

“United We Stand, Divided We Fall?”: Activism Among  
Aboriginal Women in Nova Scotia, 1970-1985

by

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## Abstract

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Through an analysis of primary and secondary documents, this study determined that from the early colonial period to the mid 19<sup>th</sup> century, adversative colonial and state policies imposed on Aboriginal communities initiated an activist spirit among Aboriginal women in Nova Scotia. In the 1970s this activism found expression in the formation of the Nova Scotia Native Women's Association and the Non-Status and Métis Association of Nova Scotia. This study examined the policies imposed on Aboriginal communities in Nova Scotia, determined the most critical issues within these communities identified by Aboriginal women, analyzed activism among Aboriginal women and the opposition women faced from local band governance and the Canadian state. The research was largely focused on the loss of legal "Indian" status among Aboriginal women through discriminatory provisions in the *Indian Act* and women's struggle to regain their "Indian" identity under Canadian law.

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To all of the women who have suffered because of the system and those who have had the strength to challenge it – thank you for the inspiration.

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## Introduction

Aboriginal<sup>1</sup> women have often been invisible or seen as victims within historical narratives in a broad sense in Canadian historiography. Historically, Aboriginal women played significant roles within their communities, but as colonial and state regulation of Aboriginal lives became increasingly intrusive, and male power privileged within Aboriginal communities, women were excluded from political governance and relegated to the private sphere.<sup>2</sup> Until approximately 1980, Aboriginal women's marginalization within society was confirmed and replicated by their absence in historical accounts and contributions. It was not until Sylvia Van Kirk and Jennifer Brown's pioneering work on Aboriginal women in the fur trade in the 1980s, that Aboriginal women were introduced into Canadian historical narratives as active agents.<sup>3</sup> In the absence of any significant empirical evidence on Aboriginal women, in particular in terms of a pre-colonial context, it had been difficult for historians to clearly determine how Aboriginal men and women negotiated within their respective gender roles. However, there is now a significant literature on topics as diverse as Aboriginal women in missionary and educational work, the changing roles and traditions of Aboriginal women during colonization, gender, sexuality and

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<sup>1</sup> Recognizing that identity politics and cultural terminology are constantly evolving, and in an effort to be as inclusive as possible, the term "Aboriginal" is used throughout the thesis to describe any woman or man belonging to or descended from any Nation or of Aboriginal ancestry in North America, living on and off-reserve.

<sup>2</sup> Beverly Jacobs, "Gender Discrimination Under the *Indian Act*: Bill C-31 and Aboriginal Women" in *Feminism, Law, Inclusion: Intersectionality in Action*, ed. Gayle MacDonald and Rachel L. Osborne (Toronto: Sumach Press, 2005), 177-178.

<sup>3</sup> Sylvia Van Kirk, *Many Tender Ties: Women in Fur-Trade Society, 1670-1870* (Norman: University of Oklahoma Press, 1980); Jennifer S. H. Brown, *Strangers In Blood: Fur Trade Company Families in Indian Country* (Vancouver: University of British Columbia Press, 1980). For evidence of the importance of these works to Aboriginal women's literature, see Sarah Carter and Patricia McCormack, eds., *Recollecting: Lives of Aboriginal Women of the Canadian Northwest and Borderlands* (Edmonton: AU Press, 2011), 8; Veronica Strong-Boag and Anita Clair Fellman, eds., *Rethinking Canada: The Promise of Women's History*, 3<sup>rd</sup> ed. (Toronto: Oxford University Press, 1997), 70.

Aboriginal women, Aboriginal women and labour, and studies on Aboriginal women, the law and their relationship with the state.<sup>4</sup> However, within this literature, there are relatively few studies focused exclusively on Aboriginal women in Atlantic Canada. This study will add to the literature of Aboriginal women's narratives through a feminist analysis of the experiences of Aboriginal women of Nova Scotia to provide a perspective sensitive to the issues that were most relevant to these women. The lack of unity among Aboriginal women was one of the most critical issues, and this study traces the ways in which women collectively organized to find solutions to the various issues resulting from the legacy of colonialism. Finally, the study offers an in-depth analysis of one specific aspect of this legacy - Section 12 1 (b) of the *Indian Act*, the implications of this discriminatory section for Aboriginal women, Aboriginal women's struggle to change the section and the effects of the application of the amendment to the *Act*, known as Bill C-31.

The creation of the *Indian Act* in 1876 was designed to regulate and control the lives of Aboriginal men and women on a more comprehensive scale; the *Act* regulated the lives of Aboriginal women to an even greater degree than it did Aboriginal men. The *Indian Act* dictated that an Aboriginal woman's identity as an "official" Indian was dependant on the "official" identity of her husband. Having legal Indian status under the *Act* provided an Aboriginal woman with access to essential funding and housing (among other things), determined her ability to reside within the Aboriginal community of her family and/or choice, her ability to inherit land and, upon death, where she could be buried. If an Aboriginal woman "out-married", that is,

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<sup>4</sup> For example, see Mary Ellen Kelm and Lorna Townsend, eds., "Historiography of Aboriginal Women in Canada: A Select Bibliography," in *In the Days of Our Grandmothers: A Reader in Aboriginal Women's History in Canada* (Toronto: University of Toronto Press, 2006), 407-418.

married a man without legal Indian status defined by the *Indian Act*, she would cease to be a legal Indian and would subsequently lose the benefits conferred to her and her children. This “out-marriage” provision (Section 12 1 (b) of the *Indian Act*) did not apply to Aboriginal men. Sadly, the archaic sections of the legislation that controlled Aboriginal women’s lives in this way remained unchanged until 1985, reconfirmed by law throughout numerous amendments to the *Act*. So throughout the century following the creation of the *Indian Act*, the impacts of the unchanging discriminatory legislation became embedded within state laws, within the positions of Aboriginal governance and within the psyche of Aboriginal men and women.

Throughout most of the 20<sup>th</sup> century, Aboriginal women did not make many significant gains where legislation of their lives was concerned; other issues of inequality were shared by other women in Canada. While there were many goals of the feminist movement of the 1960s and 70s, the goal of gender equality under legislation would have resonated with many women regardless of race and/or class, even if the legislative changes that women advocated for might have varied along race or class lines. And importantly, just because many women rallied for gender equality does not mean that all women experienced discriminatory legislation in the same way; experiences of gender vary widely when combined with elements of race and class, and this has been examined in detail with respect to the exclusivity/inclusivity of the modern women’s movement.<sup>5</sup> Despite this, there were obvious parallels between the ways in which groups of North American women organized and the ways in which Aboriginal women in Nova Scotia organized during the 1970s. There was an activist energy among groups of Aboriginal

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<sup>5</sup> For perspectives on the divisiveness of feminism and the feminist movement, see bell hooks, *Feminism Is For Everybody: Passionate Politics* (New York: South End Press, 2000); Angela Y. Davies, *Women, Race & Class* (New York: Knopf Doubleday Publishing Group, 1983).

women in Nova Scotia, no doubt influenced at least in part by second wave feminism.

Aboriginal women clearly identified with the movement's calls for gender equality as Aboriginal women had endured more than a century of gender discrimination legislated by the state and in some cases carried out by local band governance. This was especially true for Aboriginal women who had lost their status when they married a man who did not have "Indian" status under the *Indian Act*.

The devastating impact of colonialism on the social fabric of Aboriginal communities left Aboriginal people in general oppressed. The legislation that was created to govern the lives of Aboriginal people was rooted in colonial gender ideologies, and so the state created a municipal-type system whereby formal bargaining and negotiation was conducted by small groups of Aboriginal men, in the form of bands and a chief. Given the context of the legislation, this type of arrangement would have been expected, but it was this process that created the multi-layered discrimination that Aboriginal women faced; discrimination within their own communities and local governance, and discrimination from the regime that created the system of local governance. And in the case of Aboriginal women who lost their status through the out-marriage clause, they sometimes faced yet another layer of discrimination from other Aboriginal men and women who had status, and therefore, had access to government benefits and programs. These were the women who were most marginalized and were the women who fought the hardest in Nova Scotia to change the status quo in the 1970s.

Chapter one begins with an analysis of the early colonial history in Nova Scotia to uncover the evolution of the local socio-economic issues among Aboriginal communities. Scholarly analyses of the roots of Aboriginal activism share a perspective that the contemporary



problems are part of the overarching legacy of colonization, and more specifically the result of failed state policies, created in some cases over the century prior to the period in question.

Robin Jarvis Brownlie's analysis of the ways in which Aboriginal communities were influenced by the power and individual character of state-appointed Indian agents, Helen Buckley's

examination of the impact of the state's ill-fated mandate to have Aboriginal communities

become adept at farming and Hugh Shewell's work on the dependency created within

Aboriginal communities by the state-run welfare system were all instrumental in facilitating a

broad contextual understanding of the issues overall.<sup>6</sup> Fred Wien's studies on the Mi'kmaq of

Nova Scotia served as an indispensable source of empirical evidence, providing a clear picture

of the social and economic status of local Mi'kmaq communities.<sup>7</sup> Dominique Clément and

Michael Ignatieff's scholarly works on the development of a "rights" culture in Canada were

important in broadening the discussion of Canadian human and civil rights within the thesis.<sup>8</sup>

Janet Silman's, *Enough is Enough: Aboriginal Women Speak Out*, chronicles the experiences of a

group of women from Tobique First Nation, in New Brunswick when they embarked on a

number of activities and protests, including the occupation of a band council office and a walk

from Oka to Ottawa, garnering national media attention for their cause, which was changing

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<sup>6</sup> Robin Jarvis Brownlie, *A Fatherly Eye: Indian Agents, Government Power and Aboriginal Resistance in Ontario, 1918-1939* (Toronto: Oxford University Press, 2003); Helen Buckley, *From Wooden Ploughs to Welfare: Why Indian Policy Failed in the Prairie Provinces* (Toronto: McGill Queen's University Press, 1992); Hugh Shewell, *'Enough to Keep Them Alive': Indian Welfare in Canada, 1873-1965* (Toronto: University of Toronto Press, 2004).

<sup>7</sup> Fred Wien, *Rebuilding the Economic Base of Indian Communities: The Micmac in Nova Scotia* (Montreal: The Institute for Research and Public Policy, 1986) and *Socioeconomic Characteristics of the Micmac in Nova Scotia* (Halifax: Institute of Public Affairs, Dalhousie University, 1983).

<sup>8</sup> Dominique Clément, *Canada's Rights Revolution: Social Movement and Social Change, 1937-82* (Vancouver: University of British Columbia Press, 2008); Michael Ignatieff, *The Rights Revolution* (Toronto: House of Anansi Press, 2007).

Section 12 1 (b) of the *Indian Act*.<sup>9</sup> There is immense value in this work, as it provided the only first-hand account Aboriginal women's activism in this region.

The research required a careful consideration of largely archival material. In terms of primary sources, the *Micmac News* was used almost exclusively. The monthly (and occasionally bi-monthly) publication was first published by the Membertou Youth Club in 1965 and was published intermittently for one year. In 1969, the Union of Nova Scotia Indians (UNSI) assumed responsibility of the paper and issued regular monthly publications throughout the 1970s, 80s and into the 1990s. The *Micmac News* was created to bring awareness to the issues important to Aboriginal populations in Nova Scotia and it communicated the voices of individual Aboriginal women and Aboriginal women's groups which were fundamental in revealing the perspective and attitudes of Aboriginal women in Nova Scotia. Because the *Micmac News* was published by UNSI, an awareness of bias within discussions of certain topics and issues was required; nonetheless, the monthly publication was critically important to this analysis. Department of Indian Affairs records were also used as a primary source and were especially valuable when considered along-side the secondary sources that examined state-policies.

