's article, "The Indian Act: A Northern Manitoba Perspective"; Melissa Meyer's "American Indian Blood Quantum Requirements: Blood is Thicker Than Family"; Alexandra Harmon's "Tribal Enrollment Councils: Lessons on Laws and; Indian Identity and Turner Strong, Pauline and Barrik Van Winkle's "'Indian Blood': Reflections on the Reckoning and Refiguring of Native North American Identity."

The focus of this analysis is to determine what arguments the authors have chosen, their motives, and their overall opinions about blood quantum in relation to band membership, discrimination based on blood count and Bill C-31. In addition, there are two American sources, one book and another article, which were chosen for the purpose of comparison.

In his book, *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*, Gerald Alfred describes a series of objectives that must be obtained to protect North American Indian identity by securing "traditional political culture" rather than assimilating into mainstream Canadian or American ideologies. Although the book portrays Mohawks from Kahnawake, chapters five to seven provide insight into blood quantum and Bill C-31. The basis of blood quantum, membership and how this reflects Bill C-31 are discussed in a series of questions and commentary by an unidentified former chief and band council member referred as to "RK":

(Q): *You do agree with the blood quantum idea and measuring 50% blood?*

RK: Yes;

(Q): *On the membership question, what determined whether or not a person is a Mohawk to you?*

RK: If they have 50% blood;

(Q): *Do you agree with Bill C-31 giving the native women their rights and Status back?*

RK: No, the law said if they married a White man, they lose their Status. Now we got all kinds of guys on the Band List over here with no Indian blood.¹³⁵

RK's comments reveal a traditional viewpoint with regard to current issues such as rules and laws that have to be enforced no matter what the outcomes and persevering membership by blood count is essential to retaining Mohawk cultural and society.

To further define membership criteria for the Mohawk Culture in Kahnawake, three measures are proposed: "1) the 1984 Kahnawake Mohawk Law regarding citizenship; 2) the 1981 Moratorium on mixed marriage; and 3) the Indian Act."¹³⁶ These rules were framed to take after Bill C-31 initiatives and to provide a systemic review process to evaluate past members and potential newcomers. This style had two specific clauses: that members must have 50% blood quantum, and that Mohawks who married non-Indian members after May 22, 1981 would forfeit all possessions and further entitlements. The Kahnawake members have chosen the 50%-plus blood quantum, which falls into the two categories of culture and race. Members who have less than 50% blood quantum but have adequate cultural knowledge and who practise rituals can remain on the reserve.

In his book, *Blood Matters: Five Civilized Tribes and the Search of Unity in the 20th Century*, Erik Zissu evaluates the significance of implementing the blood quantum practice for the Five Civilized Tribes of Oklahoma. The author provides a review of all vital references associated with blood quantum, identity and survival. Chapter one looks at the various views about blood quantum at an early stage. A general feeling towards "unity regardless of blood quantum, stressing instead the mere existence of shared bloodlines" was a viewpoint shared by members.¹³⁷ Chapter two provides a historical overview of the Five Tribes during the 19th

¹³⁵ Gerald Alfred, *Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (Toronto: Oxford University Press, 1995), 122.

¹³⁶ *Ibid.*, 169.

¹³⁷ Erik Zissu, *Blood Matters: The Five Civilized Tribes and the Search for Unity in the Twentieth-Century* (New York: Routledge, 2001), 7.

century. Chapter three shows the reclassification of identity in the form of “Indianness” in the aftermath of the Five Tribes’ history. The purpose was to preserve their identity. Later members would therefore refer to themselves as “real Indians” to distinguish themselves from other groups within their Tribes. This is where the concept of blood quantum originated. Chapter four highlights key points on interracial dialogue that cause tension between mixed-blood people and “pure” Indians. The confrontations between these two groups are over purity levels, as Indians with Caucasian blood ties would stress their “white blood” levels. Chapters six and seven focus on the growth of Indian preservation and self-reliance after natural resources were located in Indian territory. This form of nationalism or “Indianness” brought all Five Tribes together in a common quest for preservation, whereby blood quantum was used to regulate members.

The implementation of blood quantum was not just a political measure but a tool for unity, as “tribal members almost always indicated, before anything else, their blood quantum.”¹³⁸ This self-proclamation of blood count was not viewed as a negative aspect of identity but as a symbolic yet legal definition of who one is and where one comes from. When members choose to use blood quantum as basis for citizenship, their future is preordained by limiting their choices of marriage partners, which might contribute to their offspring’s blood qualifications.¹³⁹ This aspect of “peoplehood” brought all common members under a single blood-inherent right to live among blood relations.¹⁴⁰

Today, paradoxically, blood quantum is of major importance. As the stigma of Indian ancestry has receded in many areas, tribes have been confronted with a new dilemma: more people are claiming to be Indian. As a result, blood quantum has come to occupy a central place in the determinate.¹⁴¹

In Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound,

Harmon critiques the legal and ethno-historical reification of concepts such as tribe, Indian, self-

¹³⁸ *Ibid.*, 30.

¹³⁹ *Ibid.*, 41.

¹⁴⁰ *Ibid.*, 88.

¹⁴¹ *Ibid.*

identity, membership and tradition. She also discusses the philosophy of Indian identity within white and native societies. Intermixing results in “half-breeds,” who occupy a new category of identity. Through decades of intermingling between groups and peoples, Native Americans constantly reshaped their identity. The author provides a comparison of encounters in British Columbia and the Great Plains, which have better-structured band councils than the Puget Sound Indians, who have little to no communal unification. The Puget Sound people regarded family ties as kinship rather than a form of political structure.

Harmon investigates the concept of “middle ground,” pioneered by Richard White. This research evaluated Native and non-Aboriginal mixing, which was the primary reason for selecting the Puget Sound area. Harmon briefly summarizes her methodological framework thus:

on a region where daily relations between Indians and non-Indians have been especially abundant, it allows us to see people continually defining and redefining themselves in contradistinction to one another¹⁴²

Harmon observes the definition of half-breeds in conjunction with white society as an unclear concept, taking into account historical acknowledgments of identity and classification. She notes that membership has been re-evaluated to suit band councils in determining eligibility. The meaning of tribal membership was unclear for white government administrators; they knew only that, without proper recognition of memberships, Indians would not be able to acquire territory or affiliation to the community. The author provides a detailed analysis of the Puget Sound Indians and redefines a current multicultural approach to ethnic integration.

In *Native-American-DNA.coms: In Search of Native American Race and Tribe*, Kimberly Tallbear provides examinations of blood quantum in relation to American perspectives on DNA mapping. The author explains that DNA testing became a primary method of regulating blood quantum and therefore tribal membership. DNA testing has become a predominant factor in

¹⁴² Kimberly TallBear, “Native-American-DNA.coms: In Search of Native American Race and Tribe,” *Revisiting Race in a Genomic Age*, edited by Barbara Koenig, Sandra Soo-Jin Lee, and Sarah Richardson. Rutgers University Press, 2007), 4. (forthcoming)

maintaining tribal membership, as standard blood quantum is often regulated at one-quarter blood count.¹⁴³ Tallbear indicates a change in evaluating Native Americans by showing how DNA or blood quantum regulates current and returning members.

Tallbear's insight into blood quantum has provided a vast volume of insightful information. As a professor and scholar of "regulatory implications for US tribes of genetic research," she explains why many tribes will not give it up. Tallbear writes that DNA testing has become integrated into reservations and is used by tribal councils as a key tool for regulating membership and keeping control. She suggests that Canadian standards "share attributes with American standards." As the majority of Native American tribes have adopted blood quantum requirements, this has become an "important measure of one's closeness to the tribe."¹⁴⁴ The regulating of the blood quantum standard can have both a negative and a positive meaning for non-Aboriginal affiliation, because DNA mapping has become widely incorporated into reservations: as a regulating system, blood quantum is usually accurate, and the process of determining who is eligible to reside on reservations will enable a stable community without further mixing of Indians and non-Indians. Reservations that use this method require their members to submit DNA to be used for a register. This American methodological approach of DNA mapping serves a different purpose since Bill C-31 is from a Canadian Act. However, the information obtained from the US version of blood quantum is quite helpful since American "success" might follow in Canada.

American blood quantum standards have progressed well compared to those in Canada, but because the majority of blood quantum members are one-quarter Indian, tribes in the US continue to grow. Blood quantum regulations mimic citizenship as a passport to entitlement of government benefits; and in Canada this system of regulating on-and off-reserve Natives will

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*, 346.

continue to have a negative effect on survival because the majority of Canadian Natives reside off-reserve.

In *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma*, the author, Circe Sturm, belongs to a Native American tribe known as the Cherokee People, which is where she researched the identity of the northeastern Cherokee of Oklahoma. Sturm provides a perspective from an anthropological view in analyzing blood quantum and reviewing ethnological methods of determining "Indianism." Although this book focuses on the regulation of blood count for the Cherokee, it also provides an in-depth look will provide identification as a Cherokee, according to ethnic lineage. The Cherokee people once were regarded as Americans; they were westernized and possessed some black slaves; a marginal intermixing created Afro-Indians who would later try to obtain Cherokee registration cards. In 1983, the Cherokee tribal elections sparked debate over legitimacy when votes were cast by Afro-Americans with a minor quantity of Indian-blood. The Cherokee Constitution was based on the US presidential electoral system, as reflected in the legal guidelines: "...the Cherokee Nation, good, bad or otherwise, specifically says that to be an elected official you must be a Cherokee by blood." The African Americans suspected the "tribe had systematically discriminated against them on the basis of race." In comparison with the Canadian classification of 6(1)s and 6(2)s, the Cherokee version was: Black-White becoming Black; Black-Indian becoming Black; Black-White-Indian becoming Black, and Indian-White became Indian. This allows us to see Indian, White and Black as equivalent to 6(1), 6(2) to and non-Status. Sturm's analysis of Cherokee blood quantum politics shows more than just the percentage of Indian blood by origin for both racial groups. It would seem as though ethnic classifications are still an ongoing issue in Native American politics.

In "The Racial Formation of American Indians: Negotiating Legitimate Identities Within Tribal and Federal Law," Eva Maria Garrouette provides an introduction to the legal concept of

“racial information”, pertaining to tribal beliefs. Garrouette discusses the necessity of determining Indian identity in a form of nationality by blood quantum. This form of genetic identification has become an essential part of tribal membership enrollment. Roughly two-thirds of all acknowledged tribes require a minimum blood count, as embedded in their tribal “legal citizenship criteria,” whereas one-quarter is often considered majority among tribes. Blood quantum represented two beliefs, one for tribal government and the other for tribal sovereignty:

federal intention was to use blood quantum standards as a means to liquidate tribal lands and to eliminate government trust responsibility to tribes along with entitlement programs, treaty rights, and reservations.¹⁴⁵

This shows the other concern of blood quantum: the economic benefits, which are given only to those with an adequate blood count. Elders pointed out that, although obtaining a large amount of registered Indians would benefit the community, the economic fallout would cause a greater concern, given the financial needs of a larger population. And so blood quantum or blood count has become popular among American Indian tribal membership regulations.

In *The Indian Act: A Northern Manitoba Perspective*, Robert Robson describes the frustration of northern Manitoba First Nations who believe Bill C-31 has not removed discrimination from the *Indian Act*. Robson’s main argument is in line with the Aboriginal perspective but also favours autonomy for bands. This self-government power could help regulate the local Native inhabitant without resulting in population decline. The author offers a statistical analysis of band membership as well as of Natives who had regained Indian Status. Both are located in northern Manitoba and are entitled to the Status provisions set forth in Bill C-31.

In “American Indian Blood Quantum Requirements: Blood is Thicker Than Family,” Melissa Meyer examines American Indian identity, primarily blood quantum count related to band

¹⁴⁵ Eva Maria Garrouette’s, “The Racial Formation of American Indians: Negotiating Legitimate Identities Within Tribal and Federal Law” *Negotiating Legitimate Identities within Tribal and Federal Law*, American Indian Quarterly, March 2001.

enrolment. This is a legal process for claiming identity. A key component to Meyer's research is her approach to social history by reviewing intermarriages in other tribes and non-Indian Americans. Meyer examines tribal enrolment as implemented by the United States government to regulate Indians: the advantages of blood count and how the process is regulated by federal authorities in determining who is an Indian. She evaluates the meaning and implementation of blood reference, as genetics is not a requirement and cannot necessarily convey the fundamental characteristics of a tribe. Meyer's research has added to the overall method of determining the definitions of blood quantum and is an enlightening read.

In *Tribal Enrollment Councils: Lessons on Laws and Indian Identity*, Alexandra Harmon reviews the process of proving Indian identity from the perspective of members of the Colville Indian Reservation. The author argues that there is little scholarly material on American Indians in relation to "racial categories." This might be because Indians fall under a unique legal jurisdiction, as defined by the US Supreme Court: "not as a discrete racial group, but rather, as members of quasi-sovereign tribal entities." The difference between the two views of Indian identity is: people of American Indian heritage are not categorized as racially "Indian" in legal circumstances, so proving someone's "Indianness" means showing "membership in a self-governing tribe." Further evaluating the meaning of membership, Harmon notes that "Indians have not determined the meaning of tribal membership by themselves."¹⁴⁶ It is this author's judgment that the American government has the sole responsibility to determine whether specific individuals are recognized Indians.

An initial step forward towards blood quantum is the Royal Commission on Aboriginal Peoples, which outlines a number of determining factors associated with membership regulations. In Volume 4, *Perspectives and Realities*, a summary of blood quantum stresses that band councils

¹⁴⁶ Alexandra Harmon, *Tribal Enrollment Councils: Lessons on Laws and Indian Identity*, *Western Historical Quarterly*, 32(2), 2001, 5.

cannot specify a minimum blood quantum as a general prerequisite for citizenship. Modern Aboriginal nations, like other nations in the world today, represent a mixture of genetic heritages. Their identity lies in their collective life, their history, ancestry, culture, values, traditions and ties to the land, rather than in their race as such.¹⁴⁷

Although First Nation communities can regulate Status, this process condemns selective communities, which can result in population decrease. The double-mother rule, which encompasses 6(2) members and enforces matrilineal lineage, has become a significant problem in Bill C-31 by. There are other ways of limiting memberships: birth place, lack of documentation of biological fathers on birth certificates (which results in denial of Status), adoption, marriage, community (acceptance also known as blood-brother) and even requirements to know the culture, stories, songs, languages, and so on. These can lead to a membership regulatory measure, but it is not the proper role of INAC to revoke membership or Status through the second generation cut-off rule.

American and Canadian blood quantum methods have similar attributes, although the American system has been implemented for far longer than the Canadian. US reservations incorporate DNA testing when establishing a blood registry of blood quantum. The introduction of band membership came as a direct result of land claims and self-government negotiations as a new direction in government policy.¹⁴⁸ This brought about Bill C-31 and significantly altered the parameters governing membership codes, which had been under the control of INAC. As a result, band councils were able to renew membership terms to suit their own preferences. Not all reserves followed suit, which allowed past members to return to their communities. After bands obtained official registry, Indian Affairs was obliged to sanction them even though government officials knew that band membership would become a harder means of obtaining entrance. For a

¹⁴⁷ *Perspectives and Realities: Royal Commission on Aboriginal People: Perspectives and Realities* Vol. 4 (Ottawa: Minister of Supply and Services Canada, 1996), 160.