There is a need for analyses that use sources such as the *Micmac News* because of the rich evidence it provides on Aboriginal women's insights into the issues and topics most relevant to their lives. Like many primary sources, it imparts an authentic sense of the reality of Aboriginal women's experiences. Making use of such a publication to capture Aboriginal women's experiences can inform other work, including oral histories, which play an especially

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<sup>9</sup> Janet Silman, *Enough is Enough: Aboriginal Women Speak Out* (Toronto: Women's Press, 1987).

important role in understanding the experiences of those who have been largely absent from the greater historical record.

Following the examination of the various colonial and state policies that most significantly impacted Aboriginals in the region, the chapter addresses the issues and topics most relevant to Aboriginal women in Nova Scotia – largely the legacies of these colonial and state policies. The discussion then addresses the “issues” most important to Aboriginal women nationally, identified through an analysis of the goals, agenda and themes of national Aboriginal women’s conferences and annual meetings. Drawing from this national Aboriginal women’s perspective and through an analysis of women-focused documents published in the *Micmac News*, it became apparent that unification of all Aboriginal women, regardless of their state-classification under the *Indian Act*, was an issue of prominence locally and nationally. It was not a surprise that the issue of classification and Aboriginal women’s identity emerged as the most pressing issue for the two central groups examined in the second chapter. The second chapter, or “the actions” chapter traces the formation of two Aboriginal women’s groups in Nova Scotia throughout the 1970s: the Nova Scotia Native Women’s Association and the Non-Status and Métis Association of Nova Scotia. The research uncovers some of the challenges that the groups’ faced from both the Canadian state and from local band governance and how the women dealt with those challenges. Simply put, the Nova Scotia women attended national conferences and meetings, and most importantly, drew from their own experiences, when identifying their major cause; namely, the most discriminatory section of the *Indian Act*, Section 12 1 (b). This is not to say that the women did not get behind local issues. In order to change the legislations that resulted in Aboriginal women losing their status upon marriage, women

mobilized and organized locally to bring about change for women nationally. Aboriginal women in Nova Scotia worked to reach women in rural communities to get behind the issues and had to challenge local (mostly) male governance to have their issues heard. There was great importance in undertaking this “local” activism; the changes that the women were lobbying for were issues that would impact Aboriginal women on a national level. Further, it would be working to rectify the gender discrimination embedded in the *Indian Act*.

Where possible, the study draws parallels between the actions of the Nova Scotia women and women involved in the contemporary women’s movement as the ways of organizing and the concern with gender inequality were characteristic of both groups. With respect to second-wave feminism, the women’s movement, and the parallels with the actions of local Aboriginal women, this chapter was enriched by the work of Ann Braithwaite, in particular her work on second-wave feminism, post-feminism and the personal and political.<sup>10</sup> More generally, the research has been influenced the work of many feminist writers and activists, including but not limited to: Betty Freidan, Gloria Steinem, Alice Echols and Gerda Lerner.<sup>11</sup> The essays contained in *Strong Women Stories: Native Vision and Community Survival*, edited by Bonita Lawrence and Kim Anderson, insightfully explore the roots and trajectory of the “cultural revitalization movement” launched by Aboriginal women in the 1970s as a reaction to the pressing issues in Aboriginal communities. Sylvia Maracle’s contribution to the

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<sup>10</sup> Ann Braithwaite, “‘Where We’ve Been,’ and ‘Where We’re Going’: Reflecting on Reflection of Women’s Studies and ‘The Women’s Movement,’” in *Troubling Women’s Studies: Pasts, Presents and Possibilities*, ed. Ann Braithwaite, Susan Heald, Suzanne Luhmann and Sharon Rosenberg (Toronto: Sumach Press, 2004), 91-146.

<sup>11</sup> Betty Friedan, *The Feminine Mystique* (New York: W.W Norton and Company, 1963); Gloria Steinem, *Outrageous Acts and Everyday Rebellions* (New York: Holt, Rinehart, Winston, 1983); Gerda Lerner, *Why History Matters: Life and Thought* (New York: Oxford University Press, 1997); Alice Echols, *Daring to be Bad: Radical Feminism in America, 1967-1975* (Minneapolis: University of Minnesota Press, 1989).

publication, which drew from personal experience and empirical data, was particularly helpful in imparting a national perspective on both Aboriginal women's problems and solutions.<sup>12</sup>

Chronicling this important activist work in Nova Scotia deserves historical attention. Currently, research on Aboriginal activism by a collective of women in Nova Scotia is limited. Our knowledge of Aboriginal women's activism in Nova Scotia is generally focused on individual achievement of more widely known Aboriginal women including Rita Joe, Anna Mae Aquash and Viola Robinson.<sup>13</sup> Considering the writing on Aboriginal women's activism within the Atlantic region, Janet Silman's work on the women of Tobique, previously mentioned, is critical first-hand account that imparts the most accurate picture of collective activism at a grass-roots level in the Atlantic region. Lisa Perley-Dutcher and Stephen Dutcher's study on the Impact of Bill C-31 on the women of Tobique makes a crucial scholarly contribution to Aboriginal women's activist literature and skillfully illustrates the complicated relationship between Aboriginal women, band governance and the Canadian state.<sup>14</sup> This research will complement the work of Janet Silman, Lisa Perley-Dutcher and Stephen Dutcher by providing an account of the collective activism of women of Nova Scotia against the gender discrimination inherent in Section 12 1 (b) of the *Indian Act*, and Aboriginal women's relationships with the systems of governance.

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<sup>12</sup> Sylvia Maracle, "The Eagle Has Landed: Native Women, Leadership and Community Development," in *Strong Women Stories: Native Vision and Community Survival*, ed. Kim Anderson and Bonita Lawrence (Toronto: Sumach Press, 2003), 70-80.

<sup>13</sup> Rita Joe, *Song of Rita Joe: Autobiography of a Mi'kmaq Poet* (Charlottetown: Ragweed Press, 1996); Johanna Brand, *The Life and Death of Anna Mae Aquash* (Toronto: J. Lorimer, 1978). Viola Robinson is a well-known Mi'kmaq leader from Acadia, First Nation in Nova Scotia. Robinson has been involved with the Native Council of Nova Scotia since the 1970s, has worked with the Royal Commission on Aboriginal Peoples and has received the Order of Nova Scotia and the Order of Canada.

<sup>14</sup> Lisa Perley-Dutcher and Stephen Dutcher, "At Home But Not At Peace: The Impact of Bill C-31 on Women and Children of the Tobique First Nation," in *Making Up the State: Women in 20<sup>th</sup>-Century Atlantic Canada*, ed. Janet Guildford and Suzanne Morton (Fredericton: Acadiensis Press, 2010), 197-215.

The third chapter examines the roots of legislated gender discrimination against Aboriginal women and traces the evolution of discrimination through amendments or lack of amendments to the *Indian Act* over time. Not surprisingly, the chapter is focused on a most contentious section of the *Indian Act*, Section 12 1 (b), and its implications for Aboriginal women including loss of status, land inheritance, exile from home reserve and inability to pass on Indian “identity” to their children. The chapter also examines the impetus behind the eventual amendment to Section 12 1 (b), commonly known as Bill C-31. Bill C-31 was highly significant to Aboriginal women throughout Canada as it changed the registration system so that entitlement (status) and band membership were no longer based on discriminatory rules. The research will also consider the changes enacted as a result of the legislation and the impact of the application of the amendment including the consequences for future generations, spin-off discrimination, the complications resulting from greater autonomy for band councils and the lack of support and funding for a comprehensive reinstatement process. As in the first two chapters, the third chapter also examines the tensions between Aboriginal women, Aboriginal governance and the Canadian state fostered by applications of the amendment.

There is a substantial body of research available regarding Section 12 1 (b) of the *Indian Act* and its impact on Aboriginal women. Within a more broadly defined Canadian context, this research is located in the context of existing literature on the impact of the *Indian Act*, including work by Kathleen Jamieson on the *Indian Act* as it contributed to sexual discrimination and Val Napoleon and Mary-Ellen Turpel’s work on the *Indian Act* as a tool of colonization. The research has been informed by the work of Jo-Anne Fiske, specifically her examination of Aboriginal

women in Canada and their responses to political status (or lack thereof) prior to 1985.<sup>15</sup> As expected, the impact of the *Indian Act* has been examined by Aboriginal women's groups, most significantly by the Native Women's Association of Canada. NWAC has made important contributions to our understanding of the impacts of Section 12 1 (b) and Bill C-31 and have made important recommendations to better serve Aboriginal women.<sup>16</sup> Individual Aboriginal women have enriched the historiography of Aboriginal women and the *Indian Act* including, but not limited to Mary Two-Axe Early, Patricia Monture-Angus and Sandra Lovelace, who have poignantly relayed their own experiences of discrimination, exile and injustice as a result of the *Indian Act*.<sup>17</sup> And as previously mentioned, the contribution of Lisa Perley-Dutcher and Stephen Dutcher's study on the impact of Bill C-31 on the women of Tobique is essential to any project focused on Aboriginal women's activism in Atlantic Canada, the impact of Bill C-31 or the relationship between Aboriginal woman and the state.

A study of this kind has the potential to promote greater understanding of the nation as it illustrates the integral role of Aboriginal women in the struggle to change discriminatory

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<sup>15</sup> Kathleen Jamieson, "Sex Discrimination and the *Indian Act*," in *Arduous Journey: Canadian Indians and Decolonization*, ed. Rick J. Ponting (Toronto: McClelland and Stewart, 1986), 112-136; Val Napoleon, "Extinction by Number: Colonialism Made Easy," *Canadian Journal of Law and Society* 16, no.3 (2001): 113-45; Mary Ellen Turpel, "Patriarchy and Paternalism: The Legacy of the Canadian State for Aboriginal Women," *Canadian Journal of Women and the Law* 6, (2001): 174-92; Jo-Ann Fiske, "By, For and About? Shifting Directions in the Representation of Aboriginal Women," *Atlantis* 25, no.1 (Fall/Winter 2000): 11-27 and "Political Status of Native Indian Women: Contradictory Implications of Canadian State Policy," in *In the Days of Our Grandmothers: A Reader in Aboriginal Women's History in Canada*, ed. Mary-Ellen Kelm and Lorna Townsend (Toronto: University of Toronto Press, 2006), 336-366.

<sup>16</sup> Native Women's Association of Canada, "Aboriginal Women and Bill C-31: An Issue Paper," Prepared for the National Aboriginal Women's Summit, June 20-22, 2007, Cornerbrook, NL, <http://www.laa.gov.nl.ca/laa/news/pdf/nwac-billc-31.pdf> (accessed February 15, 2010).

<sup>17</sup> Mary Two Axe Early and Sandra Lovelace describe their struggles to regain lost status in an interview with CBC, "Our Native Land: Native Women Fight for Equal Rights," 1975, CBC Digital Archives, <http://www.cbc.ca/archives/discover/programs/o/our-native-land-1/native-women-fight-for-equal-rights.html>, (accessed February 15, 2010); Patricia Monture-Angus, *Thunder in my Soul: A Mohawk Woman Speaks* (Halifax: Fernwood Publishing, 1995).

elements of the *Indian Act* and because Bill C-31 affected all Aboriginal women in Canada. I hope that this type of research, that tells a story in a way that highlights women's strength, their important contribution to their communities and to the nation, will enrich Aboriginal and Woman's or Gender historiography, where fleshing out the perspective of a sub-group within larger houses of history gives a more accurate portrayal of the experiences of Aboriginal women at a grass-roots level. I also hope that this work will add to the growing body of research that places Aboriginal women in their rightful place as active agents within the national historical narrative.