¹⁴⁸ Gary Rosen and Marc LeClair, *A Discussion Paper on Aboriginal Self-Government: Comparisons of the Canadian and International Experiences and a Métis Perspective*, "Chapter IV: Aboriginal Self-Government Citizenship" (Ottawa: University of Ottawa, 1986), 8.

band to regain its control over membership, it would need to begin reinstatement. In determining the application process for each band, the following membership rules apply:

A Band will maintain its own Band List, and only those individuals who meet membership requirements set out in the Band's membership rules will be entitled to have their names on it.¹⁴⁹

A report filed by the Ontario Métis and Aboriginal Association elaborates on the burden placed by Bill C-31 on non-Status Indians. Although the report estimates that 68% of the people applying for reinstatement were not harassed, there were individual cases where the policy was inadequate.¹⁵⁰ What appeared to be endless bureaucratic reintegration policy meant that non-Status members could not live on their reserves or continue to use the other social and financial resources to which they were accustomed. Members were alienated, and many children affected by Bill C-31 were forced to live off-reserve, which can cause anxiety and even lead to criminal activity.

Band membership can be tied to blood quantum, as seen in the following chapter. The relationship between the two regulatory methods is pivotal in administering re-entries to reserves. The following chapter will focus on the process of obtaining membership to determine the legal reasons for which this policy of regulating individuals is permitted in Canada.

¹⁴⁹ *Ibid.*

¹⁵⁰ Margaret Misk-Evans, *An Evaluation of the Impacts of Bill C-31: A Submission for the 1990 Parliamentary Review of the Indian Act* (Willowdale: Ontario Métis and Aboriginal Association, 1989), 18.

Chapter 6: Economic; non-Affected First Nations; RCAP and MRP

Prior to the introduction to Bill C-31, the AFN supported the reinstatement of Indian women and their children. However, in exchange for its support, the AFN wanted to be able to regulate their band membership. The main complaint of Native leaders is that re-entry of Native people often comes without any additional reserve income.

Failure to financially accommodate these returning women and their children was one of the main arguments that Native leaders sought to discuss with the federal government. Although many Native leaders and band councils were sympathetic to their peoples' return, the returnees did not bring any federal income. It was clear that reserves would have to share their limited resources, including social programs, health benefits, housing and ordinary annuities. Therefore, economically speaking, the band council and Native leaders did not have a chance to properly address the massive influx of native children and mothers.¹⁵¹ The exact figure has not been determined however, INAC researchers indicated twice to three times the original amount. After the introduction of Bill C-31, social support to First Nations was greatly amplified between 1985 and the mid-1990s,¹⁵² because of the overwhelming numbers of 6(2)'s who applied for band membership and moved to already well-populated reserves. Authors Keith Karamisos and Melvin Smith, in their article, "Opening the Floodgates: Bill C-31 and Native Membership," refer to the questions that Native people address, such as when the reinstated Natives "return to [the] reserve, and this influx may strain the already slim resources and land base of most reserves."¹⁵³ The crux of this problem is the poor living conditions and inadequate social services on reserves. With the influx of reinstated Natives, many reserves became overburdened and under-resourced. In Roger Maaka and Augie Fleras, article, which describes inter-territorial

¹⁵¹ Personal Commentary from Dan Beavon, "Economic effects, what happens to returning members," by John Ward, May 5, 2005.

¹⁵² Stewart Clatworthy, *Indian Registration, Membership and Population Change in First Nations Communities* (Winnipeg: *Four Directions Project Consultants*, February 2005), 59.

¹⁵³ Karamisos, Keith and Melvin H. Smith. "Opening the Floodgates: Bill C-31 and Native Membership." *Policy Options*, Vol. 18, No. 10, (1997) 41.

viewpoints, “resource-strapped bands” that are unable to adopt to the ill-planned increase of new members and express mixed feelings about the Charter, as it is a good initiative but does not adequately focus on equality for women in First Nations reserves.¹⁵⁴

The number of applications to return suddenly increased dramatically on July 1, 1985, then tapered off between January 1, 1986 and March 31, 1986.¹⁵⁵ As a result of this influx of new members, financial strain was apparent in housing, medical care and other social programs. Funding declined for education, welfare services, social assistance and economic development, while financial resources were allocated for postsecondary education, band development, administration, and increased costs in housing and social benefits. Although the percentage of funding was greatly increased in some areas, it would have been more had the federal government contributed its share. The strains meant these band councils were not willing to let members get back in since the government allocated a sufficient percentage of its annual budget to offset these new members. However, this was not a source of revenue to properly accommodate these people. Since the government had already budgeted for Native economic needs additional funds were not seen as a possibility. The government did abide by the United Nations recommendations on the Status of Native women. As a result, there was no economic support for 12 (1)(b)s. The needed funds were sent to band management and membership programs.

In addition, membership was to be defined by each separate Aboriginal group, which would have the sole authority for entry into its band membership.¹⁵⁶ Responsibility for determining eligibility was assigned to the Registrar, who would apply criteria set forth in the *Indian Act*. According to a government report, the registration process was to include a search of INAC

¹⁵⁴ Roger Maaka and Augie Fleras, *The Politics of Indigeneity: Challenging the State in Canada and Aotearoa New Zealand* (Dunedin: Univeristy of Otago Press, 2005), 171.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

records on the individual or individual's family.¹⁵⁷ Many Aboriginal organizations objected to the documentation process and the slow pace of the approval process. In addition, too few resources were assigned to the task of dealing with incoming applications. The increased volume of returning applicants within the first five years of implementing Bill C-31 not only caused great financial strife but added to the overall economic dependency on government funds. Incoming members demanded resources that were not always available from their communities and the government was unable to keep up with the overburdened reserves. In June 1990, social expenditures for reinstated members topped \$338 million, compared to a forecast expenditure of \$206 million.¹⁵⁸ Although funding increased to support the population growth, First Nations association such as the Congress of Aboriginal Peoples emphasized that the money was inadequate to meet the needs of these people and support an increase in services.

This false sense of population increase became fact when people realized the depth of the harm that the *Indian Act* had caused with its various clauses and cut-off rules. A chart depicting the potential direct outcomes of Bill C-31 is shown in appendix 7, which contains results of a census conducted between 1991 to 1996; it was part of a group research project into the migratory patterns to reserves following implementation of Bill C-31.¹⁵⁹ The Métis people were the only single group to have a significant increase, which could be attributed to their being a large ethnic grouping within a diverse demographic area with an already well-established Indian identification system traceable through family lineage.

During the Bill C-31 negotiations, there were two fundamental questions that altered perceptions of Aboriginal governance. First, women's organizations demanded reinstatement of women who had lost their Status because of past government policy. Second, Aboriginal leaders

¹⁵⁷ *Impacts of the 1985 Amendments to the Indian Act (Bill C-31)*. Hon. Tom Siddon, P.M., M.P., (Ottawa: Minister of Indian Affairs and Northern Development, 1990) 5.

¹⁵⁸ *Growth in Federal Expenditures on Aboriginal Peoples* (Ottawa: Indian and Northern Affairs Canada), 40.

¹⁵⁹ Eds., Jerry White, Susan Wingert, Dan Beavon and Paul Maxim, *Aboriginal Policy Research: Moving Forward, Making a Difference*, Vol. IV (Toronto: Thompson Educational Publishing, 2007), 124.

and band councils feared that if a massive amount of non-Status Natives were reinstated, a great number of Natives would pour into the communities, overtaxing resources.¹⁶⁰ Although regulating re-entry of non-band members is regarded as an exercise in self-government, it fails to address the Native women's inability to gain access to their reserves or to be officially recognized as band members. If the government had wanted to help these citizens, it should have made additional contributions to financially burdened communities for band membership readmissions. The primary reason that band councils did not often welcome unknown members is because they could not bring with them federal funding. This price tag has become one of the most significant reasons why returning Aboriginals are not welcomed "home."

¹⁶⁰ Barbara Craig *The Chapter of rights and freedoms and the Indian Act: before and after Bill C-31* (Ottawa: University of Ottawa Press, 1986), 51.

This section will briefly explore why the Métis and Inuit are not directly affected by Bill C-31. Bonita Lawrence's *"Real" Indians and Others: Mixed-Blood Urban Native Peoples* and the *Indigenous Nationhood* and Pauktuutit, *Arnait: The Views of Inuit Women on Contemporary Issues*, including a commentary by Clément Chartier, President of the Métis National Council and Lynda Brown of the Pauktuutit Inuit Women of Canada, aid in the development of this section by showing why these two groups are not concerned with Bill C-31.

Many non-Status off-reserve Natives who are not entitled to membership often refer to themselves as Métis because of their Status situation. Claiming Métis identity is easier than referring to oneself as a non-Status, non-member or Aboriginal person of mixed heritage. Self-proclaimed Métis are different from the Métis of the Red River settlement. In an e-mail interview, Bonita Lawrence, a professor at York University specializing in urban, non-Status and Métis identities, gender, and federally unrecognized Aboriginal communities, suggested that "Bill C-31 was about reinstating Indian Status; therefore there was no suggestion that Métis should be affected by Bill C-31."¹⁶¹

In all possible loop holes and types of legislation about Métis who might have been subject to similar past injustices as other First Nation peoples, there is but one clause that stands out: Métis receiving "scrip." If a Métis has obtained scrip then they are unable to be affected by Bill C-31 since scrip exchanged Métis or then commonly referred to as Indian status for either money or land.

Bill C-31 was silent on the situation of those who had received Métis scrip; earlier laws had prohibited those who took scrip to be registered under the *Indian Act*. As a result, Bill C-31 could not reinstate those who were not previously registered; the only Métis who gained Indian Status were those whose recent ancestors had intermarried with Status Indians.¹⁶² Larry Gilbert,

¹⁶¹ Email Interview with Bonita Lawrence, "Impact of Bill C-31 towards Métis and Métis relations" by John Ward, March 25, 2008.

¹⁶² *Ibid.*

in his book *Entitlement to Indian Status and Membership Codes in Canada*, accepts that scrip must be interpreted as “proof” of Indianness; therefore, the Métis who do have scrip should be reinstated under the *Indian Act*. Legal arguments could probably support this. One cannot be classified as Métis if one has Indian Status, yet Métis organizations are ignoring this line of thought.

Lawrence remarks on the frequent confusion about Métis people’s being part of the First Nations and yet being distinct:

“Metis” as a type of Aboriginal person (distinct from “Inuit” or “Indian”) and the nationhood claims of the Metis nation (that the Metis are a nation, like Cree, Mi’kmaq, Mohawk, etc). Most Metis make their claims for funding, etc, under section 35 which asserts that the Metis are a TYPE of Aboriginal people, without reference to nationhood. Simultaneously, however, they insist they are a nation culturally. If this is the case, why are they not classified along with other Indigenous nations under the Indian Act?”¹⁶³

She depicts a society of Northern Plains Métis people who speak Cree and think of themselves as “Indians without cards.” In her book, *“Real” Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood*, Lawrence shows the compelling reality of struggles faced by non-Status Natives and Métis in urban Toronto. She gives a detailed analysis of urban, non-Status and Métis identities, gender and colonization, and federally unrecognized Aboriginal communities. Her personal view on self-identification as a non-Status Métis member allowed her to address concerns reflected in *“Real” Indian and Others*. She examines thirty individual Torontians with Aboriginal backgrounds, including Métis, with which she identifies herself. Lawrence also implements her own sociological subjectivity deriving from her Métis heritage. This book has been subdivided into four topics within three main areas that show the federal government exercising its “right” to determine Aboriginal identity. These four topics are the *Indian Act*, the experience of Indian residential schools, the removal of Indian Status and the

¹⁶³ *Ibid.*

various policies that have been implemented for Natives, causing confrontation over identity.

The three areas of discussion are the *Indian Act*, Bill C-31 and the effects of government procedures towards Natives of mixed ancestry in Toronto, as well as the interpretation of what Native identity is: the stereotypical misunderstanding in terms of historical tradition versus Indian self-identification.

At a conference on Aboriginal rights, the author obtained personal commentary from Clément Chartier, President of the Métis National Council. When asked, "What does Bill C-31 mean to you?," Chartier responded, "Métis who have married a treaty Indian could be part of Bill C-31"¹⁶⁴ Chartier was then asked, "Is there a difference between Métis of the Red River Settlement and others?" His response was, "The descendants from the Red River Settlement are Métis but there are Métis who are not from the Red River area; these natives are often non-Status, non-member with at least one family member of Indian blood ... (it) is easier to claim Métis identity than a mixed and unclear family lineage."¹⁶⁵

There are two classifications of Métis: the original dissidents of the Red River Settlement, who formed their own unique society, and self-proclaimed Métis who know of an ancestor with Indian blood but are unable to determine where or who. This fact was often realized after child adoptions, when adoptees tried to locate relatives, knowing of some family lineage. Within these two groupings, Métis can be subject to Bill C-31 if one of the following occurs: a Métis woman or her child(ren) gain Indian Status through marriage to a Status Indian man prior to 1985¹⁶⁶ or, if a Métis woman marries a treaty Indian.

In Pauktuutit's book, focuses on the traditional role of Inuit women from a cultural viewpoint, unlike other authors who deal with membership or blood quantum. This book reveals

164 Personal Commentary with Clément Chartier, President of the Métis National Council, "Questions regarding Metis people and Bill C-31" Conference: Canada's Human Rights Paradox: Canada and the United Nations Declaration on the Rights of Indeeenous Peoples, Ottawa, May 5, 2008.

¹⁶⁵ *Ibid.*

166 Website: *Ibid.*, <http://www.ainc-inac.gc.ca/interloc/mnsi/mnsifs-eng.asp> Accessed: June 4, 2008.

other types of challenges besides blood quantum and band membership, such as the Inuit language and culture. Even though the Inuit people are viewed as a rather new Native group, given their late interaction with white society, they face similar challenges as First Nations and with greater concern over issues of language and culture. These two factors are apparent in the cultural persistence of the Inuit, many of whom still participate in traditional family and subsistence roles. The Pauktuutit, the national non-profit organization representing all Inuit women in Canada, has a mandate that provides a better understanding of Inuit women's issues, which are shared by First Nation women affected by Bill C-31.

- To unite the Inuit women of Canada;
- To familiarize our children with Inuit values, heritage, culture and language;
- To work towards better conditions for all Inuit women;
- To promote self-confidence and self-reliance amongst Inuit Women;
- To work towards the betterment of individual, family and community conditions through social and economic action;
- To encourage the involvement of Inuit women in all levels of Canadian society.¹⁶⁷

Results of a questionnaire survey that reviewed 65 Inuit women's responses on topics ranging from community, to family, lifestyle and women's issues suggest that Inuit women acknowledge their traditional role within the community, but that times are also changing. The home is an even more vital part of Inuit culture when most families reside in cities. Inuit have become active in community relations and are willing to engage in further development, contribution and decision-making. The underlining fact is that women need equality, which is a common cause for all First Nation women.