## Chapter 1

### Issues Defined by Aboriginal Women

This study analyses a very specific time and place in Canadian history, and involves a relatively small group of people. It closely examines the path of local and largely marginalized women to making change. And while the story is local in particular it is national in perspective; in ways it is an examination of the tripartite relationship between Aboriginal women, Aboriginal governance and the Canadian state.

This chapter analyses the issues identified by Aboriginal women as being most destructive to Aboriginal communities through an examination of their activism. This was largely accomplished by carefully considering writing by Aboriginal women in the *Micmac News* and to a lesser extent, through listening to audio recordings. Particular attention was paid to issues that had an impact on Aboriginal women, on and off reserve during the 1970s. The first section of the chapter addresses the roots of these issues and so, required an examination of the historical development of the relationship between Aboriginal people and the state from first European settlement to approximately 1970. Tracing the early historical development of the relationship is important for a number of reasons. The identification of the issues and more contemporary activism can be often attributed to culturally insensitive policies and unsuitable colonial legislation that shaped the historical relationship between the Mi'kmaq and the state: the *Indian Act* is a prime example of the way in which legislation created in 1876 was the impetus behind Aboriginal women's activism in the 1970s. In addition, without fully exploring the devastating impact of colonialism there is a risk that the perpetrators of these ill-conceived

policies and measures will not be held responsible for those measures and the lasting legacies.<sup>18</sup> A discussion of the early history is integral to a current discussion of activism and agency.

Concern with specific issues, and the response to those issues was often gendered. For example, education appeared to be equally important to both men and women but the issues related to land claims appeared less often and with less emphasis in stories focused on women's issues. The topic of the *Indian Act*, most specifically sections that legislated registration (status), were contentious and divided those with status from those without status. In this case, it was mostly Aboriginal women who lost their status as a result of stipulations in the *Indian Act*. Moreover, this issue was often brought to the attention of local band officers, who were largely male, by Aboriginal women's groups; therefore, the status issue sometimes divided Aboriginal communities on the basis of gender. Of course, gender was not the only difference. Some issues were more pressing in some communities than others, depending on a number of factors. Nevertheless, it is possible to identify three critical issues for Aboriginal women in Nova Scotia: housing, education and identity (as determined by the state). It is important to note here, that these were the most pressing issues according to some women, not all, and for the most part, the issues were more problematic for non-status women. Non-status women were among the most politically vocal Aboriginal women in Nova Scotia, and the women's groups that were largely comprised of non-status women with agendas to deal with the classification issue received the most publicity within the *Micmac News* and by local media.

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<sup>18</sup> Robin Brownlie and Mary Ellen Kelm, "Desperately Seeking Absolution: Native Agency as Colonialist Alibi?" *Canadian Historical Review* LXXV, no. 4 (1994): 544.

With respect to the aforementioned issues, non-status women had a unique set of grievances. Excluded from registration, often because of marrying a non-status man, these women were not entitled to the benefits and services afforded to registered band members on a reserve, including housing and education.

The exclusion of Aboriginal women is an important legacy of the regulation of Aboriginal women that has occurred through legislation beginning with the *Gradual Civilization Act* of 1857. The *Gradual Civilization Act* stipulated that women were prohibited from voting in band elections thus excluding women from participating in important aspects of band life – this was not changed until 1951.<sup>19</sup> A woman who married a man from a different band lost band membership in her home community as did her children. This Act allowed reserves to be divided into lots which were allotted to men and women; however, women lost their lot if they married a non-Indian. After 1884, an Aboriginal woman who was widowed could inherit one-third of her husband's property but only if an Indian agent determined she was living respectably.<sup>20</sup> In addition to this, the 1876 *Indian Act* prohibited Aboriginal women from voting in any decisions regarding the surrender of reserve land.<sup>21</sup> These disabilities are only some of the ways that women's lives were regulated and their experiences shaped by the state. And considering that the *Indian Act* was only amended to end gender discrimination in 1985, Aboriginal women's experiences and lives continue to be shaped by the state.

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<sup>19</sup> Kathleen Jamieson, *Indian Women and the Law: Citizens Minus* (Ottawa: Minister of Supply and Services Canada, 1978), 61.

<sup>20</sup> *An act to encourage the gradual civilization of the Indian tribes in this province and to amend the laws respecting Indians*, Statute of the Province of Canada, C. XXVI (assented to 10<sup>th</sup> June, 1857), Early Canadiana Online, [http://www.canadiana.org/ECO/mtq?doc=9\\_07030](http://www.canadiana.org/ECO/mtq?doc=9_07030) (accessed July 20, 2012).

<sup>21</sup> Bonita Lawrence, "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview," *Hypatia* 18, no.2 (2003): 25.

From the creation of settler societies until the early 19<sup>th</sup> century, the Mi'kmaq in Nova Scotia had relative autonomy over their everyday lives and affairs.<sup>22</sup> While the first 200 years of European settlement impacted Mi'kmaq people in this region in some dramatic ways such as intermarriage with settlers, introduction of diseases, patterns of movement and the creation of reserves, in this early colonial period, Mi'kmaq leaders exercised authority over their land and lives. One manifestation of the on-going power of the Mi'kmaq were the various treaties concluded during the 1700s. These treaties point to a relationship in which power was negotiated between Aboriginal people and the colonial government. Of course, prior to the arrival the Loyalists after the Revolutionary War, and before large numbers of Scottish settlers came to the region in the late 18<sup>th</sup> and 19<sup>th</sup> centuries, the Mi'kmaq's power can be largely attributed to a larger number of inhabitants compared to the number of settlers. However, by 1800, the Mi'kmaq in the region became out-numbered.<sup>23</sup>

The arrival of a large influx of settlers by 1800 marked a significant and portentous shift in the power dynamics between Aboriginal people and colonist in the region.<sup>24</sup> This shift and the colonial policies that followed set the context for the focal issues that emerged throughout the next two centuries. Colonial policies and actions related to settlement, from geographic location of reserves to the encroachment of European settlements on Aboriginal land, were among the first issues to become contentious after 1800. European settlement decreased natural resources and access to those resources. Importantly, settlement also brought more imposing colonial order. In 1820, the first efforts to develop a reserve system in Nova Scotia

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<sup>22</sup> L.F.S Upton, *Micmacs and Colonists: Indian White Relations in the Maritimes, 1713-1867* (Vancouver: University of British Columbia Press, 1979), 68-69.

<sup>23</sup> John Reid, *Nova Scotia: A Pocket History* (Halifax: Fernwood Publishing, 2009), 20-25.

<sup>24</sup> *Ibid.*, 24-25.

were initiated by the surveyor general who recommended 1000 acres of land for Mi'kmaq use in each county.<sup>25</sup> So geographical boundaries and responsibilities to the original inhabitants did become part of the new colonial agenda, but not in a way that was advantageous to Aboriginal people here. It appeared as though when colonial officials acquired more power with settlement numbers they reverted back to a terra nullius mentality. Colonial officials were interested in economic progress, and land would be used in ways that would best allow them to reach this goal. And so to encourage individual self-sufficiency and assimilation of Aboriginal people into colonial settler society, teaching Aboriginal people the tenets of farming became the central goal of colonial officials in Nova Scotia.<sup>26</sup> Colonial officials also assumed some limited responsibility for medical care.<sup>27</sup> So in these ways, the colonial government did take some responsibility for the welfare of the Mi'kmaq. But 'responsibility' must be considered in context. Abraham Gesner, Commissioner of Indian Affairs in 1847, believed that the Mi'kmaq should either cultivate the land (for which the colony would provide some implements and seeds) or accept their "inevitable fate".<sup>28</sup>

This attempt to settle the Mi'kmaq and have them embrace farming as a way of life was relatively unsuccessful and remained so for many years.<sup>29</sup> Throughout the 19<sup>th</sup> century, the

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<sup>25</sup> Upton, *Micmacs and Colonists*, 87.

<sup>26</sup> Department of Indian Affairs, *Annual Report to the Secretary of State for the Year 1868*, p. 9, Library and Archives Canada, [http://www.collectionscanada.gc.ca/databases/indianaffairs/001074-119.01-e.php?page\\_id\\_nbr=37&&PHPSESSID=o1vvhgigk7anjulf0bl5h73pi6](http://www.collectionscanada.gc.ca/databases/indianaffairs/001074-119.01-e.php?page_id_nbr=37&&PHPSESSID=o1vvhgigk7anjulf0bl5h73pi6) (accessed January 12, 2011).

<sup>27</sup> Peter Twohig, "Colonial Care: Medical Attendance among the Mi'kmaq in Nova Scotia," *Canadian Bulletin of Medical History* 13, no. 2 (1996): 335.

<sup>28</sup> Abraham Gesner to sir Rupert D. George, Nova Scotia Archives and Records Management, MG 15, Volume 4, Number 32, 29 September 1847, quoted in Andrew Parnaby, "The Cultural Economy of Survival: The Mi'kmaq of Cape Breton in the Mid-19<sup>th</sup> Century," *Labour/Le Travail* 61, (Spring 2008): 76.

<sup>29</sup> Throughout the 19<sup>th</sup> century, reports of various Indian agents in the region indicate much concern over the farming activities (or lack thereof) of the Mi'kmaq in the region. For examples, see Department of Indian Affairs, *Annual Report Of The Department Of The Interior for the Year Ended 30th June, 1875*, Library and

Mi'kmaq resisted being tied to patches of land and, as L.F.S. Upton explained, the Mi'kmaq "continued to regard their homeland as a unit, and the whims of individual governments affected only a portion of their existence. They refused to give up the seasonal rhythm of their lives; they refused to stay put on reserves, and they continued to travel across the land as before."<sup>30</sup> But as colonial society grew it became more difficult for the Mi'kmaq to move across the land as before and to not be significantly affected by settler society.

With the creation of the *Indian Act* in 1876, the Mi'kmaq in Nova Scotia officially became wards of the state. As a result of the British North America Act of 1867, responsibility of Aboriginal affairs became a federal responsibility. Within a century the balance of power had almost completely shifted to rest in the hand of the state. The *Indian Act* gave the state control over where Aboriginal people could live, hunting and fishing rights and even who was legally identified as "Indian" under the *Act*. After 1876, the federal government came to regulate much of reserve life.<sup>31</sup> Education became a key component of the government's strategy toward Aboriginal people.

In Nova Scotia, the first attempt to educate Aboriginal people beyond the basic tenets of Christianity was during the mid 19<sup>th</sup> century. In 1842, at the urging of Joseph Howe, the colonial government passed an act which provided for free tuition to Aboriginal children in any

Archives Canada, [http://www.collectionscanada.gc.ca/databases/indianaffairs/001074-119.01-e.php?page\\_id\\_nbr=553&PHPSESSID=h08esugo29jpp36ce1ob8uitu3](http://www.collectionscanada.gc.ca/databases/indianaffairs/001074-119.01-e.php?page_id_nbr=553&PHPSESSID=h08esugo29jpp36ce1ob8uitu3) (accessed January 12, 2011).; Department of Indian Affairs, *Dominion of Canada Annual Report of the Department of Indian Affairs for the Year Ended 31st December, 1880*, Library and Archives Canada, [http://www.collectionscanada.gc.ca/databases/indianaffairs/001074-119.01-e.php?page\\_id\\_nbr=1662&&PHPSESSID=tkdmlt86l69cr5um7nnr54jr55](http://www.collectionscanada.gc.ca/databases/indianaffairs/001074-119.01-e.php?page_id_nbr=1662&&PHPSESSID=tkdmlt86l69cr5um7nnr54jr55) (accessed January 12, 2011).

<sup>30</sup> Upton, *Micmacs and Colonists*, 27.

<sup>31</sup> Department of Indian Affairs, *The Indian Act*, April 12, 1876, Library and Archives Canada, <http://epe.lac-bac.gc.ca/100/205/301/ic/cdc/aboriginaldocs/m-stat.htm> (accessed January 12, 2011).

provincial school.<sup>32</sup> This is not to say that children automatically attended, in fact attendance rates were low. Marie Battiste argued that the Mi'kmaq of Nova Scotia were largely opposed to colonial education and that they generally chose to teach literacy at home.<sup>33</sup> Further, the nomadic lifestyle that was still characteristic of many Mi'kmaq in Nova Scotia during the 19<sup>th</sup> century did not facilitate attendance at school.<sup>34</sup> After confederation in 1867, the federal government officially assumed responsibility for the education of Aboriginal children whereby the state administered a Eurocentric curriculum that ignored Mi'kmaq culture and ways of learning. Beginning with a school opened at Bear River, Nova Scotia in 1872, more than a dozen Indian day schools were eventually opened in the province. By 1900, most Aboriginal children in the Maritimes were within walking distance of a day school.<sup>35</sup> In 1920, legislation was introduced that required mandatory school attendance for Aboriginal children until the age of fifteen;<sup>36</sup> however, Indian Affairs records indicate that this legislation had little impact on attendance at the day schools. These same records indicate high attendance rates for boarding schools in other provinces which quite possibly reinforced the governments' decision to open a residential school in Nova Scotia.<sup>37</sup> The low attendance rates at day schools combined with the increased dependency of the Mi'kmaq on the state spurred the state to strengthen their

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<sup>32</sup> Mary Battiste, "Micmac Literacy and Cognitive Assimilation," in *Indian Education in Canada: The Legacy*, ed. Jean Barman, Yvonne Hebert and Don McCaskill (Vancouver: University of British Columbia Press, 1986), 33.

<sup>33</sup> Ibid.

<sup>34</sup> W.D. Hamilton, *The Federal Indian Day Schools of the Maritimes* (Fredericton: the Micmac-Maliseet Institute, University of New Brunswick, 1986), 6-9.

<sup>35</sup> Hamilton, *The Federal Indian Day Schools*, 13- 25. Hamilton lists the names of all schools and years of operation.

<sup>36</sup> *An Act to amend the Indian Act*, (assented to 1<sup>st</sup> July, 1920), Library and Archives Canada, <http://epe.lac-bac.gc.ca/100/205/301/ic/cdc/aboriginaldocs/m-stat.htm> (accessed January 12, 2011).

<sup>37</sup> Department of Indian Affairs, *Annual Report for the Year ending March 31 1921*, 74, Library and Archives Canada [http://www.collectionscanada.gc.ca/databases/indianaffairs/001074-119.01-e.php?page\\_id\\_nbr=29542&PHPSESSID=2hqrtn7ceipphl9t17fjqe8jg0](http://www.collectionscanada.gc.ca/databases/indianaffairs/001074-119.01-e.php?page_id_nbr=29542&PHPSESSID=2hqrtn7ceipphl9t17fjqe8jg0) (accessed March 1, 2011).

responsibility to educate the Mi'kmaq. The Shubenacadie residential school was opened in 1929 with the hope of assimilating Aboriginal people into contemporary Canadian society.

Throughout this period in the late 19 and early 20<sup>th</sup> centuries, the Mi'kmaq in Nova Scotia lived in small settlements throughout the province, many of which were isolated. Most of the Mi'kmaq population in Nova Scotia lived in birch bark wigwams and tar paper shacks well into the twentieth century – dwellings that could be easily dismantled and which did not require much capital. Prior to the 1920s, the Mi'kmaq were not destitute compared to rural settler society as their living conditions would have fallen under the category of rural poverty.<sup>38</sup> The Mi'kmaq managed to eke out a living by hunting and trapping and by operating on the fringes of settler economy. But as the Depression hit, many of these wage labour positions and economic opportunities were diminished. Unemployment among the Mi'kmaq in Nova Scotia was high. The impact of the Depression resulted in a crisis in the living conditions of the Mi'kmaq in the province and saw the federal governments' unparalleled use of welfare money. The desire to curb this spending prompted the government to establish more intrusive efforts to assimilate the Mi'kmaq into mainstream Canadian society.<sup>39</sup>

In 1941, the federal government commissioned an investigation into reserves in Nova Scotia and their administration. This resulted in the decision to consolidate the forty-two small reserves in Nova Scotia into two large communities in Eskasoni in Cape Breton and in Indianbrook, near Shubenacadie, on mainland Nova Scotia. The program, known as centralization, was based on the idea that by consolidating the reserves, economies of scale

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<sup>38</sup> Wien, *Rebuilding the Economic Base*, 27-29.

<sup>39</sup> Ibid.



would result and that the two communities would become economically viable and prosperous. A significant increase in annual expenditures on Mi'kmaq administration, relief, welfare and medical also became an overwhelming argument in defense of centralization: annual costs to the Department of Indian Affairs rose from \$16,533 in 1910/11 to \$163, 878 in 1940/41. However, largely due to the inability of the state to effectively accommodate the housing needs of those relocated to the two communities, the centralization program was deemed a failure by 1949.<sup>40</sup> The motivation behind the policy, whether it was economic or assimilationist or both, mattered less than the fact that it was another state policy designed to control the lives of the Mi'kmaq. The failed centralization program added to the distrust and resentment that the Mi'kmaq felt toward the state and thus, contributed to the agitation in the 1970s.

The mostly negative experiences of Aboriginal children at the Shubenacadie residential school also added to the distrust and resentment that the Mi'kmaq felt toward the state. Young Mi'kmaq children were discouraged from using their own language and from practicing their cultural traditions as they might have in their homes, were separated from their parents and were exposed to sometimes heavy-handed discipline. Since the school's closure in 1968, there have been allegations of sexual abuse perpetrated by authorities at the school.<sup>41</sup> Many in Nova Scotia and throughout the country would argue that the residential school system was the state's most intrusive effort to live up to their responsibility to educate Aboriginal people and of

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<sup>40</sup> Ibid., 31-36.

<sup>41</sup> For a first-hand account of experiences at Shubenacadie Residential School, see Isabelle Knockwood, *Out of the Depths: The Experiences of Mi'kmaq Children at the Indian Residential School at Shubenacadie, Nova Scotia* (Lockeport: Roseway Press, 1992). For secondary analyses of experiences and the impacts of Shubenacadie Residential School, see Marilyn Elaine O'Hearn, "Canadian Native Education Policy: A Case Study of the Residential School at Shubenacadie, Nova Scotia" (Master's Thesis, Saint Mary's University, 1989); Marilyn Millward, "Clean Behind the Ears?: Micmac Parents, Micmac Children and the Shubenacadie Residential School," *New Maritimes* 10 (March-April, 1992): 6-15.

the most damaging state programs to date. Aboriginal people are still experiencing the devastating impacts of the residential school system. Knowledge of cultural traditions and language, which can play such an important part in overall wellness and healing, were lost while attending residential schools. Not only was this important part of Aboriginal identity diminished for those enrolled in residential school, it also diminished the ability for those students to pass on this knowledge to their children. The historical trauma created by the residential school system continues to impact Aboriginal people's experiences today.

There is no single way to explain the tense state of the relationship between Aboriginal people and the state at the beginning of the 1970s. However, colonial ideology rooted in individualism contrasted sharply with the more collectivist ideology of Aboriginal people and in many cases, the state-imposed policies were antithetical to Aboriginal ways of living. State educational policies imposed instruction in a classroom with an out-of-context curriculum as opposed to one based on culturally relevant imitation and repetition. Settlement policies imposed permanent settlement instead of nomadic patterns of movement. Farming policies promoted individual agricultural pursuits for sustenance instead of community-driven hunting, fishing and gathering based on the seasons. Intentional or not, these adversative policies set Aboriginal communities up for failure and created a state of dependency – which ironically, was exactly what colonial and state officials tried to avoid.<sup>42</sup> And although the state began to take an approach more focused on integration rather than assimilation of Aboriginal people by the 1970s, the fall-out from unsuitable colonial and state legislation had left Aboriginal communities guarded and skeptical of state policies in general. Moreover, Aboriginal

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<sup>42</sup> Brownlie, *A Fatherly Eye*, 101.

communities were increasingly demanding that policies that impacted their communities be culturally relevant.

The shift from an approach focused on assimilation to one of integration may be seen as part of a broader shift regarding rights and responsibilities of the state and among the general Canadian public that began following World War II. In *Canada's Rights Revolution*, Dominique Clément explores this ideological shift and he argues that the Canadian public wanted the state to play a greater role in protecting human rights. Canadians faced various forms of discrimination in the 1940s, including anti-Semitism, racial segregation and limited opportunities for women. Between 1949 and 1980, a host of rights were recognized in Canada including basic social rights, such as education and health care, linguistic rights and women's rights.<sup>43</sup> Social rights normalized the rights of various groups to publicize their grievances and, in particular, the discrimination they encountered at the hands of state and of local governance. This movement was an important model for Aboriginal communities in Canada, including Aboriginal women who had lost their status as a result of the discriminatory clauses of the *Indian Act*. In 1960 non-enfranchised Aboriginal people were granted the right to vote and the Canadian Bill of Rights was enacted. It recognized individuals' right to life, liberty, personal security and enjoyment of property; served to protect rights to equality before the law and protection of the law and protected the freedoms of religion, speech, assembly and association. Furthermore, the 1960 Canadian Bill of Rights gave Aboriginal women a starting point from

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<sup>43</sup> Clément, *Canada's Rights Revolution*, 18.

which to rally against the discrimination they faced.<sup>44</sup> Clearly, the rights revolution created opportunities for some marginalized groups to challenge state policies but it was not without its complications. Nevertheless, it was the case that the *Indian Act* simultaneously defined some rights for Aboriginal people and discriminated against Aboriginal women.

The enactment of a number of human rights and equality-based policies and legislation following WWII and a number of social movements happening in North America evolved in tandem throughout the 1950s to the 1970s. Throughout Canada, legislation was introduced to deal with racial discrimination, equal pay for women and fair employment practices. This legislation and the tenets of a number of social movements would have resonated within many Aboriginal communities. Quebec's demands for recognition of cultural and language rights in the late 1960s and the passing of the Official Languages act in 1969, illustrated that Canada was more prepared than ever before to acknowledge and sanction language and cultural difference. And although the women's movement has been criticized for not acknowledging the different challenges faced by minority groups, Aboriginal women would have been affected by the wider women's movement in general and media coverage of women's rights interests. The grievances that were articulated in the late 1960s and 1970s in Aboriginal communities, and in particular the ones that were written about in the *Micmac News* (the issues discussed in this chapter), were undoubtedly shaped by this burgeoning liberal ideology and the social movement activity in the 1960s in North America, including the civil rights movement, gay rights, children's rights and the anti-poverty movement.