Lynda Brown of the Pauktuutit Inuit Women of Canada gave insights into Inuit women in the context of Bill C-31. In reply to the question, "What do you think is the general belief about Bill C-31 within the Inuit community and First Nations in general?," she answered:

This bill is specific to First Nations, as it clearly defines who the government considers to be "Indian." Inuit are defined through

¹⁶⁷ Pauktuutit, *Arnait: The Views of Inuit Women on Contemporary Issues* (Ottawa: Inuit Women's Association of Canada, 1991), 7-8.

comprehensive land claim agreements, so to be considered Inuk you have to be registered through one of the four land claims.¹⁶⁸

In reply to a second question, “What if an Inuit woman married a treaty Native?” Ms Brown said:

They both retain their heritage- the tricky part when they have children- the children cannot be registered an Inuit and First Nations, so the parents have to decide which one they will enroll their child in (most commonly First Nations because they do have better benefits).¹⁶⁹

Furthermore, Brown indicated that “Bill C-31 has no bearing at all on Inuit” and expressed “sympathy for the First Nations and the plight that First Nations women are experiencing.” According to Brown, Inuit women have their own challenges, which excludes them from Bill C-31. The legislation, she said, was directed to all First Nations except the Métis and the Inuit. These two groups were left out because they were recognized as Natives with no treaty rights by definition in the *Constitution Act* of 1982.

¹⁶⁸ Email Interview with Lynda Brown. Member of the Pauktuutit Inuit Women of Canada, “questions and commentary on Inuit women in respect to Bill C-31” by John Ward, July 23-24, 2008.

¹⁶⁹ *Ibid.*

This section will evaluate the 1996 Royal Commission on Aboriginal Peoples, followed by a detailed analysis of various issues that arise from government reports. Although this section will be shorter, the overall information will aid in further understanding consequences of Bill C-31 in terms of government policy resulting from the Royal Commission. There will also be a discussion on matrimonial real property, which is a contributing factor for women who were affected by Bill C-31. This will provide an insight into government policy in regard to social issues. The Royal Commission provided greater details on Bill C-31's effects on women and children. This report has investigated individual disputes, legal interpretation and factual information through interviews and statistical research. According to Wayne Beaver, Bill C-31:

allows for the reinstatement of those who lost Indian Status under the old rules and gives Indian Status to their children. However, the process and criteria for first-time registration are confusing and still offensive, because authority to determine who can be recognized as a Status Indian still lies with the federal government, not with Aboriginal people.¹⁷⁰

In other words, this bill is not received well by First Nations groups and individuals because they now have to decide who the Indians are and who can or cannot reside on their reserve. This matter of classification is a directive enacted by the federal government and not by First Nations people.

In 1996, the final report of the Royal Commission provided a wealth of information on the life and history of First Nations, and even on the preservation of Aboriginal identity, which is the primary concern of elders. Subsequent revisions revealed many uncertainties, such as the direction that Indian women and their offspring needed to obtain justice within the *Indian Act*. Volume One, *Looking Forward, Looking Back*, provides an overview of the overall troubles plaguing First Nations Peoples in regard to social, economic, legal, demographic, and other historical events, from the Royal Proclamation of 1763 to such current issues as residential

¹⁷⁰ Wayne Beaver, "Alderville First Nation Councillor" *A Brief History of the Federal Government's Policy of Assimilating Indians* Ogemawahj Tribal Council's National Conference, (Toronto: Marriott Hotel, April 16, 2007), 16.

schools and Bill C-31. The historical development of the *Indian Act* provides the necessary background information on Aboriginals, Indian identity, Status and membership concerns, as well as the discrimination embedded in the *Indian Act*. Volume Two, Part One of *Restructuring the Relationship* evaluates self-governance, membership, and identity politics directly linked to self-government as well as self-determination. These are well-known factors that contribute negatively to Bill C-31. Volume Four, *Perspectives and Realities*, provides additional information on Bill C-31, Indian Status under section 6, impacts on band membership, codes, and the right to live on-reserve and obtain land-holding systems on-reserves, such as matrimonial real property, Volume four deals primarily with Bill C-31; there are nine citation clauses that cover Bill C-31, with in-depth analysis.

As mentioned earlier, many social and economic problems can be linked directly to Bill C-31 such as inadequate funding off-reserve, no post-secondary grants, and lack of special privileges with regard to taxation and other benefits. All of these contributing factors would cause great strain when Indian Status have expired or was never regained after disenfranchisement. The Royal Commission report provides an analytical approach for identifying the causes and factors that arise by Bill C-31. While the report relies primarily on government data, a seven-member panel consisting of four aboriginals and 3 non-Aboriginals provided additional insight from a multi-researched spectrum. However, there is one instance where the government is seen as having caused injustice: “Not only are they extremely complex, but like their historical predecessors, they appear to continue the policy of assimilation in disguise.”¹⁷¹ This has been called a ‘government conspiracy’ to finally remove Aboriginalism from the Canadian identity. Scholars have indicated that the move to contain and reduce First Nations recalls past attempts, primarily the White Paper of 1969. Although disenfranchisement has been abolished because of

¹⁷¹ *Looking Forward, Looking Back: Report of the Royal Commission on Aboriginal Peoples*, Vol. 5 (Ottawa: Minister of Supply and Services Canada, 1996), 304.

a provision in Bill C-31, second- and even third-generation 6.1s and 6.2s will no longer be recognized as Native Canadians.

Why is Bill C-31 important to consider in developing a Matrimonial Real Property (MRP) solution? This question will be the basis for this section on MRP issues. Previous research on MRPs has not incorporated a great deal about Bill C-31. Even though Bill C-31 is within the sphere of influence of MRPs, there has not been a significant link made between these two aspects of Canadian law. MRPs will be further considered here to better illustrate the ongoing ideological turmoil that Bill C-31 has become.

Matrimonial Real Property is a rather new concept in Canadian law and can represent a difficult process for clients.¹⁷² There are laws to protect both males and females after divorce. However, MRP and other marital issues require a great deal of time and effort. Matrimonial real property is not always linked to Bill C-31, which is why the outcomes are crucial when personal property has been dissolved. There are a few generic terms associated with the concepts: matrimonial property law, family property, family assets and marital property.¹⁷³ To further develop a successful analytical overview of key concerns associated with the MRPs, a series of question shall be addressed:

- What is matrimonial property?
- Why do matrimonial property rights occur differently vis-à-vis other Canadian regulations?
- Why is Bill C-31 important to consider in developing an MRP solution?
- Does either the Canadian or United Nations legal system take precedence in these matters?
- How are women's rights being protected?

Factual data, statistical diagrams and articles and government reports are primary sources that will aid in sharing the link between MRP and Bill C-31.

¹⁷² Definition of matrimonial real property is the "requirement to address matrimonial real property applies to breakdown of 'marriage' - it is not clear whether this is intended to apply to customary marriages or to common law relationships"

¹⁷³ Wendy Grant-John, *Consultation Report on Matrimonial Real Property* (Ottawa: Indian and Northern Affairs Canada, March 7, 2007), 17.

We have already looked at the devastating circumstances faced by Native women when their Status has been revoked by treaty inheritances, family inheritance and MRP. The matrimonial real property denies the descendants any land or territorial gains from the estate. These social issues are not merely based on financial obligation, but on necessity, as when an Aboriginal woman divorces her non-Native husband. If she is living on the reserve, she would be removed and could not claim any economic benefit since resource property is communal. In the circumstance of a divorce, the woman would not be able to inherit property even if she has a legal claim to the land either under treaty rights or through family lineage. Under this legal loophole, once a divorced status woman has lost her rights to memberships also unable to inherit and personal belongings from an estate. This would be attributed to MRP since non-status members have no rights on reserve.

In a letter written by lawyer Diane Soroka to Wendy Grant-John, Ministerial Representative of Matrimonial Real Property Issues on Reserves, Soroka reveals that in order to facilitate the legal discourse between Native women and their local band councils, three options should be considered:

- Option 1: Incorporation of provincial and territorial matrimonial real property laws on reserves
- Option 2: Incorporation of provincial and territorial matrimonial real property laws combined with a legislative mechanism granting authority to First Nations to exercise jurisdiction over matrimonial real property
- Option 3: Substantive federal matrimonial real property law combined with a legislative mechanism granting authority to First Nations to exercise jurisdiction over matrimonial real property.
- Options 1 & 2 provide that the *Indian Act* will prevail in case of inconsistency or conflict.¹⁷⁴

These three issues can aid in the further development of MRP legal responses for on-reserve situations. However, according to Soroka, to insure a stable and productive legal outcome all

¹⁷⁴ Letter by Diane Soroka to Wendy Grant-John regarding a legal understanding within civil law jurisdiction in comparison to Aboriginal legality and treaty rights., in *Consultation Document: Matrimonial Real Property on Reserves, Women's Issues and Gender Equality Directorate*, Indian and Northern Affairs Canada, September 2006.

levels of government should be addressed – First Nations band councils, the Department of Indian Affairs, and other federal departments and provincial governments.

The extent of financial difficulties attributed directly to Bill C-31 is such that non-Status Indians are also denied economic benefits, such as tax exemptions, housing subsidies, social programs and even post-secondary education funding. Although many Aboriginals use both social programs and economic programs to better their conditions on and off reserves, these financial services are revoked for Bill C-31 victims. These services aid in the social and cultural renewal of family and community members by incorporating the necessary steps for full integration into First Nations society. Moreover, without these special privileges, many 6(2)s and their children would be denied any form of government services.

In *Report of the Ministerial Representative on Matrimonial Real Property Issues on Reserves*, Wendy Grant-John details MRP, the outcomes, impacts, overall policy and goals to be met in preserving social rights. The Assembly of Manitoba Chiefs arranged a seminar geared to provide fundamental answers in an educational setting to members who were affected by MRP, primarily women. The event was attended by representatives of twenty-seven Native communities, the First Nations Women's Council, and various tribal council representatives. The information obtained would help 6(2) women cope with the neglect from government services through alternative social and economic avenues. The results proved to be enlightening, especially to women who were affected by Bill C-31. Here are the recommendations of the AMC on MRP initiatives:

- recognition and implementation of First Nations' authority over family law;
- protection of the First Nations' land base and interests, now and into the future;
- support systems for women, men, children and families;
- building on, and promotion, of First Nation human rights, including an appropriate balance between individual and collective rights; and
- sustainable outcomes for First Nation communities and governments.¹⁷⁵

¹⁷⁵ Wendy Grant-John, *Consultation Report on Matrimonial Real Property* (Ottawa: Indian and Northern Affairs Canada, March 7, 2007), 17.

Additional recommendations having a direct impact for women affected by Bill C-31 include:

- the federal government should recognize authority over citizenship and provide education/information sessions on Bill C-31 in the interim;
- future discussions between the federal government and First Nation leaders should include a combined Bill C-31 and MRP scenario;
- a First Nations principle for “best interests” of children should be developed;
- interventions to keep families together; and
- more conceptualizing of “human rights” is needed before any MRP solution is implemented.¹⁷⁶

During a similar gathering, the New Brunswick Aboriginal Peoples Council organized, in consultation with government officials dealing with MRP concerns for on-reserve Aboriginals, six sit-ins (meet-and-greets) composed of twenty-two individuals, half of whom were women.

The proposal consisted of three primary terms:

- the *Indian Act* be replaced rather than “tinkered” with;
- MRP related legislation should be adjudicated by federal courts, provincial courts and independent First Nations circuit court; and
- on and off-reserve legal systems should work together to resolve MRP-related issues based on mutual jurisdiction.¹⁷⁷

The other five terms had bearing on MRP as the final recommendation dealt with Bill C-31 concerns. This was crucial, since 50% of women took part in the six sessions. Following are the additional recommendations:

- amend the CP system to include more than one spouse;
- recognize traditional marriages;
- apply of a consistent MRP regime on reserves;
- prevent Chiefs and Councils from being accorded individual power over MRP-related policies; and
- implement mechanisms to resolve Bill C-31 issues.¹⁷⁸

All of these recommendations will serve to further aid and develop the necessary process both women and men may rely on to obtain their rights. To follow up on the ongoing impact of

¹⁷⁶ *Ibid.*, 17.

¹⁷⁷ *Ibid.*, 22.

¹⁷⁸ *Ibid.*, 23.

Bill C-31 in regard to MRP with Aboriginal groups, internal reports will help by providing factual data and evaluating the results. At a discussion session with three women from the Wet'suwet'en First Nation group, one particular view was shared: "the negative impacts of MRP are due to the effects of the *Indian Act* and values which operate contrary to Aboriginal societal beliefs."¹⁷⁹ They stated that they did not share in their people's views of customary principles, but they recommended settling compensation issues related to Bill C-31 prior to moving forward with any MRP legislation.¹⁸⁰

Wills can be dismissed when arguing for land title, housing rights or loss of financial benefits. The status of an individual or her heirs should not impede the fulfillment of their deceased family member's wishes. During times of family pain and confusion, problems such as the inability to obtain family heirlooms and possessions can cause additional distress. This is an emotional period that must be taken seriously.

When analyzing MRP there are group rights and individual rights.

Group rights benefit some particular class or category within a society, and insure to the benefit of the members of the group through the group; that is, by virtue of their membership these people are entitled to the benefits accorded to the group which are identified as group rights. An assertion of such a right is meaningful only if the person is a member of a group, however the Status is determined.¹⁸¹

Once a woman is no longer listed as a band member, her rights become void; this is where the MRP laws are challenged. Most cases not recognized because not all bands have their own MRP provisions. Kent McNeil, a professor of law at York University, argues that title and possession can be deliberated when determining right to individual property:

due to their association as a community, no member would have a severable individual share. Each member's interest, like that of a member of a club or other unincorporated association, would last

¹⁷⁹ Wendy Grant-John, *Consultation Report on Matrimonial Real Property* (Ottawa: Indian and Northern Affairs Canada, March 7, 2007), 24.

¹⁸⁰ *Ibid.*

¹⁸¹ Jocelyn Gagné, *Entitlement to the Rights of Aboriginal People* (LLM Thesis, University of Ottawa, 1992), 45.

only as long as membership in the group was maintained. Upon death, resignation, or expulsion, a member's interest in the communal property would terminate. By the same token new members (whether by birth or acceptance into the group) would automatically become entitled to equal interests in the communal property.¹⁸²

In summary, the complexity of MRP's legitimacy in obtaining a legal injunction as a result of Bill C-31 stems from two things: the *Indian Act* and self-government agreements over MRP actions.¹⁸³ These two concerns reflecting MRP in their own unique ways; the *Indian Act*, "says nothing about matrimonial real property and what should happen to the housing being used by a couple when the relationship ends." However:

First Nations with self-government agreements which include provision on the allotment and disposition of land would likely be able to pass laws dealing with matrimonial real property, if they wanted to do so.¹⁸⁴

Denied self-governance and nationhood, including the right to determine their own citizenship rules, First Nations face many complex and challenging issues when developing solutions in regard to MRP. The Assembly of Manitoba First Nations has offered its research into the breakdown causes of Bill C-31 within the MRP section, should membership or Status become the turning point in determining who shall receive the family's house after divorce. The long-term social implications can be severe and due to concerns of sections 6(1)s and 6(2)s, there might not be an appropriate band member or Status Indian who could take possession of the home. This lack of substantial membership base would directly affect the capacity of band councils to protect on-reserve property.

¹⁸² *Ibid.*, 46.

¹⁸³ Wendy Cornet, *After marriage breakdown: Information on the on-reserve matrimonial home* (Ottawa: INAC, 2003), 2.

¹⁸⁴ *Ibid.*, 3.

Chapter 7: Comparative Analysis of Aboriginal and non-Aboriginal Newspapers

The following newspapers were selected because of their circulation area and importance within their communities. First Nations sources are the *Alberta Native News*, the *Tekawennake: Six Nations - New Credit Reporter*, the *Wawatay News*, the *Hi-Shilth-Sa*. non-Native sources are the *Vancouver Sun*, the *Winnipeg Free Press*, the *Globe and Mail* and the *Montreal Gazette*. These non-Native sources were chosen to provide additional insight into the differences between Aboriginal and non-Aboriginal responses to Bill C-31.¹⁸⁵ The research covers the six months from June 28, 1985 to December 28, 1985, followed by comparison of reviews during June 28, 1995 and December 28, 1995. These dates were selected to cover a sufficient time frame for media coverage.

To facilitate the process of re-listing issues of non-Native and international issues, a series of compressed topics from both 1985 and 1995 will help understand stories whose prominence may have overshadowed Aboriginal issues. These were current events pertaining to First Nations: equal pay, AIDS, learning disabilities, the Manitoba Métis Federation's struggle for land claims, labour concerns, prostitution and pornography, native children and out-of-province adoption, an increase in Aboriginal movie productions and internal strife.

The goal of this analysis is to assess the responses to Bill C-31. The analysis will consist of a two-part critique of the reception of Bill C-31, followed by a review of the impacts following its tenth anniversary. These dates cover June 28, 1985 to December 28, 1985 and June 28, 1995 to December 28, 1995.

Following is a list of current events during this time with regard to Native and non-Indian issues and international affairs. Aboriginal issues include life on reserves (alcoholism and mental and physical abuse), Gitksan-Wetsuwet'en land claims, and the Canadian National Railway's exploitation of Native territory. In contrast, Canadian and foreign issues including Expo 86,

¹⁸⁵ For this reason, non-Native and non-Aboriginal are terms used interchangeably to represent the general Canadian non-Aboriginal descent.

school strikes, abortion, pornography and prostitution, gay and lesbian rights, and sterilization of the mentally retarded, Soviet and international relations.

The *Vancouver Sun* provides a comprehensive depiction of Native Status and Bill C-31, given the large Aboriginal presence in editorials and headlines. The *Sun* has discussed Bill C-31 on the basis of the opinions of many that have captured the sentiment of Aboriginals in Vancouver, versus non-Natives, regarding Native concerns. Two points provide both a positive and negative approach to the *Charter of Rights and Freedoms*, in particular Section 15 and Bill C-31. Section 15 of the Charter was heavily analyzed, as it reflected attributes associated with Bill C-31. These can be seen in the *Vancouver Sun* reports and editorial reviews. Section 15 was cited for its “sexual discrimination clause.” Although reference to Bill C-31 does not seem to be present in the initial reviews, the information provided points to a positive view of section 15 by women. Bill C-31 made its appearance one month later, on June 28, 1985. Native issues were well covered in the *Sun*, but given the level of respect and lack of rights, including treaty rights, accorded to Natives it is plausible that the media refer to section 15 of the Charter rather than report directly on Bill C-31. Native appeals to the United Nations not only addressed Status rights but also land claims,¹⁸⁶ a controversial topic that would continue to the present day. A column dated May 8, 1985, “Public on our side, Indians tell Scored” reflects the support of British Columbians who understand and acknowledge native rights, despite the government’s attempt to redirect criticism against Aboriginal understanding.¹⁸⁷ It would seem that public image, crucial in the debate over Native Status and Bill C-31, favour Native people as the victims of an unjust society rather than as a militant voice bent on reclaiming lost territory. For example, there are news headlines that read, “Women Lobby MPs for Rights” and “Many

¹⁸⁶ Dave Thompson, “Indians to appeal to UN on land claims” *Vancouver Sun*, April 19, 1985, A12.

¹⁸⁷ Larry Pynn, “Public on our side, Indians tell Scored” *Vancouver Sun*, May 8, 1985, A12

Indians Still Unhappy with Aspects of Status Bill”.¹⁸⁸ Public outcry could be attributed to well-known politicians such as Ed Broadbent, who chose to support Native feminists and their drive for both Indian Status and equal pay for equal work. Not only politicians, but also Status Indians, demanded re-initialization of Status for all Aboriginals as suggested by the headline, “Natives to Continue Fighting for Equality of non-Status Indians”.¹⁸⁹ Support among Aboriginals to acquire Status seems to be a double-edged sword: there is equality for some Natives but not all are able to re-enter reserves. This division of families has been a major concern for female First Nations members. Given this unpopular provision of Bill C-31, funds for additional members to obtain band membership or Status were not granted. This led to mixed reactions, which can be seen in news articles depicting two primary concerns resulting from Bill C-31: regaining Indian Status as a requirement for equality, and the cost of receiving membership. The latter was not always viewed positively. Band membership meant more than belonging to a reserve; it meant entitlement to voting, housing, payments and involvement in the community.

Although a six-month review was conducted, the bulk of coverage pertaining to Bill C-31 occurred between June 17 and August 15, 1985. The two primary Aboriginal topics were Native land rights and securing treaty rights in British Columbia. In response, the British Columbia government was not willing to give back territory to Natives at any cost.

Ten years later, the top *Sun* topics related to Native, non-Aboriginal and international stories (June 28, to December 28, 1995) were Native protest being seen as another Oka crisis in British Columbia, with land claims in particular in the Nisga’s territory. Although the issue of Status rights was already a concern, obtaining a treaty took priority, as BC had no treaties or provisions in force.

¹⁸⁸ Ed Broadbent, “Women lobby MPs for rights” *Vancouver Sun*, May 13, 1985, A12 and “Many Indians still unhappy with aspects of Status bill” *Vancouver Sun*, July 18, 1985, A2

¹⁸⁹ Larry Pynn, “Natives to continue fighting for equality of non-Status Indians” *Vancouver Sun*, July 17, 1985, A16

At first glance, it would seem that the majority of news articles depict Aboriginals as militia bent on blockading all major roads that run through disputed territory. There seems to have been a gradual transition in media representation of non-Native sentiment, with sympathetic non-Natives encouraging Aboriginals to regain their Indian Status in the mid-to-late-eighties, compared to representations of Natives a decade later as armed militant groups causing mayhem. The initial reaction to the armed rebellions against the Canadian establishment can be seen in this comment by Jack Aubry: “After warning over the past decade that Canada’s Indian reserves are a powder keg waiting to explode, there are signs the summer of 1995 will be remembered as the year when the fuse was lit”¹⁹⁰ This quote reveals the already hostile attitude towards Natives, a fact to be recognized in order to understand the ordeals faced by First Nations.

It would seem that self-government might be the only means of resolving these often violent land claims demonstrations. Governments in the past have both debated this issue and ignored it, because of the complexity of definitions, rules and regulations; in addition, the Bloc Québécois referendum giving self-government to Natives was viewed as potentially aiding the Quebec separatist movement. The push towards self-government (also referred to as self-determination) would be debated in discussion on legislation, including Bill C-31.

In newspapers, the coverage often suggested that Canadians may not fully understand the larger context of issues pertaining to Aboriginals. When editors highlight a news column to grasp the reader’s attention, often on front pages with enlarged bold lettering (*Land claims, mine payoff cost taxpayers \$134 million and \$7 billion for natives: Where does it all go?*), readers may form a negative view of Native issues.

With all of these ongoing circumstances faced by Aboriginals, women affected by Bill C-31 are still suffering and are often caught between being Status Indian and obtaining band membership. An international conference on equality for women was held in Beijing with the

¹⁹⁰ Jack Aubry, news columnist *Ottawa Citizen* retold in the *Vancouver Sun*, August 12, 1995, B4.

task of recognizing women's rights (regardless of their sexual orientation).¹⁹¹ However, five days later, government officials recognized that to obtain women's rights and equality, one must ask: does true equality for Native women include Bill C-31 or is it a simple general acknowledgement of human rights? These issues would continue to plague Natives by determining the avenues that have and will be taken to secure land claims, self-government and Native Status within Bill C-31.

However, by 1995, the primary concern regarding Aboriginals was the possibility of major protests over land claims. British Columbians saw this as a negative aspect of Canadian First Nation relations that hindered the type of support seen in 1985. This switch in Aboriginal policy towards forcible recognition of lost Indian land title was to educate non-Natives, but it ultimately caused a greater divide in British Columbia.

Prior to reviewing the *Winnipeg Free Press*, it is worth reviewing the events that took place during this selected period, June 28, 1985 to December 28, 1985. There were, as in all newspapers a wide range of additional topics focusing on Indian concerns. The *Winnipeg Free Press* was chosen because there is a large Aboriginal presence in Manitoba.

A large portion of Manitobans are also New Democratic Party supporters, which shows in news stories that pertain to a more pro-minority/anti-oppression viewpoint such as in the first instance of recognition of Indian Status renewal in the July 14, 1985 issue: "women who were stripped of Indian Status for marrying non-native men are not rushing to take advantage of a recent legal change."¹⁹² Author Paul Maloney wrote that only 250 out of 18,000 Natives had filed for Status with Indian Affairs – a rather small number, given the potentially positive outcomes for Aboriginals. Maloney's bold statement was accurate, and because many Natives were already on some sort of financial subsidy, band membership was not always a guarantee of Status. If this were true, then equal pay would be more important than Status.

¹⁹¹ Jonathon Manthorpe, "Women's sexual rights recognized by delegates" *Vancouver Sun*, September 12, 1995, A13.

¹⁹² Paul Moloney "Few apply to regain Indian Status" *Winnipeg Free Press*, July 14, 1985, 2

Further analysis will determine the extent of coverage of Bill C-31. One month later, on August 12, the *Winnipeg Free Press* ran a story headed, “3,500 Indians apply to regain Status.”¹⁹³ This sudden increase can be traced to statistical data given by Dan Beavon, who predicted a rise in Status over the first initial period of 1985 to 1990. The 3,500 figure is out of 26,000 Aboriginals and 50,000 6(1)s in Canada. Although 800 Manitoban Natives had received Status, the process is still ongoing.¹⁹⁴ There were predictions that 16,000 Natives were entitled to regain their Status, including an additional 8,000 who were disenfranchised for enlisting in the armed forces and the clergy.¹⁹⁵ The common view among Manitoban First Nations peoples was that they were neglected, and subject to internal problems as well as federal biases related to Status and proper funding. Federal grants protected Natives as “wards of the state” but non-Status Aboriginals received little to no help and became the responsibility of the province. The press described the federal government’s policy of accommodating Natives with equality in three ways: as a smoke screen used against Natives, as a gesture of sympathy or reconciliation with non-Aboriginals, and as justification in a form of legal discourse for the sole purpose of protecting the image of Canada as fair and just in the eyes of the UN.

Chief Louis Stevenson, in a September 30, 1985 column, wrote that the Peguis band would not allow Natives who had recently regained Status onto their reserves. According to a statement by the band representative:

the government took them out into the mainstream and now they’re putting them back into native society. It’s going to mix the reserve and we’re afraid we’re going to lose our ethnic identity. It’s genocide¹⁹⁶.

This type of over-zealous concern might seem unfamiliar to many non-Natives, given the community values for which Natives are known. However, the fact remains that these so-called

¹⁹³ Bob Lowery “3,500 Indians apply to regain Status” *Winnipeg Free Press*, August 12, 1985, 2.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ Paul Moloney, “Peguis band refuses to reinstate rights” *Winnipeg Free Press*, September 30, 1985, 1.

refugees were dependent on the band for housing, treaty annuities if they qualified, education, and other incentives to living on a reserve. There is also the unseen psychological cross-cultural element associated with being a newcomer who has been incorporated into mainstream society. People such as Chief Stevenson alleged that the federal government “dumped” its responsibility back onto First Nations communities by granting Status and not allocating sufficient funds to cover the reintegration. After numerous responses, the federal government tried to avoid the financial contribution needed for these new people by presenting its policy on Natives as freedom from gender discrimination.¹⁹⁷ This mainly economic issue took the spotlight in *Winnipeg Free Press* coverage.

News stories not directly associated with Native Status covered housing, Métis land claims and honouring Louis Riel as the Manitoba Father of Confederation. These subjects have merit within the Aboriginal community. Indian housing was a great concern. In the article, “Indians reject housing blame,” Tom Goldstein evaluates the dialogue between band councils and Indian Affairs officers. Band council Chief Tony Blauer states: “I blame Indian Affairs totally on this. I don’t blame bands”.¹⁹⁸ This bold statement suggests a rough relationship between government and Native groups. The Manitoba Métis Federation had lobbied the federal government for land claims and had begun to prosper with its unique classification as Indian with no previous treaty rights. The Métis have argued their claim to land not only in the Red River, but also elsewhere, and in time they achieved their goal. The Métis also lobbied the federal government to recognize Louis Riel as their founding father. This endnote was one of the final strong concerns expressed in the *Winnipeg Free Press*.

In the ten-year period from June 28 to December 28, 1995, the *Winnipeg Free Press* published several articles and editorials about Bill C-31 along with misunderstandings among

¹⁹⁷ Staff-CP, “Indian Affairs steer clear of band finances conflict” *Winnipeg Free Press*, October 25, 1985, 9.

¹⁹⁸ Tony Blauer, “Indians reject housing blame” *Winnipeg Free Press*, July 19, 1985, 2.

non-Aboriginals, which showed an alternative view of Canadian-Aboriginal relations of the day. Native land claims, protests and various marches were highlighted during this period.

An August 28, 1995 editorial entitled, "Mr. Irwin's politics," referred to tensions between the Assembly of First Nations' Chief, Phil Fontaine, and the Indian Affairs Minister, Ron Irwin, over issues of self-government. This reflected a typical debate in the 1995 news coverage in the *Winnipeg Free Press*. Self-government was not the only issue; land claims were equally, if not more, vital. A dissident leader of the time, Wolverine, reacted to news coverage regarding his group: "[we are] SOVEREIGNTISTS NOT TERRORISTS." This sentiment was often misinterpreted by non-Aboriginals, given marginal news coverage or inaccurate information. As tensions continued to rise, Canadians feared another Oka crisis. Headlines like, "Native rebels ambush RCMP" (the Royal Commission), on the front page of the *Free Press*, hindered a positive view of Canada's First Nations peoples as tensions grew about these "militant" reactions to Canadian policy and government mishandling of First Nations issues and as other critical concerns were overshadowed, including Bill C-31.

In the following weeks in 1995, government leaders took the time to resolve land claims in the hope of calming down Native protests and roadblocks. This was a positive step forward in Native-non-Native relations until discussion turned to residential schools. On a final note, Manitoba celebrated the 125th anniversary with Louis Riel as the unofficial founding father of Confederation. A symbol of mixed heritage, Riel was interwoven in both Aboriginal and European identities to form a truly Canadian identity known as Métis.

Canada's national newspaper, the *Globe and Mail*, did not discuss Bill C-31 in the month of June. Ironically, the only reference to Natives is an advertisement in the Entertainment section outlining the exploits of Davy Crockett. This was not a promising start for Native representation, particularly in light of Indian Status and Bill C-31, in the *Globe and Mail*.