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<sup>44</sup> Although largely ineffective for arguing in a court of law, the Bill of Rights did give some marginalized groups a legal basis for a discrimination case in a court of law. Aboriginal women were not successful in the courts until after the adoption of the Canadian Charter of Rights and Freedoms in 1982.

An analysis of the *Micmac News* during the 1970s provides insight into the impact of these various social movements on the Mi'kmaq and how the Mi'kmaq, in turn, presented their grievances. The *Micmac News* frequently published stories related to the American Indian Movement (AIM), both the conflict at Wounded Knee and past and current plight of American Indians, especially during the early 1970s.<sup>45</sup> Given the history of the pattern of movement of many Mi'kmaq from the Atlantic region to the eastern United States, the similarities between the impact of colonialism on both sides of the border and the involvement of individuals from the region, including Anna Mae Aquash, it is not a surprise that the *Micmac News* frequently reported on the AIM.<sup>46</sup> The AIM may have ignited some level of activism or political mobilization among the Mi'kmaq in Nova Scotia although it is difficult to ascertain the level and nature of that influence; however, there were similarities between the method of protest of the AIM and of the Indian rights movement in Canada. For example, in 1972, the American Indians created the Trail of Broken Treaties Caravan, in which up to a thousand participants travelled from reservation to reservation until they reached Washington and took over the Bureau of Indian Affairs office. Similar types of protests were staged in Canada, including the Women's Walk (organized by the women of Tobique) from Oka to Ottawa in 1979 and the Native Caravan from Vancouver to Ottawa in 1974. Thus, Aboriginal people on both sides of the border used similar strategies in their activism and both can be seen as part of the broader social movements of the 1960s and 70s.

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<sup>45</sup> For examples, see "Long trial seen on Wounded Knee," *Micmac News*, November 1973, 12; "We Are the Landlords of America. At Wounded Knee We Showed Up to Collect," *Micmac News*, January 1974, 8.

<sup>46</sup> Johanna Brand, *The Life and Death of Anna Mae Aquash* (Toronto: James Lorimer and Company, 1993).

Another key aspect during this period was the *Statement of the Government of Canada on Indian Policy*, widely known as the “White Paper”.<sup>47</sup> The newly elected Liberal government released the controversial policy paper in 1969, which outlined the government’s plan to radically change existing Indian policy. Over time, the legal distinction between Aboriginal people and all other Canadians would be ended, as would any special status accorded through such distinction. In addition, the *Indian Act* would be repealed. Responsibility for Aboriginal people would be transferred from the federal government to the provincial governments, which would provide access to programs and benefits no differently than those offered to all Canadians. The Department of Indian Affairs would be drastically changed, phasing out the department units that provided federal programs and benefits to Aboriginals. Control of reserve land would eventually be transferred to Aboriginals.<sup>48</sup> Such sweeping reforms were entirely consistent with the liberal philosophy of Prime Minister Pierre Trudeau. However, a number of Aboriginal groups reacted negatively to the policy, and of the most adverse and widely publicized reaction was the “Red Paper”, written by the Indian Chiefs of Alberta and titled *Citizens Plus*, which ultimately countered all of Trudeau’s proposals.<sup>49</sup> The proposals in the “White Paper” were never acted upon but it resulted in intensified activism within Aboriginal communities across Canada.

Women’s concerns found expression beginning at the 1971 National Native Women’s Conference. This conference included four delegates from Nova Scotia, including the

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<sup>47</sup> Aboriginal Affairs and Northern Development Canada, *A statement of the Government of Canada on Indian Policy, 1969*, <http://www.aadnc-aandc.gc.ca/eng/1100100010189#chp1> (accessed April 5<sup>th</sup>, 2012).

<sup>48</sup> Ibid.

<sup>49</sup> Indian Chiefs of Alberta, *Citizens Plus*, June, 1970, Aboriginal Policy Studies, University of Alberta, <http://ejournals.library.ualberta.ca/index.php/aps/article/view/11690/8926>, (accessed April, 7, 2012).

Chairperson, Helen Martin. During this conference, key community problems were addressed including drug and alcohol abuse, education, housing and communication. The conference delegates agreed that the problems were much the same everywhere.<sup>50</sup> The issue of the lack of unity among Aboriginal women (Métis, status and non-status) was highlighted in September 1971, in a story in the *Micmac News* that outlined what the Native Women of Canada Association was and their recommendations. One of the five recommendations was to have all three groups of Aboriginal women united, thereby creating a common front so that their shared issues would be recognized and, hopefully, be addressed.<sup>51</sup> The issues identified in 1971 were echoed in 1974 at the National Committee on Indian Women Conference. The official mandate of the meeting was to bring all groups of native women together, regardless of their legal classification under the *Act*. Seminars were held on housing, education, health and culture.<sup>52</sup> The theme of the meeting, "Getting Together," indicated that the classification system of the *Indian Act* was not just an issue for those women who lost their status. All of the panel members expressed the need for all groups of women to come together to form a single organization with the objective of defining issues and solutions.<sup>53</sup> In 1974, the treasurer of the Native Council of Canada, Gloria Gabert, took part in discussions held for the non-status and Métis of Nova Scotia where she urged the group to stay united with status groups and to fight for an end to the classification system.<sup>54</sup> As previously noted, in 1977 women from Tobique, First Nation occupied the band office, ultimately in protest of the impacts of the classification

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<sup>50</sup> Helen Sylliboy, "National Native Women's Conference," *Micmac News*, May 1971, 3.

<sup>51</sup> "Native Women of Canada," *Micmac News*, September 1971, 7.

<sup>52</sup> "Native Women," *Micmac News*, February 1974, 15.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Micmac News*, December 1973, 15.

system. In the summer of 1979, Aboriginal women and their supporters continued their protest of the *Indian Act* by making a week-long walk from Oka to Ottawa. Clearly then, throughout the 1970s the division of Aboriginal women that resulted from the *Indian Acts'* classification system was a major concern.

The search for common ground among all Aboriginal groups during the first half of the 1970s had both practical and ideological aspects.<sup>55</sup> In 1973, the non-status and Métis members of the Union of Nova Scotia Indians opted to stay within the Union despite allegations that the issues and grievances of the non-status and Métis members were being ignored. For the non-status and Métis members, this was a pragmatic decision made in the hope that a portion of government funds earmarked for the UNSI could be secured for programs and needs specifically for the non-status and Métis populations. Furthermore, remaining within the UNSI would ensure ongoing representation within the more established group. Ideologically, this decision illustrated the unwillingness of the group to accept the division of individuals by legal status dictated by the *Indian Act*. After electing an all-woman executive, the newly formed Non-status and Métis Association of Nova Scotia would cut ties with the UNSI, (to be considered in greater detail in Chapter 2), but it is clear that the classification system was a contentious issue for Aboriginal women both locally and nationally.

Helen Martin highlighted this in an address that was printed in the June 1975 issue of the *Micmac News*. Martin pointed out that dividing women by status overshadowed the shared issues that women all should have been dealing with. In Martin's opinion, until the gender

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<sup>55</sup> Jim Gourlay, "Non-status Indians and Métis reject proposal to form own association," *Micmac News*, November 1973, 13.



discrimination inherent in the *Indian Act* was eliminated, Aboriginal women would continue to face significant difficulty in addressing the social problems of Aboriginal communities.<sup>56</sup>

Aboriginal women in Nova Scotia occasionally found common ground, despite ongoing divisions among them. Education provides a powerful example of an issue that was important for all Aboriginal women, regardless of their legal status.

The residential school system and the use of Eurocentric curriculum both in residential schools and in municipal/provincial schools created a number of challenges for Aboriginal students. Finding a solution to the problems of high drop-out rates among Aboriginal students and a lack of perceived value in attending school were top priorities; the proposed solutions to these problems varied and shifted over time. In the late 1960s and early 1970s the issue of integration was at the forefront. The *Micmac News* featured a number of stories and opinion pieces that both supported and were critical of integrating Aboriginal children into non-Aboriginal schools; within these early publications, public opinion leaned toward supporting this type of integration.<sup>57</sup> In the late 60s, educational integration was essentially the continuation of a broader process of assimilation; to integrate was to attend a state-run school. While Aboriginal students were no longer forbidden to speak their native language and practice their culture in state-run schools, the inclusion of curriculum that emphasized Mi'kmaq history and teaching practices sensitive to the needs of Mi'kmaq students was generally not a priority. However over time, articles in the *Micmac News* illustrated that attitudes around education shifted to support for a different model of integration, one that emphasized the integration of

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<sup>56</sup> Helen Martin, "Talk Given By Helen Martin," *Micmac News*, June 1975, 9.

<sup>57</sup> For examples, see "Should Enforce Truancy Laws," *Micmac News*, January 1966, 3; Janet Morris, "Living in Ottawa," *Micmac News*, March 1966, 1.

Mi'kmaq language and tradition into state school curriculum and/or separate band-run schools.<sup>58</sup>

In view of a general North American context, the shift to support for separate Aboriginal schools and curriculum was undoubtedly influenced by the emerging demands of social rights movements for protection and celebration of culture and language preservation, including the AIM. In Canada, the Liberal government's 1969 "White Paper" confirmed that the state was prepared to fully eliminate Aboriginal special status. We can assume that the fear of losing special status under the law was accompanied by heightened concerns regarding loss of language and cultural traditions. This looming possibility combined with burgeoning social rights movements and various culture, religion and language protection Acts affected Aboriginal view on integration. As a result of an Aboriginal lobby for more control over Aboriginal education, the state recognized that their model of integration needed to evolve. In 1972, Minister of Indian Affairs and Northern Development, Jean Chrétien explained the new concept of integration:

Integration interpreted as a unilateral change is unacceptable to the Indian people. Our concept of integration must be revised to recognize the unique contribution which Indian culture and language have made to the Canadian way of life. Integration should protect and foster the Indian identity and the personal dignity of each child.<sup>59</sup>

Given the historical context and the abovementioned circumstances, Chrétien's address could also be seen as a reaction to the 1972 publication of *Indian Control of Indian Education*, by the

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<sup>58</sup> For examples, see "Native Women Successful This Time," *Micmac News*, August 1973, 8; "Indian Schools: Is Ego Boosting Enough?" *Micmac News*, August 1973, 9.

<sup>59</sup> Jean Chrétien, "Address to the Council of Ministers of Education," 1972, quoted in Dierdre Jordan, "Education and the Reclaiming of Identity: Rights and Claims of Canadian Indians, Norwegian Sami, and Australian Aboriginies," in *Arduous Journey: Canadian Indians and Decolonization*, ed. J. Rick Ponting, (Toronto: McClelland and Stewart, 1986), 268.

Indian Brotherhood. *Indian Control of Indian Education* was groundbreaking in that it publicly articulated that Aboriginal identification, pride and value in their native culture and language was directly tied to an Aboriginal-focused and controlled education.<sup>60</sup> The Indian Brotherhood's call to action was a declaration to Aboriginal people and to the state that the path to socio-economic advancement was through a celebration and protection of Aboriginal language and culture achieved through Aboriginal control of education. Control of education would create a bulwark against culture and language loss and concurrently limit the impact of legally-sanctioned integration.