The topics reviewed in Toronto have most often been on the political side. On July 5, 1985, however, the *Globe and Mail* reported on Bill C-31 from a Native women's activist point of view in the article, "Native rights fighter wins back her Status".¹⁹⁹ This article showed that the *Globe and Mail* at least included Bill C-31 in its coverage of political affairs with the argument that "reserves can't bar those who regained Status in 1985, judge rules." This quote focuses on the rule of law with interpretation that band councils cannot forbid past members to return to the reserve, due to Bill C-31. However, that argument missed the point that band councils have the legal right to regulate their own memberships.²⁰⁰ The extent of the paper's concern regarding Bill C-31 can also be seen in the article, "Indians fear effects of law," where Chief Ron Derrickson of the Westbank Indian Reserve commented on the ratio about land use and the increase in reserve populations after Bill C-31.²⁰¹

The issues starting from mid-July 1985 concerned several things: women who tried to re-enter reserves but were rejected due to lack of financial subsidies; lack of land; unknown foreign social elements introduced by new members; and a wide range of other topics. An article dated July 22, reflects the situation of native women who are unable to join their previous bands even though the majority have an Indian status card.²⁰²

The *Globe and Mail* has contributed to a wealth of information. Native fishing rights, self-government and land claims were still ongoing dilemmas but became turning points in indigenous affairs. Although the Oka crisis still lingered, with resurgences in the Ipperwash standoff, 1995 was a year characterized by both positive and negative actions, from land standoffs in Quebec, Ontario and British Columbia to the closing of Indian residential school.

During six months in 1995, there were only two news stories pertaining to Bill C-31, one of them an accurate and well-documented column on Indian women applying to regain their Status

¹⁹⁹ Denthys Horgan, "Native rights fighter wins back her Status" *The Globe and Mail*, July 7, 1985, A7.

²⁰⁰ Jack Danylchuk, "Court upholds Indian women's victory" *The Globe and Mail*, July 7, 1995, A8.

²⁰¹ Chief Ron Derrickson, "Indians fear effects of law" *The Globe and Mail*, July 9, 1985, A4.

²⁰² Anonymous, "Few women expected to rejoin band" *The Globe and Mail*, July 22, 1985, A3.

and being allowed back onto their reserves. That story contained statistics on court decisions and the time durations and financial cost attributed to re-entry. There were also data concerning community populations compared to Indian women affected by Bill C-31 and individual figures: of 165,000 women affected by Bill C-31, 9541 reside in Alberta in 44 bands, which have allowed less than 2% back into their communities.²⁰³

The second piece, a letter to the editor, discussed blood quantum within the Kahnawake reserve and the diversity of policies for obtaining membership, as well as the measurement of proper blood count for entrance.²⁰⁴ According to the writer, the members of the Kahnawake community have taken longer than expected to state their views about regaining Indian Status and the registration process of band membership rules. In 1995, it seems, the *Globe* had little else to be said on Bill C-31 and particular Indian Status renewal.

Natives in land stand-offs are represented not as historically important, but rather as militants. Yet there are many sides to this issue. On August 11, 1995, Aboriginals received additional governing powers, similar to self-government, which is itself roughly defined as “more powerful than a municipality but weaker than a province”²⁰⁵ Not all First Nations were happy, but this was a step towards the affirmation of indigenous rights. Struggling as they were with the issues of women’s rights, First Nations took nearly every position with regards to gender equality. However, Aboriginal women continue to be excluded from this forum.²⁰⁶

Some find it easy to criticize other countries’ domestic policies towards women, but one would be wise to look first at Canada’s own problems. Canada marginalized Native women through Bill C-31.²⁰⁷ Canadian government officials asserted their intention to abide by the United Nations’ rules, but allowing women to re-enter reserves through membership in bands

²⁰³ Jack Danylchuk, “Court upholds Indian women’s victory” *The Globe and Mail*, July 7, 1995, A8.

²⁰⁴ Anonymous, “Aboriginal blood” *The Globe and Mail*, July 10, 1995, A10.

²⁰⁵ Susan Delacourt, “Natives offered limited powers” *Globe and Mail*, August 11, 1995, A1.

²⁰⁶ Susan Goldenberg, “A guide to Women’s Studies Etiquette, 101” *Globe and Mail*, September 7, 1995, A18.

²⁰⁷ Rod Mickleburgh, *Globe and Mail*, September 16, 1995, A13.

created another problem: a short-term policy affecting only a minimal percentage of people, with little to no financial relief.²⁰⁸

The *Montreal Gazette* is the fourth and final non-Aboriginal newspaper chosen for this comparative research. The *Gazette* was chosen because of its importance as the largest newspaper in English Quebec. The events that took place during the later half of 1985 contributed to the same sorts of stories as in the other newspapers. However, unlike the newspapers that operate outside Quebec, the *Gazette* has a unique perspective. These were the top First Nation related stories that took precedence in 1985: public inquiry into the 1984 drowning of 6,500 caribou; Indians electing George Erasmus as the new national leader; banning alcohol to give bands new hope; Roman Catholic church leaders honouring a Mohawk Kateri Tekakwitha as the First Native female saint; Aboriginal fishing disputes' being a common occurrence; Inuit survivors going home after 26 years because of starvation; respect for treaties worsening under the new Progressive Conservative government; and the ten-year anniversary of the James Bay hydroelectric plant as a modern treaty while new talks continue.

On July 5, 1985, the issue of Indian Status made front page news in section B. The story, "Woman is an Indian again 50 years after losing Status,"²⁰⁹ was a short but direct commentary. A July 18, 1985 heading reads, "Economic self-sufficiency the way for Indians."²¹⁰ One week later, on July 25, a front-page article claimed that a high-level official from Indian Affairs was fired for leaking crucial financial statements intended only for internal use. Given the sensitivity of issues surrounding funding and grants, the *Gazette* presented this news primarily because readers are generally curious about government spending. It would seem as though the *Gazette* had a larger interest in Native issues, pertaining to Bill C-31 and Indian Status.

²⁰⁸ Jane Gadd, "Canadian policy in line with U.N. plan officials say" *Globe and Mail*, September 16, 1995, A13.

²⁰⁹ Anonymous, "Woman is an Indian against 50 years after losing Status" *The Gazette*, July 5, 1985, B4.

²¹⁰ Comment, "Economic self-sufficiency the way for Indians" *The Gazette*, July 18, 1985, B3.

The following section will concentrate on the period from June 28 to December 28, 1995, with current events spanning Aboriginal, non-Native and international incidents. These issues consist of: tourists posing as Indians at the Wendake Huron reserve (“who knew being an Indian was so much fun?”)²¹¹; self-government seeming promising for both First Nations and the federal government; settling or resolving land claims and blockades; the Oka crisis four years later; the Royal Commission initial report supporting self-government; the Mohawks painted as dangerous gun-carrying villains; the Kanesatake Mohawks acquiring the right to build casinos; and protests over fishing rights in the Miramichi River.

From a study of this six-month period, the *Gazette* seems to have been uninterested in reporting on Bill C-31. Although there were references to Bill C-31 in 1985, it took ten years until a more detailed analysis of the legislation appeared, on June 28, 1995. The article, entitled, “Human rights panel rules Indian band in Quebec discriminated against women,”²¹² explains the situation of the Montagnais of Lac-Saint-Jean band council in conjunction with the Canadian Human Rights Commission, on equal salary for Native women as a result of Bill C-31. There were also four interviews, including one with Sharon McIvor, on economic planning by Indian Affairs Minister Ron Irwin.

On July 7, the *Gazette* covered First Nations women and their children who were finally reinstated as Status Indians after applying for band membership. (“Court upholds Indian women’s victory”... “Reserves can’t bar those who regained Status in 1985, judge rules”.)²¹³ According to an article on Aboriginal Status, “Lubicon Cree talks will hinge on size of band membership”,²¹⁴ the band was concerned with the influx of unfunded returning band members in a community already overcrowded and ecologically restricted as a result of oil contamination.

²¹¹ Comment, “Wendake Tourist” *The Gazette*, July 20, 1985, B4.

²¹² Wendy Cox, “Human rights panel rules Indian band in Quebec discriminated against women” *Gazette*, June 28, 1995, A13.

²¹³ Jack Danylchuk, “Court upholds Indian women’s victory” *Gazette*, July 7, 1995, A8.

²¹⁴ Jack Danylchuk, “Lubicon Cree talks will hinge on size of band membership” *Gazette*, July 18, 1995, A6.

One could see the differences between the Québec perspective and those from outside the province. Quebec relations to First Nation peoples have been based on a more realistic outlook on negative factors. This fact might stem from the historical hostilities as seen from the Oka crisis. Still, despite grievances regarding blockades, protests and the occasional dispute, Québec and its Native inhabitants have a shared understanding of Native issues and concerns, such as territorial conquest, assimilation and educational reforms.

The second and final phase of analyzing newspapers will focus on the Aboriginal content from community-based media. A similar method of analysis as towards non-Native news coverage will be taken; however, the content of community-based sources is more specific than that of larger, non-Native newspapers. The First Nations newspapers that were selected are the *Ha-Shilth-Sa*, *Tekawennake*, the *Alberta Native News* and the *Wawatay News*.

The *Hi-Shilth-Sa* paper was chosen for its location in British Columbia and the Arctic Circle and because it is the oldest Aboriginal newspaper, published since 1979. *Ha-Shilth-Sa* represents the West Coast of Vancouver and covers issues in Western Canada. The time span is from June 28, 1985 to December 28, 1985 and covers Aboriginal, non-Native and international concerns. Native stories cover issues ranging from self-government, economic development, job market growth, social and cultural events including sports events, offshore oil and the ongoing disputes with the federal government. Related non-Aboriginal topics include First Nation and non-Aboriginal disputes over fishing and hunting rights and rights with Alaskan Native Americans.

Removal of sexual discrimination within the *Indian Act* is discussed in the issue of March 28, 1985.²¹⁵ It would seem that Bill C-31 was already known and making headlines prior to its official release three months later. The members and subscribers of the *Ha-Shilth-Sa* were quite aware of the historical ramifications for Indians, particularly regarding Bill C-47 and Bill C-31.

²¹⁵ Charlotte Cote, "Attempts being made to remove discrimination from the Indian Act" *Ha-Shilth-Sa*, March 28, 1985, 5.

In an article dated July 25, 1985, the headline reads, "Status returned through Bill C-31." This piece provides a general overview of what Bill C-31 was by reviewing the increase in band power over regulating membership. There were also statistics; 26,000 first-generation and 50,000 to 60,000 second-generation applications.²¹⁶ The final piece associated with Bill C-31 is a story from October 1, 1985, titled "Bill C-31 Applications for Reinstatements."²¹⁷ This headline was influenced by the Nuu-Cha-Nulth Tribal Council, (NTC), which also operates the *Ha-Shilth-Sa*. This editorial was written on a four step analysis: by providing an initial three basic views of what Bill C-31 comprises; removal of sexual discrimination, reinstate the rights of past members due to sexual discrimination and the increased control of band councils over regulating by-laws. The author of one brief digest clearly makes the reader aware of the differences between Indian Status and band membership. Finally, the NTC has clearly provided the necessary application process for members affected by Bill C-31.²¹⁸

Ten years later, 1995 saw the height of new challenges in First Nations history, with the closure of residential schools, the hazards of drug abuse and treaty negotiations, the Royal Commission, land claims, and self-government debates. This was a new beginning in government relations with First Nation representatives. During this time span there was no discussion of Bill C-31. However, the introduction of the Royal Commission and the recognition of residential school victims resulted in a new perspective towards First Nations concerns. In 1985 there were two main topics pertaining to Indian women: Bill C-31 and women equality Status under section 15 of the charter; in 1995 there were two different topics: residential school inquirers and territorial standoffs like Oka and Ipperwash.

Tekawennake is published weekly at Ohsweken, Ontario and was a Six Nations publication. Local Mohawk issues, as well as general community events and politics, are reported.

²¹⁶ Anonymous, "Status returned through Bill C-31" *Ha-Shilth-Sa*, July 25, 1985, 3.

²¹⁷ Susan Wale, "Bill C-31 Applications for Reinstatements" *Ha-Shilth-Sa*, October 1, 1985, 16.

²¹⁸ *Ibid.*

Tekawennake was selected here because it was founded in 1963 and continues to offer insight to its readers from the Six Nations, Mississauga and surrounding southern Ontario communities. This community newspaper provides an abundance of articles, commentaries and editorial reviews. The first time period between June 28, 1985 and December 28, 1985 offers a large database of materials, which will be discussed in the analysis of this newspaper.

Additional events to be taken into account from Indian sources and viewpoints were covered in conjunction with Bill C-31 articles. However, the bulk of the information reports on First Nation topics, with a general inclination towards non-Native sentiments and little-to-no coverage of international issues. On July 31, a news column explains the potential Indian registration of not only Six Nations people but of sixteen thousand women and roughly fifty thousand first-generation children across Canada.²¹⁹ Membership would be determined by each individual band and subject to the band's own regulations. Florence Nicholas, Six Nations band membership clerk, stated that "discrimination has not been completely deleted".²²⁰ Bill C-31 is not a guaranteed right, and as long as there is an *Indian Act* with Indian Affairs overseeing all Native policies, discrimination will be present. In an article dated September 4, Joanna Bernard, executive director of the Woodland Indian Cultural Education Centre, (WICEC) sheds light on the "Keepers of Our Culture," women who have preserved the culture, society and structure of Aboriginal identity.²²¹ The single and most destructive force for Aboriginal women's role in Native tradition is Bill C-31. Attached to the *Indian Act* is a web of policies aimed at regulating First Nation's peoples so they better integrate with non-Aboriginal society. To clarify the process of regaining Status and membership, a proposal outlining concerns on Bill C-31 was established by the Six Nations Council, answering questions from members non-Status Indians and band

²¹⁹ Florence Nicholas, "Bill C-31" *Tekawennake*, July 31, 1995, 2.

²²⁰ *Ibid.*

²²¹ Anonymous, "W.I.C.E.C., Special Celebration – "Keepers Of Our Culture" *Tekawennake*, September 4, 1985, 2.

councils.²²² In a different article also featured on September 4, Donna Phillips, vice president of the National Native Women's Association, and president of the Ontario Native Women's Association, commented on the continued struggles faced by Indian women, "things will be better than what they are."²²³ This was her message to not just her own affected community members but to all.

In the month of October, there were four full-length entries on Bill C-31. A conference, Keepers of Our Culture was established to celebrate First Nations women in the living arts, and changes to the *Indian Act* arising from the passage of Bill C-31. As a result, on December 28, 1985, reserves were able to implement laws concerning the consumption of alcohol in their communities. This conference sparked five news headlines to shape the ongoing struggles faced by Six Nations readers when trying to grasp the concept of Bill C-31. On October 2, the Keepers of Our Culture banquet was a huge success in prompting Native women's rights and the challenges related to Bill C-31 that lay ahead.²²⁴ The story, "Band powers increased by Bill C-31", reflects the political aspect, pointing to the political structure of band powers that increased as a direct result of Bill C-31. These self-government powers aid in maintaining social order by enforcing bylaws (such as those concerning liquor consumption) which are often viewed as vital to community survival.²²⁵ Such issues describe the historical development of Bill C-31 within the broader context of the *Indian Act*, particularly the different sections, fundamentals, and band limitations on membership.²²⁶ In another issue, the Six Nations Council reveals the positive and negative reactions to registration and a detailed list of application processes. The final article describes an attributing factor of Bill C-31 in response to provisions in the *Indian Act*; the headline reads, "December 28, 1985, Six Nations becomes a wet community under Bill C-31."

²²² Anonymous, "Council meeting from front pg.," *Tekawennake*, September 4, 1985, 3.

²²³ Anonymous, "Native women say fight must continue" *Tekawennake*, September 4, 1985, 5.

²²⁴ Roberta Jamieson, "Keepers of Our Culture Conference is a celebration of Native Women in the Living Arts" *Tekawennake*, October 2, 1985, 1.

²²⁵ Anonymous, "Band powers increased by Bill C-31" *Tekawennake*, October 23, 1985, 1.

²²⁶ Indian and Northern Affairs Canada, "Changes to the Canadian Indian Act" *Tekawennake*, October 23, 1985, 3.

This does not imply that Bill C-31 also leads to alcoholism; however, the power to evoke such a bylaw would usually require a state power similar as that of a municipality. This regulation of consumption and purchase of alcohol is similar to regulation of membership. In December, there was only a single and final article depicting Bill C-31 as a major economic concern prior to allowing re-entry of past members. The headline reads, "Bill C-31 re-instatement information never taken to council." Among the concerns discussed in the article were poor communication between government officials and First Nations peoples. Shirley Farmer relayed a few disturbing facts on Bill C-31, including "where and when the appropriate backup dollars will arrive."

Ten years later, in 1995, the remnants of Bill C-31 still lingered on, but were over-shadowed by high-profile issues such as residential schools and land claims. The period from June 28 to December 28, 1995 shows the transition in media interest from Bill C-31 to residential schools. The main features that are present within an Aboriginal context are sports and recreational events, self-government, the Ipperwash shooting, illegal gaming, Native views towards community growth, provincial funding cuts, and remarks pertaining to economic strength-building, such as "Shop local Shop Native."²²⁷

Tekawennake is a typical southern community paper that covers a large geographical area and reports on all key industries, upcoming events, social responsibilities and news. There seems to be little or no context pertaining to non-First-Nation and international news besides the occasional advertisement or politically motivated statement. The path from numerous articles depicting Bill C-31 in 1985 has changed over the last ten years as a result of land claims and the aftermath of the residential schooling system. Paul Barnsley reflects on the concerns in regard to economic development as a social method for preventing suicides and other health-related issues for natives.²²⁸ Barnsley continues to comment of the mistrust and anger towards Indian Affairs,

²²⁷ Paul Barnsley, "Economic development important in fight against Native suicide, says Irwin" *Tekawennake*, November 8, 1995, 29.

²²⁸ Anonymous, "Advertisement Section" *Tekawennake*, November 29, 1995, 4.

arguing that perhaps the biggest indication of wrongful management towards welfare “is over a billion dollars while economic development is under \$50 million.” The funds that are usually supposed to be allocated to bands often are displaced at various administrative levels at INAC.

There was only a single entry referring to Bill C-31, due to attention to residential schools and poor economic accountability on the part of INAC towards reserves. In a 1995 news report outlining the achievements of First Nations peoples it is said that they still have a long road ahead.²²⁹

Bill C-31 was not supposed to function as a political band-aid to resolve problems with Indian Status, but as a means of addressing the injustices suffered by people who have been taken away from their families and subject to abuse because they could not acquire the help they needed from reserves and friendship centres. *Tekawennake* has given an in-depth review of Bill C-31 in 1985 then followed up in 1995, by revealing how Bill C-31, if left unattended, will continue to cause problems. “Perhaps the biggest indictment of my ministry so far is that welfare is over a billion dollars while economic development is under \$50 million. That’s got to change.”²³⁰ This quote demonstrates the mixed reviews by First Nations peoples over adequate funding and proper mediation policies towards social development as a result of Bill C-31.

The *Alberta Native News* was selected to cover areas of concern with Bill C-31 between June and December 28, 1985, including Indian, non-Indian and occasional foreign issues. Although the bulk of information pertaining to Bill C-31 derives from the initial reporting on June 28, 1985, additional insight will be provided.

The first reference to Bill C-31 is on page 3 of the May-June issue, in an article citing that an increase of 24,000 additional members and 2,700 past disenfranchised members would be able to regain their Indian Status and band membership. Yet, there remained the question of the

²²⁹ Wendy Cox, “Aboriginal people gained ground in 1995 disputes; expect more for 1996” in *The Canadian Press* from *Tekawennake*, December 13, 1995, 15.

²³⁰ Paul Barnsley, “Economic development important in fight against Native suicides, says Irwin” *Tekawennake*, November 29, 1995, 4.

legitimacy of 52,000 offspring of Status Indian. The grandchildren would also face an unpredictable fate.²³¹ These issues received full-spread coverage by Floyd Smith and featured the House of Commons committee on the implementations of Bill C-31 with commentaries from Minister Crombie and the Liberal Party critic for Indian Affairs. This article provides a debate between political parties on correcting past injustices by integrating new members into Native communities.

In the August-September edition, Mary Two-Axe Early wrote, *Status? Native women's rights?* She commented on Native women's struggles for equality and argued "the rights of 60,000 to 70,000 children and grandchildren will be a challenge for the next generation."²³² Following this article, a half-page analysis outlines the potential adverse effects of Bill C-31 if no significant alterations occur to this legislation. This article reveals positive opinions from the general Canadian public, who viewed Bill C-31 as an "ethical, just and progressive act" given the small amount of information, while Natives had mixed reactions to the bill and its implications. Natives were said to be glad to welcome back past members and family relations, while concern about where these additional people might live, work and what would happen to their already overburdened reserves, "stinging examples of government intrusion into native affairs".²³³ More question than answers was the feeling among native subscribers. This shows a clear difference between the Canadian public's response and those of First Nations. In the preceding article, the Indian Association of Alberta (IAA) provided factual information about the potential effects of reinstating non-Status Indian women. The Association's efforts resulted in an injunction appeal to the Supreme Court, which blocked entrance of these women back onto their reserves regardless of whether they had regained their Indian Status. The IAA did not initially act

²³¹ Anonymous, "Natives continue challenge to membership legislation" *Alberta Native News*, May-June, 1985, 3.

²³² Anonymous, "Pioneer Activist Becomes First Women to Regain Status" *Alberta Native News*, August-September, 1985, 4.

²³³ Robert Girvan, "Indian Act Amendment (Bill C-31): A Clash of Cultures" *Alberta Native News*, May-June, 1985, 5.

on Bill C-31 but soon realized that it would cause an imbalance in the population as well as economic drawbacks, as witnessed by Helen Gladue, chairman of the Alberta Council of Treaty Women: "It is a gradual death to our special rights as Indians."²³⁴

In an article by the IAA in response to Minister Crombie's rushing of Bill C-31, a House of Commons review panel was said to question the Minister's haste. Leaders of the IAA wanted to halt the minister's pushing of Bill C-31 and to further debate and analyze the bill.²³⁵ Following this statement, a leaked report from the INAC was passed on to Jim Fulton, NDP critic for Native Affairs, who then gave the document to the House of Commons for debate. Jim Fulton and Ed Broadbent both suggested that the government had a secret agenda for terminating Indian Status, and that this task could be accomplished by Bill C-31. However, then- Prime Minister Brian Mulroney indicated that this bill was in no way comparable to the White Paper in 1969, and would lead to a positive outcome for Natives. Fulton expressed his strong belief that left unattended, Bill C-31 would be listed among other well known First Nations disasters: "Haida people wiped out by smallpox in 1888, or the murder of the Beothuk in the last century."²³⁶ This glimpse of past historical injustices still haunts First Nation members as a possible faith given what has already occurred. Finally, in the November edition, columnist H. Chapparel responds to Jim Crow's article by further analyzing the different ways of regaining Status -- inquiries, applications and self-representation. Chapparel explains that people can communicate with Indian Affairs, and that the Department is trying to resolve these issues of Status and membership as quickly as possible.²³⁷ In another article, H. Chapparel comments on the First Ministers Conference where Bill C-31 was largely debated and analyzed in terms of its impact on to communities. A vital point was the potential transfer of funds from Indian Affairs to local

²³⁴ Floyd Smith, "Court Injunction Sought by IAA" *Alberta Native News*, August-September, 1985, 12.

²³⁵ Anonymous, "Indian Association of Alberta Will Put The Brakes on Crombie" *Alberta Native News*, September-October 1985, 3

²³⁶ Anonymous, "Leaked Document Still Creating Problems" *Alberta Native News*, September-October, 1985, 4

²³⁷ H. Chapparel, "Inquiries About Bill C-31 Still Pouring In" *Alberta Native News*, November, 1985, 3.

bands, which could now regulate their own membership. Although these two new concepts were informative, local members were unsure of the potential ripple effects this might have on their communities.²³⁸ Therefore, the final assessment of Bill C-31 in December primarily focuses on financial subsidies of \$2.4 million to be given to 15 Aboriginal associations, which helped inform their members of the various changes to the *Indian Act* by providing information pamphlets and packages.²³⁹

The *Alberta Native News* was selected because of the demographic nature of Alberta, which has an important presence of First Nation Peoples. The selected timeline from June 28, 1995 to December 28, 1995 shows primarily Indigenous topics similar to those in the *Wawatay News*. Aboriginal definitions of self-government were based on the separatist movement during the Quebec referendum. These were not the only conflicts that arose: resistance over gun control, Elijah Harper's call for solidarity, land claims, benefits, residential school inquiries, First Nation identity, the need for health care and medical centres, AIDS, natural resources and the standoff at 100 Mile House were also matters of concern.²⁴⁰ Non-Aboriginal and international topics were less visible and therefore were not listed.

Land claims are highly present in this newspaper; for instance, in one article, Rhonda Ferguson, Chief of the New Westminster Band, represents the sole member of her tribe who in 1994 applied for Indian Status under Bill C-31. Chief Ferguson also required that the original land be given back to her regardless of its size.²⁴¹ Chief Ferguson wanted to establish a Friendship Centre and secure federal grants in order to re-educate distant members to revitalize their dying entity. The *Alberta Native News* presented four articles on Bill C-31. The first focused on the bill's ten-year anniversary. The second concerns Judge Frances Muldoon's praising the accomplishments of the bill in allowing Native women to return home. John Copley

²³⁸ H. Chapparel, "Treaty 6 Chiefs Return to Tradition" *Alberta Native News*, November, 1985, 4.

²³⁹ H. Chapparel, "C-31 Grants Split Among 15 Native Groups" *Alberta Native News*, December, 1985, 19.

²⁴⁰ Elijah Harper, "Issues that are faced by First Nations" *Alberta Native News*, October 1995, 4.

²⁴¹ Ennis Morris, "Canada's smallest Indian band seeks land base" *Alberta Native News*, October 1995, 10.

also describes an alternative classification for First Nation peoples as “a new breed of Indian, and thus a new name to the growing list of “types” of indigenous people living in this land. They were to be called the “Bill C-31s”.²⁴² In addition, in a letter to the editor on Bill C-31, Doris Ronnenberg, President of the Native Council of Canada, reflects on the process of the Twinn Case, which determined that “women who lost band membership under the old discriminatory Section 12(1)(b) of the *Indian Act* are legally entitled to their band membership as well as to their Status”.²⁴³

This shows that although Bill C-31 might have helped some women, sexual discrimination is still rampant on reserves. As shown in one article, social assistance programs were denied to non-Aboriginal women from the Shubenacadie Band, whose plea was overruled by the Canadian Human Rights Commission. The band “had no authority to deny benefits to qualified non-native residents” and these residents” claimed they were discriminated against on the grounds of sex, race, and family Status.”²⁴⁴ The final news clipping was in light of land claims that cited Bill C-31 as a negative development towards settling territory, especially with an increase in payments in reason of reinstated members.²⁴⁵ These two editorials provided a realistic and cynical perspective on women’s advocacy and band council reforms.

Former Prime Minister Brian Mulroney confesses in a statement to Pope John Paul II that “I and the provinces haven’t gone far enough in trying to eliminate the pain and misery of Native peoples.”²⁴⁶ Just like the Royal Commission in 1995, government policy towards Aboriginals never seems quite good enough. This insight from Mulroney provides a view of promises not kept, which continues to cause a negative situation for Canadian First Nations citizens.

²⁴² John Copley, “Bill C-31 stands as is says Justice Muldoon” *Alberta Native News*, July 1995, 3.

²⁴³ Doris Ronnenberg, “Leader pleased will Bill C-31 decision” *Alberta Native News*, August 1995, 7.

²⁴⁴ Anonymous, “Band order to pay benefits” *Alberta Native News*, November 1995, 4.

²⁴⁵ Anonymous, “Papaschase Indian Band #136 renewal continues” *Alberta Native News*, December 1995, 13.

²⁴⁶ Art Babych, “Closure needed on Aboriginal rights issues” *Alberta Native News*, October 1995, 4.

The *Wawatay News* was selected for its strong community-based network and its blending of technology and tradition in order to connect to its readers. The period reviewed is the same as the other publications, from June 28 to December 28, 1985, and a summary of local, national and international events that helped shape the coverage of Bill C-31 is included. Topics ranged from social and cultural events to disagreements between the federal government and local band councils as to economic and development prosperity for Aboriginals.

The *Wawatay News* provides a wealth of information on Bill C-31. News content spans from reports to editorials and personal statements, and addresses personal reflections, government oversight, advocates, chiefs, band councils and other elected officials. Since the *Wawatay News* only reported Bill C-31 in August, it might have been because the entire month was dedicated solely to Bill C-31. On the front page of the August issue, the headline reads, "Indian Act: Bill C-31 women now equal."²⁴⁷ This lengthy news column takes-up three-quarters of the paper's word count. The article further outlines the circumstances for the passing of Bill C-31. The paper's in-depth analysis explains both sides of the bill's purpose: government policy towards women through reinstatement of Status, and membership increase with increase of band council power.