Throughout the 1970's, education was often seen as the key to preserving cultural tradition and language preservation; a curriculum that emphasized Mi'kmaq cultural tradition and prioritized Mi'kmaq language would greatly facilitate the inculcation of Mi'kmaq language and culture for those children attending Aboriginal schools.<sup>61</sup> At almost every Aboriginal women's conference during the 1970s, education made the list of top priorities.<sup>62</sup> The issue of education would have been especially troubling for non-status members of Aboriginal women's groups. Without the right to live on reserve and benefit from the available programs, the children of non-status women would have little chance to benefit from formal exposure to Mi'kmaq language and cultural education. Both featured articles and editorial comments in the *Micmac News* promoted of the importance of language retention, cultural revival, school attendance and the importance of education in general to ensure success in 1970s contemporary society. The 1970s marked the beginning a powerful movement of "cultural

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<sup>60</sup> National Indian Brotherhood/Assembly of Aboriginals, *Indian Control of Indian Education*, 1972.

<sup>61</sup> For examples, see "Focus of Four Outstanding Women," *Micmac News*, February 1976, 17; Rita Joe, "Education is a Means of Accomplishment," *Micmac News*, October 1974, 15.

<sup>62</sup>"Indian Rights for Indian Women's Conference." *Micmac News*, January 1974, 16.

revitalization,” so it is not a surprise that Aboriginal groups in Nova Scotia were making an effort to gain greater autonomy over the education of their children.<sup>63</sup> With more control over education and curriculum, Aboriginal groups had the potential to reinforce Aboriginal language and tradition, and would hopefully increase education levels among Aboriginal students.

The state of education levels among school-aged Mi’kmaq students was disconcerting. An article published in the *Micmac News* reported that nationally, ninety four percent of Indian and Inuit students did not finish high school.<sup>64</sup> Fred Wien’s study, *Socioeconomic Characteristics of the Micmac in Nova Scotia*, also revealed that drop-out rates among Mi’kmaq students in Nova Scotia were much higher than non-native students in 1972-73.<sup>65</sup> Even more troubling, was the level at which many Mi’kmaq students were leaving school. In 1972-73, the drop-out rate greatly accelerated at grade seven, the year in which many Mi’kmaq youth would have reached the legal drop-out age if they had repeated earlier grades. For some, grade seven also marked the transition from smaller reserve schools to larger provincial junior high schools.<sup>66</sup> This suggests that there may have been little perceived value in attending school and that there were significant challenges involved in attending larger provincial schools; schools where there would be fewer Mi’kmaq students and no emphasis on Mi’kmaq language and culture.

The physical condition of some of the on-reserve schools was also distressing for some. According to an article in the July 1971 issue of the *Micmac News*, the conditions at the Wycocomagh reserve school were especially poor. The photograph that accompanied the

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<sup>63</sup> Maracle, “The Eagle has Landed,” 71.

<sup>64</sup> “PC’s Policy Proposal on Native Peoples.” *Micmac News*, June 1971, 9.

<sup>65</sup> Wien, *Socioeconomic Characteristics*, 134. Wien’s study indicates that the proportion of all Nova Scotia students enrolled in grades 10 to 12 ranged between 17.7 and 21.2 percent. For Mi’kmaq students, the range was between 6.6 and 9.7 percent.

<sup>66</sup> *Ibid.*, 135 and 139.

article showed a building in serious disrepair situated on grounds with no playground equipment or grass; the school ground resembled a neglected parking lot. The author, Mary Googoo, argued that the municipal school received funding in the amount of one thousand dollars per student. While she did not report on the funding received for the band school, it was implied that the amount for the municipal school was much higher. Googoo also suggested that this funding imbalance was a tool of assimilation; as the state plan was to eliminate the band run school and have Aboriginal students educated at the municipal schools.<sup>67</sup> This funding imbalance served to further polarize Aboriginal views on the competing models of education: integration and assimilation in state-run schools versus culture and language retention in Aboriginal-run schools. Attending reserve schools often meant attending an under-funded school with poor physical conditions and without adequate financial support for staff and teaching materials. State-run schools were generally in acceptable physical condition and had adequate books and teaching staff, but did not promote Mi'kmaq language or culture. Mi'kmaq students were also a minority group at state-run schools, and as such, more susceptible to racial discrimination. Clearly, in the 1970's, education was a very contentious issue for Aboriginal people – both men and women, locally and nationally.

While educational issues were paramount in the minds of Aboriginal women, other distressing issues existed. Issues related to housing impacted many Aboriginal people in Nova Scotia in the 1970's, both on and off reserve. The non-status and Métis representative with the UNSI published a list of amendments to the *National Housing Act* by the Canadian Mortgage and Housing Corporation in the October, 1974 issue of the *Micmac News*, including a list of

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<sup>67</sup> Mary Googoo, "I.A.B. Attacks Wycocomagh Reserve School," *Micmac News*, July 1971, 12.

available housing programs such as Emergency Repair, Winter Warmth, Residential Rehabilitation Assistance and Assisted Home-Ownership, which suggests that rural Aboriginal people that did not qualify for on-reserve housing needed housing improvements.<sup>68</sup> There were also various problems with housing on reserves in Nova Scotia. A study on Indian Housing in Nova Scotia conducted by Peter Kassebaum in 1972 indicated that Aboriginal communities in Nova Scotia had some unique housing issues compared to non-Aboriginal residents. Compared to the rural, non-Aboriginal sample, Aboriginal families were more likely to experience overcrowding and smaller quarters and thus, less privacy. In Kassebaum's interviews with Aboriginal survey participants, some reported that the lack of privacy combined with the isolation of their communities and heavy alcohol use was a terrible combination.<sup>69</sup> Kassebaum's study reported that more than half of the Aboriginal participants were unaware of available housing programs; a number of study participants claimed that the technical jargon used by the Canadian Mortgage and Housing Corporation and the Department of Indian Affairs was difficult to understand.<sup>70</sup> Kassebaum's study did not differentiate between participant characteristics such as gender, so in terms of the impact of these issues on different genders, we cannot account for the how on-reserve housing conditions may have impacted genders differently.

Aboriginal women, and in particular women who had lost their status as a result of "out-marrying", Métis women who did not qualify for status, or women who were widowed had unique housing challenges. In her column in the *Micmac News*, Rita Joe wrote about a young non-status woman in Eskasoni, Nova Scotia, who moved into a condemned house to provide

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<sup>68</sup> Kathy Brown, "Information on Housing." *Micmac News*, October 1974, 18.

<sup>69</sup> Peter Kassebaum, *Indian Housing in Nova Scotia* (Kentfield: Peter Kassebaum, College of Marin, 1972), 37, 45.

<sup>70</sup> *Ibid.*, 191.

shelter for her four children because she could not secure proper housing for her family without legal status. Joe implied that members of the band council refused to help the woman and in the same editorial piece, Joe criticized the band council for a failed housing project that left some community members with partially built homes. Joe suggested that community members needed to make their band council responsible for their part in the project and shamed the band council members who refused to help a woman in need.<sup>71</sup> This non-status woman's situation was not uncommon in other parts of Canada as well.

At the 1973 Indian Rights for Indian Women's conference in Vancouver, the living conditions of Aboriginal women in Canada was listed as one the most pressing topics to be addressed.<sup>72</sup> Mary Two-Axe Early, an exiled widow and pioneer of Aboriginal women's rights in Canada, spoke about the eviction of Aboriginal women who were widows and charged that the Band Council of the Caughnawage reserve in Ontario, in cooperation with the Department of Indian Affairs were discriminating against Aboriginal women, "preying on the weakest of those who had married non-Indians."<sup>73</sup> The most infamous case of discrimination against women who had lost status because of "out-marrying" in Atlantic Canada was that of Sandra Lovelace from Tobique, New Brunswick. In 1977, Lovelace's protests began with a demand that band council provide decent homes for their families. Lovelace would later take her case to the Human Rights Commission, but access to housing was the catalyst for her future actions.

All of these examples – the woman Joe described in Eskasoni, the widows in Ontario, and Lovelace in New Brunswick – indicate that women all over the country were suffering as a

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<sup>71</sup> Rita Joe, "Here and There in Eskasoni," *Micmac News*, February 1975, 7.

<sup>72</sup> "Indian Rights for Indian Women Conference," *Micmac News*, January 1974, 16.

<sup>73</sup> *Ibid.*

result of Section 12 1 (b) of the *Indian Act*. In each of these cases the women appealed to their band councils for help with no positive result. In the Lovelace case, some members of the band council and members of the community went to severe lengths to force the women to leave their community; Aboriginal women felt the fallout from speaking and acting out against members of their own communities when it came to demands for adequate housing.<sup>74</sup> These situations also forced band councils into a tenuous position. Local band officials were seen as “providers” for their communities. Given the poor housing conditions on the reserves, some community members would have been upset if councils were providing housing or even financial help to those without status or band membership. Ultimately, it was council’s job to implement the state-created policies that did not allow for housing for Aboriginal people without status, regardless of the injustice or discrimination inherent in the policies. Aboriginal women would have to take the state to task, because amendments to the discriminatory rules could only be sanctioned by the Canadian government. And until amendments to end the discrimination in the rules were in place, local band officials would do little to provide for non-status Aboriginal women. This particular legislation, Section 12 1 (b), created a polarization of rights within the Aboriginal community: Aboriginal’s rights versus women’s rights.

Nationally, the issues that Aboriginal women faced in the 1970s varied between regions, those who lived on-reserve and off-reserve and between those with status and those without. Other issues were generally typical across the country. The issues identified by various Aboriginal women’s groups directed the type of solutions sought or programs implemented. For example, in larger northern cities, Aboriginal women that had recently relocated were

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<sup>74</sup> For example, see Silman, *Enough is Enough*, 124-133.



finding that they did not have the support to make the transition. So, Aboriginal women's groups in the north developed support centers in the larger cities. In Ontario, Aboriginal women's groups were concerned with the lack of employment and job training opportunities for young Aboriginal women; the Native Women's Association of Ontario developed paid job-training programs.<sup>75</sup> The Native Women's Association of Canada and Indian Rights for Indian Women (IRIW) were the two main national groups in Canada during the 1970's. Like the provincial native women's groups, these two groups also had different ideas about the most pressing issues; therefore, they proposed different solutions.

Founded in 1970, the Indian Rights for Indian Women groups' main objective was ending the discrimination inherent in the *Indian Act* and Section 12, 1 (b) in particular. In 1975, the IRIW's primary concern was the Jeanette Corbière-Lavell case although the group also lobbied the provincial government of Alberta for funds to improve the education of Aboriginal students.<sup>76</sup> The Native Women's Association saw disunity among Aboriginal women as a major challenge along with issues around cultural identity. In the first half of the 1970's, the two groups were divided by the issue of status determined by the *Indian Act* and this division was the reason why two different national groups were formed in the first place. However, in 1975, the Native Women's Association passed a resolution to support disenfranchised women, thus

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<sup>75</sup> CBC, "Taking the Power Back: Native Women Organize," CBC Digital Archives, 1975, <http://www.cbc.ca/archives/discover/programs/o/our-native-land-1/taking-the-power-back-native-women-organize.html> (accessed September, 19, 2011).

<sup>76</sup> Royal Commission on Aboriginal Peoples, *Individual Presentation by Nellie Carlson, 30 April, 1992*, University of Saskatchewan Archives, Native Law Center Fonds, RCAP vol. 36, <http://scaa.usask.ca/ourlegacy/solr?query=Subject%3A%22Jeanette%20Laval%20case%22&start=&rows=&mode=view&pos=0&page=3> (accessed September 19, 2011).

creating more unity among all Aboriginal women.<sup>77</sup> Overall though, Aboriginal women throughout the country were concerned with the education of their children, cultural identity, housing availability and living conditions. Aboriginal women wanted a good life for their children and to build a strong unified voice of Aboriginal women.<sup>78</sup>

There were many elements that motivated the agitation against Section 12 1 (b) of the *Indian Act* by Aboriginal women in Nova Scotia. Over the course of a century, Section 12 1 (b) resulted in the loss of status for many Aboriginal women. Without status they could not inherit land or a house on the reserve, nor could they live on the reserve where they may have had family ties and support. They could not be buried on the reserve. Most would not have been able to send their children to band-controlled schools where available. Aboriginal women who lost their status would not have been able to take advantage of the programs or funding earmarked for Aboriginal people with registered status. Based on gender alone, these women were unable to access the programs and reap the benefits of living in their communities, where they could practice their cultural traditions and where they could speak their native language with greater ease. The loss of status meant the loss of culture and identity. The injustice of this out-dated legislation must have been infuriating, especially given the context of the 1970s. In a era during which women were fighting for equal rights, when the importance of language and culture preservation were being realized and when human rights were being protected by laws, it is not a surprise that Aboriginal women were organizing and mobilizing to force changes to the discrimination in the *Indian Act*.

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<sup>77</sup> CBC, "Taking the Power Back."

<sup>78</sup> CBC, "Taking the Power Back."

## Chapter 2

### Contemporary Activism

Activism can take such a wide range of forms and Aboriginal women engaged in an array of activist behaviors to incite both changes in policy and in their communities. Within the context of 1970s feminism, activism in Nova Scotia mirrored the activities of the feminist movement elsewhere: it could be passive or assertive as well as either collective or individual. Some Aboriginal women in Nova Scotia directly lobbied legislators and band councils. Others participated in ladies auxiliaries, church groups and other women's organizations. A good example of an Aboriginal woman who engaged in a number of activist behaviors was the late Rita Joe. Although Joe was active as a member of the Eskasoni Ladies Auxiliary (and so in this way acted as part of a collective) throughout the 1970s, Joe was more of an individual activist. In her own subtle and affirmative way, Joe spoke to the impact of colonialism on her people through her poetry.<sup>79</sup> Joe also wrote a monthly column in the *Micmac News* called, "Here and There in Eskasoni" in which she described the events happening on her reserve in Cape Breton. Joe's descriptions were not only a reflection of community events; she also used her column as a forum to encourage people to question band governance and to occasionally criticize band

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<sup>79</sup> Sam McKegney, *Magic Weapons: Aboriginal Writers Remaking Community after Residential School* (Winnipeg: University of Manitoba Press, 2007), 107. McKegney describes Joe's poetry as "affirmatism" because of her choice to focus on the positive while writing about her experiences in the residential school system.

council.<sup>80</sup> Into the 1980s and 1990s, Joe travelled throughout the Maritimes teaching Aboriginal culture, discussed the importance of education and would become a significant and prominent Aboriginal activist in Nova Scotia.<sup>81</sup>

The struggles and stories of a small number of Aboriginal women and the Aboriginal women's groups that they formed are important examples of activism by Aboriginal women in Nova Scotia. Of particular significance are the formation of the Nova Scotia Native Women's Association and the work of president, Helen Martin during the early and mid-1970s and the election of an exclusively female executive of the Non-Status and Métis Association of Nova Scotia in 1975. While the ways in which these two groups organized were sometimes similar, they did have separate goals, motivations and methods of mobilization. The NSNWA generally took a more grass-roots approach to their activism, making unsolicited appearances to voice their grievances at band council meetings. The NSMANS engaged with the state and band governance in a more formal way, whereby representatives from the association took part in annual UNSI meetings and met with state officials to address concerns. Regardless of the strategy, both met with resistance from the federal government, band councils or both.

The mid 1970s was a transformative time for Aboriginal women in Nova Scotia. Many Aboriginal women were collectively and individually making grass-roots efforts to improve their communities, many were doing this by participating in important forms of activism such as involvement in church groups and ladies auxiliaries. According to a 1976 story in the *Micmac*

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<sup>80</sup> Rita Joe, "Here and There in Eskasoni," *Micmac News*, February 1975, 7.

<sup>81</sup> Joe was a member of the Order of Canada, the Queen's Privy Council of Canada and received A National Aboriginal Achievement Award and a number of honorary degrees. For evidence in support of Joe's important contributions to Aboriginal communities, see, Ruth Holmes Whitehead, introduction to *Song of Rita Joe: Autobiography of a Mi'kmaq Poet*, by Rita Joe (Charlottetown: Ragweed Press, 1996), 9-10.

*News*, most women on reserves were involved in at least one of these types of groups. In the community of Eskasoni, the ladies auxiliary consisted of at least 85 members.<sup>82</sup> These groups were doing work that was probably considered “typical” for this type of group, i.e., fundraising for churches and community by holding church suppers and bingos, but they were also engaged in more innovative and comprehensive efforts to improve their communities. For example, the Eskasoni Women’s Auxiliary drafted a grant for a student summer employment program that assisted the elderly with home/yard maintenance, domestic help and facilitated the interpretation of English letters into Mi’kmaq. Upon completion of the program, the students were required to write their recommendations for elder health care/welfare and forward them to the Eskasoni Band Council and the Provincial Health officer. The Eskasoni Women’s Auxiliary group also acted as a liaison between local government and community groups.<sup>83</sup> While it is questionable whether this group considered themselves to be “feminist” or working as part of the women’s movement, their motivations clearly campaigned for more than just raising money for the church and/or community. This progressive program was designed to help the community and to teach Mi’kmaq youth to effectively advocate for change.

While local, grass-roots organizations were active at the community level, the Union of Nova Scotia Indians played an important role in articulating the interests of Aboriginal people in the province. In 1969 the UNSI was formed to represent all Aboriginal’s people in Nova Scotia regardless of whether or not they had official status as legislated by the *Indian Act*. Nova Scotia was one of only two provinces and territories that did not have a separate organization to deal

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<sup>82</sup> Helen Martin, “Nova Scotia Native Women Search for Funding,” *Micmac News*, September, 1976, 27.

<sup>83</sup> *Ibid.*

exclusively with the needs of non-status Aboriginal people. Why this is so can be partly attributed to the fact that Aboriginal organizations in general were only beginning to be formed but also speaks to the absence of non-status people from our historical analysis. However, the Union's decision to represent all Aboriginal people was more idealistic than realistic and in the Union's beginning stages it sincerely wished to advocate for all people, regardless of the state-created classification system. But over time, the Union realized that there were unique challenges in representing the non-status and Métis population in Nova Scotia. Because the Union represented the non-status and Métis populations, this group expected to benefit in part from the funding received from the Department of Indian Affairs. However, DIA was only financially responsible for those with official status. So if funds from DIA were used for non-status programs and services, the Union could have been accused of taking much needed funding away from those for whom it was rightfully intended – those with official status. In addition to this, the national and local agitation against Section 12 1 (b) of the *Indian Act*, including the Corbière-Lavell case, and Helen Martin and the NSNWA's demands that the Union acknowledge and advocate for the women affected by 12 1 (b), made the Union want to distance itself from the looming controversy.

In 1973, Union members who represented the non-status and Métis population of Nova Scotia voted against forming their own organization separate from the UNSI at a special meeting of non-status and Métis representatives at that year's UNSI semi-annual meeting. The UNSI had approved changes in their policies that would allow for the provisional representation of the non-status group by the Union. This was a progressive move on behalf of the Union. By forming an alliance with the non-status and Métis community in Nova Scotia, the Union was

taking a stand against the state-created legislation that dictated who was or was not an Aboriginal person under the law. Although, as we will see, the idea of an all inclusive Union that would advocate on behalf of the non-status and Métis community was a great concept but would prove difficult to carry-out.

At the non-status and Métis meeting in 1973, national secretary-treasurer of the Native Council of Canada, Gloria Gabert, the guest speaker, urged the non-status and Métis group to stay united with the Union. Gabert saw the ongoing inclusion of both the status and non-status Aboriginal people within the Union of Nova Scotia Indians as a tacit rejection of the classification system embodied in the *Indian Act*. Moreover, Gabert argued that by staying unified, the non-status and Métis population would have a better chance of securing the same rights as those with official status, and a unified group would have more power to lobby the state for change. Not surprisingly, at this same meeting, discussions also centered on the impact of the classification system. Delegates rightly suggested that the classification policy was designed to eliminate the number of registered Aboriginal people through intermarriages. Helen Martin elaborated on the impact of the classification system, pointing out that it was women and their children who were being eliminated first and at the fastest rate. Over the course of the year prior, both the UNSI and the non-status and Métis representatives had been engaged in discussions on whether or not the UNSI should officially represent and advocate for the non-status and Métis of Nova Scotia.<sup>84</sup> The fact that there were discussions over the course of a year regarding official representation and considering that both the UNSI and the non-

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<sup>84</sup> Jim Gourlay, "Non-status and Métis reject proposal to form own association," *Micmac News*, November 1973, 13.

status and Métis representatives put the decision to a vote suggests that there was some level of trepidation about the unification within both groups.

In 1974, the non-status representatives on the Board of the UNSI started to publicly express concerns that their needs were not being taken seriously. At the UNSI annual meeting in the spring of 1974, Clarence Gould, a non-status delegate attending the conference, attempted to pass a motion that would see the president of the UNSI, John Knockwood, lose his position by pointing to the illegality of the last election.<sup>85</sup> Although it was not clear what Gould's particular grievances were, it was clear that there were a significant number of delegates voicing disappointment with the Union and its President, and many made overt attempts to have the President step down. In October 1974, the Union did what many suspected they would do for some time and tabled a motion that membership in the Union should be restricted to those with official status under the *Indian Act*. At this time, Kathy Brown, an employee of the UNSI representing the non-status population in Nova Scotia, received permission from the Union to hold another meeting exclusively for the non-status and Métis of Nova Scotia to discuss the formation of their own organization in March 1975.<sup>86</sup> The impending separation was driven by both the UNSI and the non-status and Métis community in Nova Scotia. No doubt the Union felt that by agreeing to represent the non-status and Métis, they were engaging in a battle with the state over Section 12 1 (b) of the *Indian Act*. This position would have also put the UNSI at odds with the NIB, who were not supporting Aboriginal women in their fight to have the *Indian Act* amended. In the mid-seventies, in the

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<sup>85</sup> For examples, see "Non-confidence Motion to Unseat President Fails," *Micmac News*, May 1974, 1; "Abolishing Executive Director's Position Disturbing," *Micmac News*, May 1974, 11.

<sup>86</sup> Kathy Brown, "Non-status Corner," *Micmac News*, January 1975, 6.



context of the women's movement and the Corbière-Lavell case, representing the non-status and Métis community seemed to the UNSI that they were advocating for women's rights to the detriment of Aboriginal rights. Supporting this group of mostly non-status, vocal women was risking the support of the state, Aboriginal people in Nova Scotia with status and other powerful national and provincial Aboriginal groups. It was a risk that the UNSI would not take.