The second full spread article, "Native leaders react to Bill C-31," reflects comments by four chiefs: Titus Tait, Josias Fiddler, Havey Yesno and Thomas Petawayway with their individual responses to four questions regarding Bill C-31. These four chiefs have expressed their personal insight into a series of four questions pertaining to Indian women's right for reinstatement; membership through section 12(1)(b); healthcare and funding provisions not reduced by INAC; control of band membership; new band bylaws aid in enforcing local jurisdictions, while

²⁴⁷ Rob Rupert, "Indian Act: Bill C-31 women now equal" *Wawatay News*, August 1985, 1.

strengthening self-government directives and whether Bill C-31 creates more confidence in a new conservative government.²⁴⁸

The third full spread article, “Indian Act attendant long time coming,” reflects another view of the *Indian Act*. How can section 12(1)(b) be removed, thereby granting Status and membership? Indian Affairs Minister David Crombie, (1984-1986) gave his own reflections on Bill C-31 at a press conference. When Rob Rupert wrote on the three sections of the bill, his comments were well researched and well articulated. In section 12(1)(b) he goes to the root of revisions to the *Indian Act*. The Indian Affairs Minister John Munro, (1980-1984) who was willing to remove section 12(1)(b) if bands allowed women to return to reserves (also known as Bill C-47). The *Indian Act* did provide a challenge for Aboriginal women trying obtain their inherent band rights, which can be taken from improper funding by INAC since “Indian Affairs had not guaranteed increased funding to bands and reserves whose expenses might rise if significant numbers of reinstated women, and their families, wanted to return to live on reserves.”²⁴⁹ In reference to “Status and membership,” individuals applying for reinstatement of rights would be permitted once Indian Affairs has given approval. This process would have to occur rapidly given the brief time allowed, prior to regaining control. This rush to grant women and their offspring Status and membership was to prevent band councils from creating their own membership criteria. Once a band list was enacted under the provisions of the *Indian Act*, bands could limit returnees by a number of processes, including blood quantum, family relationship and other legal roadblocks.

The third and final review, “International sympathy,” describes not only the Canadian political context but also its relevance internationally. The United Nations reflects on the uphill battle by Aboriginal women’s organizations in their struggle for equality for all First Nation Peoples. Once these women have regained their Status in the eyes of the U.N., the Canadian

²⁴⁸ Rob Rupert, “Native leaders react to Bill C-31” *Wawatay News*, August 1985, 17.

²⁴⁹ Rob Rupert, “Indian Act amendments long time coming” *Wawatay News*, August 1985, 19.

government had to incorporate these measures into policy and provide a legal implementation strategy. In a twist of events, bands were given control of their membership if they chose to accept past members. This administrative power could eventually lead to stronger internally organized and well-maintained reserves for band councils.

Another full-page piece on Bill C-31 depicts another notable turn of events: Donna Phillips, second vice-president of the NNWA and president of the ONWA, has indicated at a press conference that Native women's fight for equality is still a great concern even after the passage of Bill C-31. Phillips argues that 12(1)(b) women should apply for membership and Status immediately, while reinstatement is still under Indian Affairs jurisdiction and allows for automatic entrance to those who are eligible under Bill C-31.²⁵⁰

The article begins by describing the processes of obtaining Status and membership. Columnist Laurel Woods describes the step-by-step process for gaining membership in terms of the necessary documentation, the mailing address and information on any costs associated with this procedure. Although this information is intended for the Sioux Lookout community, the general procedures apply to all Natives. The column goes on to list five aspects of the process: band membership and Status, Status under the Indian Act, the "grounds for registration", handling of the applications, and special or unusual cases.²⁵¹ Her advice for regaining lost entitlement makes the process seem clearer to the community.

It would seem that the government is not entirely excluded from the media discussion of Bill C-31. The Senate contributed a half-page editorial review to *Wawatay News*, which provides a historical and legal perspective on the regulation of Aboriginals, with interesting points and commentaries that gives much-needed information for concerned First Nations peoples. In contrast, Carol Terry, a freelance journalist with past personal dealings with Bill C-31, contributes a letter to the *Wawatay News*. She describes a struggle where she and other Natives

²⁵⁰ Donna Phillips, "Native women say fight must continue" *Wawatay News*, August 1985, 21.

²⁵¹ Laurel Wood, "How to apply for Status, band membership" *Wawatay News*, August 1985, 21.

are caught between two worlds: being not Indian enough for the reserve and not white enough for life outside the reserve. Many people including Carol Terry, live off-reserve and never experienced the negative aspects of reserve life, such as “no running water, no food to eat, etc.”²⁵² Yet because her residence was not located on a reserve, she and others would have to renounce their birthright benefits, which included Status and membership. On the same page is an announcement that Leonard Gilbeau of Aroland received Status after sixty years, finally having somewhere to belong to as a treaty Indian?²⁵³

In the final news depiction of Bill C-31, “Native leaders react to Bill C-31” Chiefs and councilors were questioned on their thoughts on Bill C-31. Chief Absolum Moose of Poplar Hill Band believed that reinstating 12(1)(b) would be a positive step forward. However, once a reinstated member tried “to return on their original band,” there would have to be increased funding from the federal government. Bearskin Lake Band Councilor Rosie Mosquito was open to the amendment to the *Indian Act*, emphasizing the removal of section 12(1)(b) to allow women their birthright “because they were band members” and “because they really didn’t have a choice.” Mosquito advised Minister Crombie to “give us a guarantee that he would not allow programs or services to be affected by the increased in numbers of Status Indians.” Chief Edward Machimity of the New Saugeen Band accepted the new regulation of Bill C-31 within the *Indian Act*. Since his band was negotiating with the federal government over the allocation of territory for a new reserve, returning members were welcome, but he “predicted his people will [not allow non-Natives onto their new reserve.] Chief Machimity did not take for granted the false “promise about maintenance of current levels of services and programs.” The final band representative, Kashechewan Head Councillor George Koois, gave a general statement from his community members’ interpretation of Bill C-31: “I don’t think they like it.” Councilor Koois was unable to accept that Bill C-31 directly affected many women by out-marriage or through

²⁵² Carol Terry, “Indian Act divisive, but we ‘must live with it’” *Wawatay News*, August 1985, 24.

²⁵³ Stu Cummins, “After 60 years: Aroland man gets Status” *Wawatay News*, August 1985, 2.

disenfranchisement. Finally, in quick concluding remarks, Councilor Koois said he could not respond to any more questions until he confirmed with Chief Dan Koois, who at the time was on vacation. The general concern was the removal of section 12(1)(b); reinstatement was well supported. But an increase in funds is needed to off-set the expenses entitiled by returnees, since the current programs would be greatly compromised.²⁵⁴

Ten years later, the *Wawatay News* again reviewed topics such as: the extent to which the federal government could be trusted; sports and cultural events as a strong component to reserve society; the truth behind actions of the federal government; action towards self-government; government cuts to federal spending; Ipperwash coming closer to home; increases in healing foundations and support programs for residential schools and suicide crisis; AIDS; Mexican Natives' visit and reflections on similar challenges to community survival; and an exchange student from Finland enjoying the warm hospitality of local indigenous peoples.

Although there was no direct quotation or citation on Bill C-31, there was reference to a switch in concerns from Status reinstatement to community problems, such as residential schools contributing to a wide range of social ills including suicide, alcoholism, and mental and physical abuse. By 1995, discussions of Bill C-31 would be replaced with coverage of those issues listed above. The residential school debate took precedence over Bill C-31 within the ten-year period. However, the aftermath and challenges associated with Indian Status and membership would continue to plague the courts, Indian Affairs, and various Aboriginal communities. The lingering past of Bill C-31 means that there has not been sufficient time to correct the injustices that occurred to off-reserve Natives, and that Bill C-31 may continue to cause permanent damage by splitting families.

²⁵⁴ Footnotes for the entire final paragraph derived from the same page: Chief Absolum Moose, Councilor Rosie Mosquito, Chief Edward Machimity and Councilor George Koois, "Native leaders react to Bill C-31" *Wawatay News*, August 1985, 2.

The overall analysis of the four mainstream Canadian newspapers: the *Vancouver Sun*, the *Winnipeg Free Press*, the *Globe and Mail* and the *Montreal Gazette*, provides a general overview of Native Status renewal and topics associated with Bill C-31. Although there are other Aboriginal stories, the vast majority of the content concerns Native women's struggles to regain their Indian Status after marrying a non-Aboriginal man. In contrast, Indigenous newspapers (the *Wawatay News*, the *Alberta Native News*, the *Tekawennake* and the *Hi-Shilth-Sa*), provide a deeper sense of First nation issues related to *Bill C-31*, and can be seen as a crucial part of Native society rather than as research on the backburner of the mainstream media.

As one final point of interest, the term of "Indian" changes from 1985 to 1995 and re-emerges as "Native," "Aboriginal" or "First Nations." The re-labeling occurs as a result of the Royal Commission's tendency to use "Indian" as a classification. The new terms are therefore more useful than the 1980s term, where "Indian" could also refer to people from India.

Conclusion

It was the intent of this thesis to incorporate a legal understanding and research sources to better review Bill C-31 and to determine what has been written, as well as the potential troubles if this legislation is not corrected and continues to cause significant problem for First Nations peoples. Therefore, because this thesis concerns a political topic and takes a largely legal perspective, it incorporates terminology related to blood quantum and matrimonial real property. Moreover, these two subjects are not always researched together when analyzing the effects of Bill C-31 on the membership model. A comprehensive review of secondary sources, including oral sources, was incorporated to enrich the historiographical analysis of Bill C-31, Bill C-47, blood quantum, section 6 and matrimonial real property. This additional reference has expanded the overall methodological framework.

The topics of this thesis include the fundamental rights of Aboriginal people, the development of the Constitution, the Charter of Rights and Freedoms, historiography, court cases and early legal battles, Canadian legal foundation, Bill C-47, Bill C-31, section 6 of the *Indian Act*, matrimonial real property, the Royal Commission on Aboriginal Peoples, blood quantum, economics, non-affected First Nations: the Métis and the Inuit, First Nation community newspapers, and non-Native methods. These were the selected Native newspapers followed by non-Aboriginal sources: the *Hi-Shilth-Sa*, the *Tekawennake: Six Nations - New Credit Reporter*, the *Alberta Native News*, the *Wawatay News* also the *Vancouver Sun*, the *Winnipeg Free Press*, the *Globe and Mail* and the *Montreal Gazette*. The primary objective of these sources was to evaluate the coverage of Bill C-31 in Canadian society. A six-month study was chosen to properly evaluate commentary and reports pertaining to Bill C-31, commencing on June 28, 1985 as the official date of enactment, followed by a ten-year comparative analysis to view what the media either Native or non-Aboriginal newspaper reported afterwards. The timeframe was June 28, 1985 to December 28, 1985, then June 28, 1995 to December 28, 1995.

These were the sources of research that were conducted in this thesis to aid in the methodological approach for studying Bill C-31.

In the end, different levels of government, provincial and federal, as well as the Department of Indian Affairs, have made considerable strides towards allowing many of these non-Status Indians and non-members a chance to regain entry into a community by correcting the imperfections that still reside within Bill C-31. Although there are still ongoing challenges before the courts and recent victories such as the McIvor case in June of 2007, over twenty years have passed and families still suffer the consequences as a result of poor government management. The aftermath of Bill C-31 still plagues reserves, divides families, and removes accessibility from cultural, social and ethnic bonds from individuals. These are just a few examples of a political system that went wrong and finding a correction seems to be even harder. However, the ongoing sexual discrimination flowing out of Bill C-31 has brought on a new wave of abuse in that it ultimately assimilates First Nations (other than Métis and Inuit) into mainstream Canadian society. In addition, as suggested by journalist Midelle Jacobs and others, the bill causes gender imbalance by preventing women from achieving the same rights to Status, living on-reserve and accessing treaty payments or annuities.

This quote was chosen because it is a remarkable summary of this thesis:

The cycle of poverty, violence, lack of access to quality health care and education, and the non-recognition of inherent First Nations jurisdiction continue to be perpetuated in federal genocide and assimilations policies and approaches.²⁵⁵

The French have a saying: “*Plus ça change, plus ca reste pareil.*” The more things change, the more they remain the same. This quote alludes to the impact of Bill C-31 ten-years ago. Bill C-31 was enacted to serve and protect neglected non-Aboriginal Status; however, it proved to be unfruitful due to the unproductive measures taken by the government to secure Native rights.

²⁵⁵ Final Report on AFN Regional Dialogue Sessions, *Consensus Statement by First Nations Women Chiefs and Councilors* (Vancouver: Assembly of First Nations, February 14, 2007), 1.

The *Indian Act* no doubt faced the greatest changes as a result of Bill C-31 amendments.

However, the changes to the *Indian Act* would not all be of a positive nature, as would be seen and described by Natives.

With the introduction of the 1985 changes to the *Indian Act*, over 100,000 Indian people have regained their Status due to the measures of Bill C-31.²⁵⁶ In the last seventeen years the bill has proven to be the primary adjustment legislation needed to become an effective tool in correcting past injustices to First Nations Peoples. Bill C-31 had proven to be an effective measure for obtaining Native rights within the *Indian Act* and provides solutions for many Natives. However, the long term consequences, such as member-labeling as with 6(1) and 6(2)s, the ensuing second generation cut-off rule, and labeling of individual rights, will lead to a dwindling Indigenous presence in Canada. These acts intended to protect Indians will only counteract the initial purposes.

Statistical research has concluded that if the current trend of Bill C-31 Status enrolments continues, then the possibility of extinction of "Status Indians" might become a fact. One could argue that the government's unofficial Indian policy was to assimilate all Aboriginal inhabitants. Since the end of the War of 1812, the government was no longer in need of Indian defense services and tried to assimilate them into mainstream Canadian society. In one form or another -- Disenfranchisement, White Paper, Bill C-31 ---with their numerous clauses (such as the double-mother clause, section 6 and the second generation cut-off rule) policies and regulations originally meant to help Natives did the very opposite. The fact remains that, with the new classification of "Indian", perhaps this theory of government involvement might be a direct cause of a gradual assimilation.

The 1985 Amendment to the *Indian Act* also known as the revision of Bill C-31 was an initiative by the government to change its policy regarding discrimination based on sex, as stated

²⁵⁶ Produced by Brenda Chambers, speaker: Nelly Carlson, "Aboriginal Women's Rights Advocate" *Indians Enough?: The New Caste System of the Future*, (Kelowna: Venturing Forth, 2004, Season 4, Episode 3)

in the *Charter of Rights and Freedoms*. This three-year time period was insufficient to satisfy both parties, Sandra Lovelace and the United Nations sub-committee on sexual discrimination. The provisions for Lovelace and the Charter became Bill C-31. This allowed for the United Nation's ruling of allowance of Native women affected by loss Status upon marriage with non-Status men. However, since band membership responsibility was then passed onto band councils, they were able to regulate their own membership, which created new problems for women. Yet the government has a legal responsibility towards Natives; there is a "political trust" entrenched in the *Indian Act*.²⁵⁷ Natives are, legally speaking, wards of the state. One could argue that if the government had not hastily rushed these revisions, then perhaps Lovelace and other women with their children would not have had to face this issue known as Bill C-31. In order to correct this injustice, the government must mediate financially between band councils and displaced women and children affected by the bill, given the high costs associated with the returning of members.

The exploitation of Native women and their children could be compared to the residential school experiences, which caused both shame for Canada as a founding member of the United Nations and arguably has led to ongoing genocide by the Canadian government. Genocide is indeed a strong word; however, when the government has the power to remove sexual discrimination in the *Indian Act* and does not do so for political reasons this could only cause as injustice to Canadian Aboriginal peoples.

In a recent political debate between Indian Affairs Minister Jim Prentice and former Liberal Prime Minister Paul Martin, Prentice challenged Martin to prove that his defeated government supported a United Nations declaration on the rights of Indigenous peoples. In a letter branding Mr. Martin as "irresponsible and hypocritical," Mr. Prentice questions Mr. Martin's assertion that the former Liberal government was poised to endorse a United Nations declaration opposed by the current Conservative government. Mr. Martin stood by his comments that the

²⁵⁷ J. Paul Salembier, *The Crown as Fiduciary and the Conflict of Interest Inherent in its use of Indian Land for Public Purpose*, (LL.M., University of Ottawa, 1994), 52.

Conservative government reversed the Liberal course on the UN declaration.²⁵⁸ The actions of one government versus another might seem as though the standing government or minister challenges the acts of the previous administration. This game of cat and mouse is only to the media's benefit. In the end, Canadians First Nations peoples are back where they started; without control over band membership, financial independence or self-government.

Furthermore, the psychological trauma created by the lack of rights associated with Bill C-31 victims who were not able to reconnect with family members caused a great tear in their social fabric. Reserves are not just groupings of people surrounded by various buildings on a plot of land; they are a life force, one that must be cared for and nurtured. A valuable social as well as cultural attribute of reserves is their healing centres. These non-western institutions provide the necessary atmosphere needed to heal members from both mental and psychological pain by using traditional methods, such as sweat lodges, healing circles, vision quests, and talks with elders and meetings with shamans. All of these factors provide a positive outlook for those who require it. Although many of these services can be obtained by non-band-members, to fully immerse members in these customary rituals is crucial. Without these healing foundations many non-Status or non-band members will continue to suffer.

In conclusion, the circumstances surrounding Bill C-31 and its subsequent enforcement reveal that the federal government was attempting to give Aboriginal people greater self-governing powers without the means to carry them out. Unfortunately, the government had a difficult time in defining what role it would play in this transfer of power. It was up to the government to take the necessary steps to ensure that this transfer took place. However, their role in the transfer involved adding both human and financial resources.

In effect, the government seems to have passed on their responsibility to the band councils. This action nullified their previous agreement set out as per Bill C-31. The band councils had

²⁵⁸ Jim Robson, "Indian Affairs minister challenges former PM" *Ottawa Citizen*, July 17, 2007, A12.

mixed feelings towards these potential new members. Yes, they were family; however, reserve resources were stretched to the limit and the government was not willing to contribute additional financial support to cover the massive influx in any fashion. The main hope was for new money that could be used for construction of additional housing units, social services programs and allowance in the form of either a social assistance or a means to provide a temporary relief.

How will the government deal with the many women and children unable to return to their reserve and reunite with their families, learn their cultural heritage, speak their language, sing their songs and experience who there are and where they come from? Who will determine where they shall go? This question is continuously asked by Aboriginal elders and Native political leaders, as Bill C-31 affects all Aboriginal people, directly or indirectly. Since the classification of Status Indians 6(1) and 6(2) may result in a depopulation of Indigenous communities in Canada in the long term, what will the next century have to deal with?

– End –

From earth – from water our people grow to love each other in this manner. For in all our languages there is no he or she. We are the children of the earth and the sea.²⁵⁹

²⁵⁹ Alanis Obomsawin, *Mother of many Children*, documentary National Film Board of Canada, 1977.

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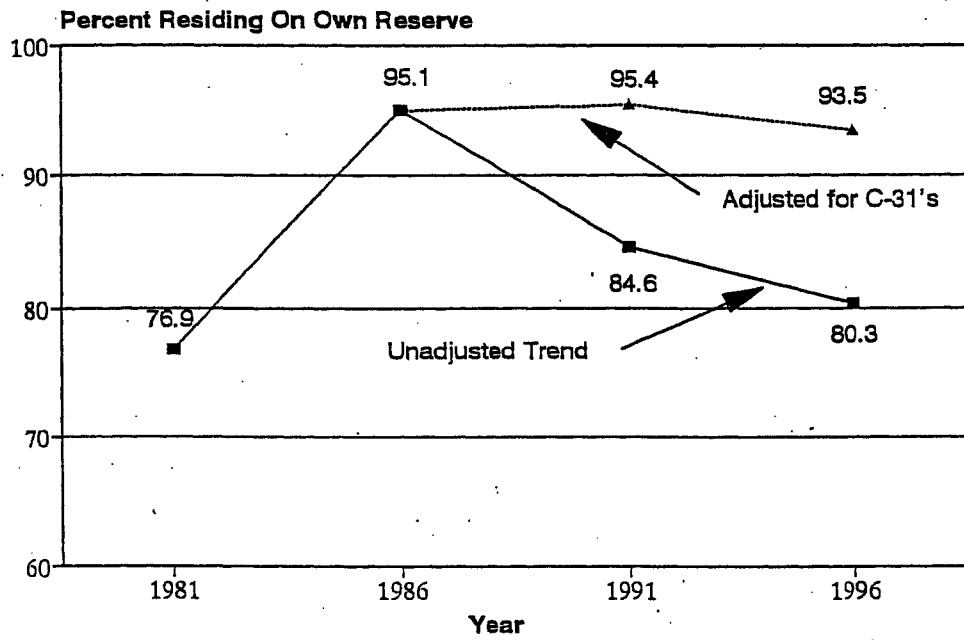
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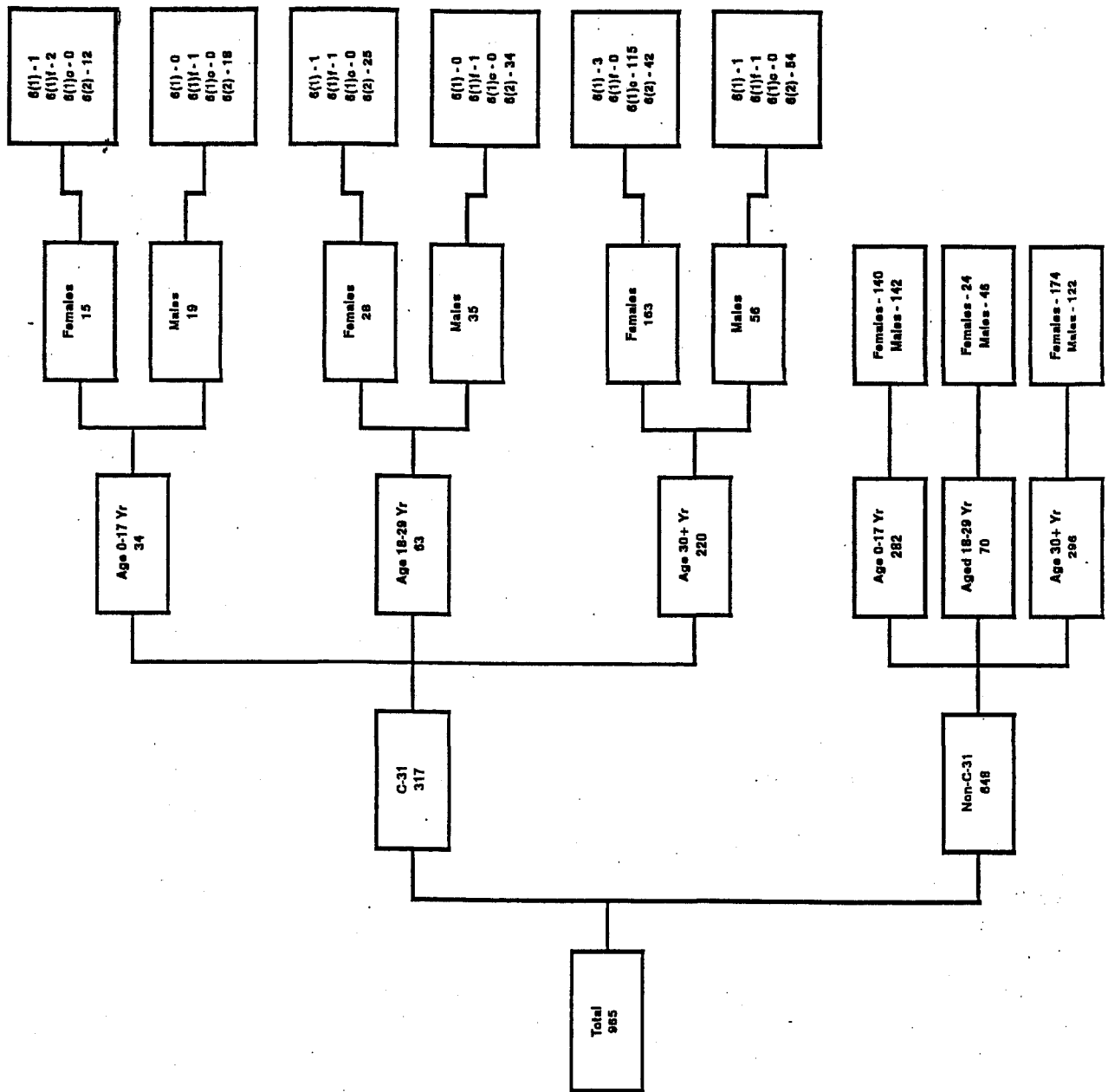
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Appendix 1: Mohawks of Kahnawake, 1981-1996 Population Fluctuation



Source: Indian Register, 1981-1996

Appendix 2: Distribution of Registered Indian, Non-Member Population: Residing on Own Reserve by Age, Gender and C-31 Status

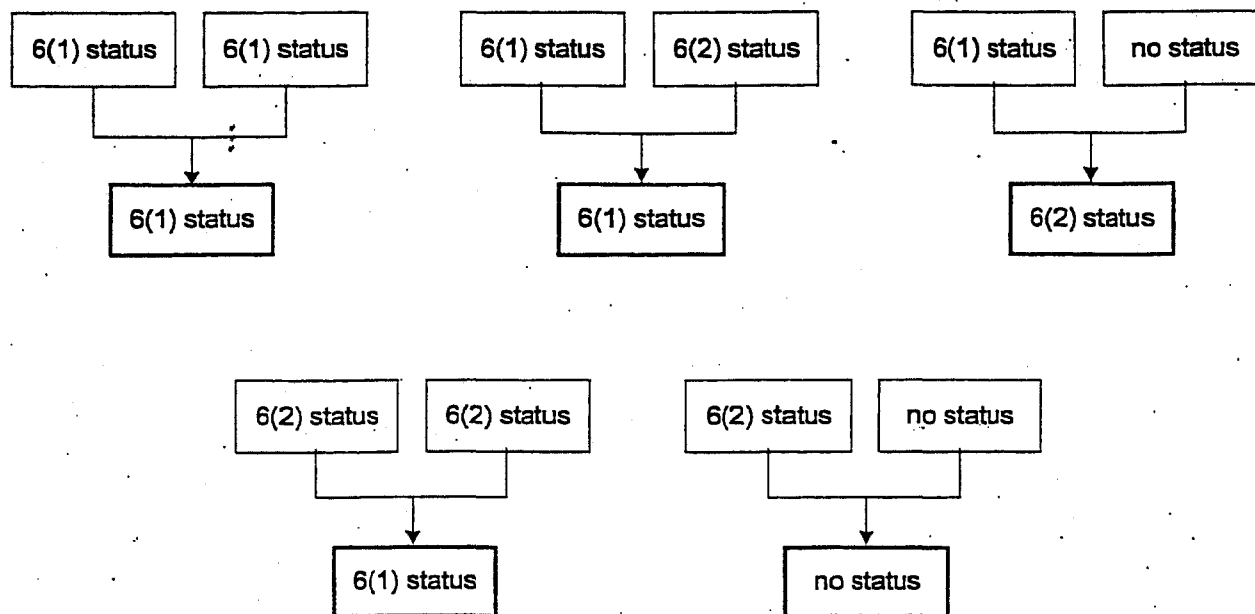


Appendix 3: Female Membership in the Ten Largest Bands of Canada, 1991

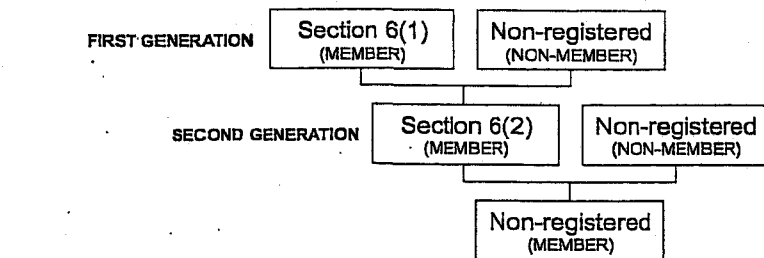
Band Name	Province	Number of Female Members	Proportion of Female Members
Six Nations of the Grand River	Ontario	8,384	52.4
Kahnawake	Quebec	3,875	52.1
Blood	Alberta	3,771	51.8
Mohawks of Akwesasne	Ontario	3,753	51.8
Saddle Lake	Alberta	2,991	50.5
Mohawks of the Bay of Quinte	Ontario	2,839	53.5
Wiwemikong	Ontario	2,621	52.1
Lac La Ronge	Saskatchewan	2,502	50.4
Peguis	Manitoba	2,444	49.7
Peter Ballantyne	Saskatchewan	2,340	50.7

Source: DIAND, *Indian Register*, 1991.

Appendix 4: Children Born to Different Parenting Combinations



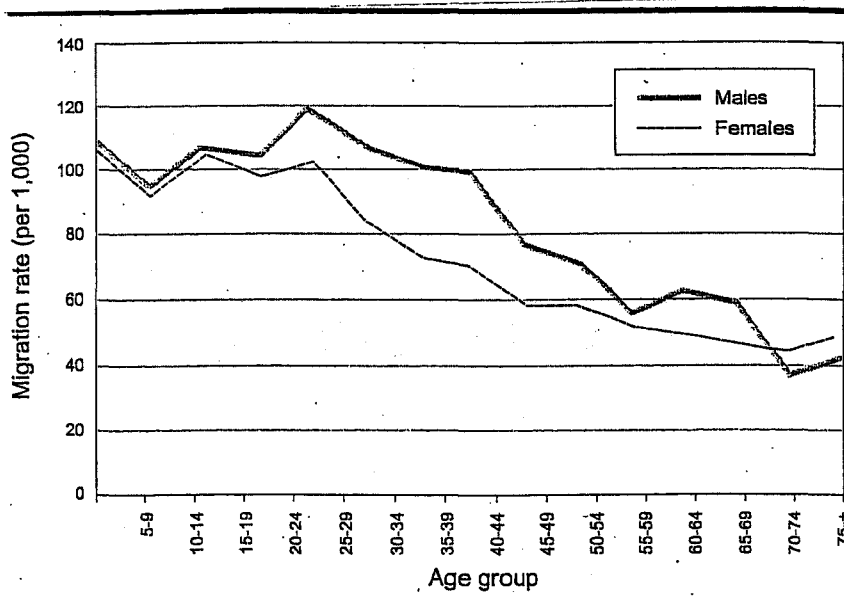
Appendix 5: Second Generation Cutt-off Rule also known as the Double-Mother Clause



Appendix 6: Parenting Grouping by Section 6

Parent's Entitlement	Parent's Entitlement	Child's Entitlement
Section 6(1)	Section 6(1)	Section 6(1)
Section 6(1)	Section 6(2)	Section 6(1)
Section 6(1)	Non Entitled	Section 6(2)
Section 6(2)	Section 6(2)	Section 6(1)
Section 6(2)	Non Entitled	Non Entitled
Non Entitled	Non Entitled	Non Entitled

Appendix 7: Migratory Patterns of Population to Reserves by Bill C-31, 1991 to 1996



Sources: Norris 2002.