It was clear by this time that Aboriginal women, and particularly those who had lost their status as the result of "out-marriage" did not feel represented by the UNSI. In January 1975, one month before the non-status and Métis would meet to discuss the formation of their own organization separate from the UNSI for the second time, Helen Martin and a delegation of Aboriginal women confronted the UNSI at the Board of Directors meeting in Truro. Martin told the Board that according to the Department of the Secretary of State, a grant of \$104,000 had been allocated to the UNSI specifically for the non-status and Métis of Nova Scotia. On behalf of the non-status and Métis women, Martin demanded to know how the money had been spent. Martin also told UNSI meeting members that it was rumored that the UNSI did not wish to represent the non-status and Métis of Nova Scotia. Alex Denny, the vice president of the UNSI told the delegation of women that they had been misinformed by the Secretary of State and that the Secretary of State did not stipulate how the money should be spent. Further, Denny reported that the monies in question were spent on administration and salaries. With respect to the rumors that the UNSI did not want to represent the non-status and Métis of Nova Scotia, Denny told Martin that this could be discussed at the upcoming non-status and Métis meeting

being held to discuss the formation of the separate group.<sup>87</sup> Martin also charged the UNSI with blatantly ignoring the Nova Scotia Native Women's Association. She accused the Union of discriminating against them by not publishing the Association's meeting minutes in the *Micmac News*. Again, it was Denny who responded to this accusation. He alluded to the Union's constitution that stated that UNSI was elected and set up by *all* Aboriginal people of Nova Scotia, men and women alike. While Denny did not overtly acknowledge any wrong doing by the Union, he did admit that the Union was undergoing some administrative changes and that he hoped that a more concerted effort would be made to effectively deal with other Aboriginal organizations.<sup>88</sup>

In an analysis of the *Micmac News* up until approximately 1973, it is difficult to pinpoint the exact grievances and needs of the non-status community in Nova Scotia; the group was loosely organized without a clear set of objectives. Over time this changed, and gradually the group coalesced around addressing the gender discrimination in Section 12 1 (b). The non-status and Métis group became an organization of primarily women and was more formally recognized. Non-status women, most frequently Helen Martin, became a consistent presence at the non-status meetings, at which "out-marriage" was generally one of the main topics. Aboriginal women without official status were often representatives or were holding important positions in non-status groups both locally and nationally, like Kathy Brown with UNSI and Gloria Gabert with the Native Council of Canada. By 1975, "non-status" had become very much associated with Aboriginal women and the gender discrimination inherent in Section 12 1 (b) of

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<sup>87</sup> "Native Women Confront U.N.S.I. Board," *Micmac News*, January, 1975.

<sup>88</sup> *Ibid.*

the Act. At the same time, 1975 was the year of the woman, a period marked by a growing awareness of Aboriginal women's rights, the women's movement, and an Aboriginal cultural revival.

This shift to "non-status" being synonymous with Aboriginal women is particularly evident when considering the official formation of the Non-Status and Métis Association of Nova Scotia. In March 1975 two important meetings were held in Yarmouth: the Union of Nova Scotia Indian annual meeting and a non-status and Métis group meeting organized by Kathy Brown. The non-status meeting was organized with the main purpose of taking a vote to decide if they would break off from the UNSI and form a completely separate organization. After an impassioned plea by Viola Robinson for the formation of a separate group, the non-status and Métis delegates voted to go out on their own. This meant they would be forming their own executive and board, and seeking separate core funding from the Secretary of State.<sup>89</sup>

The article in the *Micmac News* that described the meetings and the division of the two groups was written with a very positive spin. For example, the article stated that "some would see the division as a way to make it easier for the government to carry out their plans regardless of what the people want. The opposite is true....status Indians served by the Union will be better served by the Union which is no longer burdened by its responsibility to the 3500 non-status Indians in the province."<sup>90</sup> The bias of the publisher – the UNSI – is certainly reflected in this particular story. The reality was that while the division clearly did benefit the Union it did not guarantee a successful future for the newly formed Non-Status and Métis

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<sup>89</sup> "Non-status and Métis Elects All-woman Executive," *Micmac News*, March, 1975, 1-4.

<sup>90</sup> Ibid.

Association of Nova Scotia. The Union was no longer financially responsible for funding programs and services for the non-status population, chiefs of the bands who made up the UNSI Board would not be compelled to help those who did not have status, nor would they have to advocate for the non-status women. While the Union assured the non-status group that there would be a “strong bond of mutual assistance,”<sup>91</sup> given the lack of assistance and support in the past, surely the newly formed Non-Status and Métis Association doubted the sincerity of this statement.

Despite the circumstances under which the Non-Status and Métis Association of Nova Scotia was formed, the newly formed group made history when it elected an all-woman executive to a provincial Aboriginal organization. It was also an all-woman board of which all of the members had lost their status as a result of Section 12 1 (b) of the *Indian Act*. Indeed, as of March 1975, “non-status” became a woman’s issue in Nova Scotia. Kathy Brown was elected President with Viola Robinson as 1<sup>st</sup> Vice President. The group decided that the President would be a salaried position and that four field officers would also be needed. The field officers would be tasked with reaching people at a grass-roots level.<sup>92</sup> There were obvious similarities between the NSMANS and groups directly connected to the mainstream feminist movement – like women involved in the feminist movement, the NSMANS was fighting for equal rights and organizing at a grass-roots level. An analysis of the formation and organization of the first official Aboriginal women’s group in Nova Scotia further illustrates the parallels between

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<sup>91</sup> “Non-status and Métis Elects All-woman Executive,” *Micmac News*, March, 1975, 1-4.

<sup>92</sup> *Ibid.*

Aboriginal woman's groups in Nova Scotia and women's groups directly associated with the feminist movement.

The first official Aboriginal women's group in Nova Scotia, aside from church and community based groups was the Nova Scotia Native Women's Association formed in 1972. The decision to start a provincial women's group in Nova Scotia was made in March 1971, when Aboriginal women from all over Canada gathered at the first Native women's conference in Edmonton, Alberta. The national meeting was held to determine if there was a need for a national organization. Four delegates were in attendance from Nova Scotia: Helen Martin, Martha Julian, Mrs. Steve Marshall and Helen Sylliboy, with Martin acting as co-chairman for the conference meetings, an obvious testament to her leadership skills and her engagement in women's issues. While the conference did not conclude with the formation of a unified national group, a steering committee was formed to determine the viability and need for a national group with the plan to revisit the discussion the following year. Helen Martin was appointed to a steering committee and over the course of the year she was expected to determine if there was a need for a national group based on input she would gather from meetings with Aboriginal women in Nova Scotia. Perhaps as a consequence of her appointment and knowing the position would give her an opportunity to reach out to many Nova Scotia women on numerous reserves, Martin and the other Nova Scotia delegates decided that they would try to form a provincial organization. In an effort to learn how to organize and run a women's group, Martin and Sylliboy attended the Alberta Native Women's Association meeting which was held during the conference in Edmonton. Armed with the information gathered from the Alberta women, the

Nova Scotia women returned to their home province and hoped that they would have a delegation of women to form a Nova Scotia association in the near future.<sup>93</sup>

Over the next few months Martin and her colleagues in Nova Scotia and throughout the other provinces were busy determining goals and objectives for Aboriginal women both locally and nationally. Although the Aboriginal women of Nova Scotia had yet to officially form a provincial association, by September of 1971 a group of Nova Scotia women had developed a list of goals, objectives and recommendations for Aboriginal women in Nova Scotia. Each of the provinces and territories (excluding PEI and Nfld) created a similar list, which reflected the goals of the respective provinces, and all were combined in one document to impart a national perspective; the document was published in the September 1971 issue of the *Micmac News*.<sup>94</sup> The fact that the document was published in the *Micmac News*, and the formal quality of the document itself, suggests that there had been a significant degree of discussion and mobilization. The official formation (i.e., state recognition and funding) of national and provincial Aboriginal women's groups was fast approaching.

In February 1972, Helen Martin secured a grant to hold the first ever Indian women's conference in Nova Scotia over the course of three days in Sydney at the end of February. Martin had worked hard to mobilize the Aboriginal women of Nova Scotia to create a provincial organization and it appeared that this conference could be the starting point. As a member of the steering committee appointed the year prior at the national conference, and because she was one of the four delegates from Nova Scotia who were attending the second annual national

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<sup>93</sup>Helen Sylliboy, "National native Women's Conference," *Micmac News*, May 1971, 3.

<sup>94</sup>"Native Women of Canada: What it is and Their Recommendations," *Micmac News*, September 1971, 7.

native women's meeting in March of 1972, Martin submitted a story to the *Micmac News* regarding the main topic of the National conference, which was the reinstatement of Janette Corbière-Lavell's status as per the *Canadian Bill of Rights*. Martin used the article to reinforce the need for a provincial organization and encouraged Nova Scotia women to attend the provincial conference, one she hoped 40 delegates would attend.<sup>95</sup> Martin also told the *Micmac News* that the conference was being held "to bring up the status of women and to increase their involvement in helping to improve their communities."<sup>96</sup> At the February meeting, the Nova Scotia Native Women's Association was officially formed, with Helen Martin elected as the first President. Jean Goodwill, from the National Committee for Native Women was a guest speaker, and a representative from the Department of the Secretary of State was also in attendance. The organizers and leaders of these initial meetings were obviously very dedicated to making changes within Nova Scotia communities and nationally. Federal funds for Aboriginal women's groups had only been committed to seven months before the Nova Scotia women secured the funding for their start-up. In addition to this, only two other provincial Aboriginal women's groups had been formed at that point and, considering the provincial Aboriginal populations, this further exemplifies the enthusiastic commitment of the Nova Scotia women.<sup>97</sup>

The issue of membership – whether non-status women should be included in the association – was discussed by both Goodwill and by the delegates in general. And while the meeting had an optimistic and hopeful tone, the delegates were realistic. The representative from the Department of the Secretary of State gave assurances that the government was

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<sup>95</sup> Helen Martin, "National Native Women's Conference in Saskatoon March 24-26," *Micmac News*, February 1972, 3.

<sup>96</sup> "Native Women to Hold Organizational Meeting," *Micmac News*, February 1972, 1.

<sup>97</sup> "Nova Scotia Native Women," *Micmac News*, March 1972, 10.

“open” to change with respect to the classification system, that this type of group would give “our Indian women a voice” and that the impetus for legislative changes came from listening to groups like the NSNWA. The women appreciated the assurances but the bureaucratic rhetoric was not accepted without apprehension. These women clearly understood just how embedded the gender discrimination was within their communities and within the statutes of the *Indian Act*. These women were not naïve. Goodwill appropriately cautioned that legislative changes only came after very lengthy negotiations and generally, much struggle. One delegate reminded the group that there were still men in the community that did not believe that women should have a public voice, let alone a provincial organization. Despite the obvious challenges ahead the group was determined to get organized and work toward forming a national organization.<sup>98</sup>

Newly elected president Helen Martin did not want to commit to a national organization without careful consideration and the consent of the entire membership of the Nova Scotia Association. Martin’s apprehension was connected to the issue of classification. After the Native women’s conference in 1971, classification, more specifically whether or not all Aboriginal women regardless of status should be allowed membership, remained a contentious issue.<sup>99</sup> However, there did appear to be a desire to work through the classification issue and present a united front and despite the fact that there was a lack of an official organization and continued tension over the classification issue, the women were doing their best to put forth a unified front. Aboriginal women hoped that by having a national and unified voice, they would be able to have more say within Band politics and would bring more “fairness” to the

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<sup>98</sup> Ibid.

<sup>99</sup> “Nova Scotia Assn. Not Ready to Join National Committee,” *Micmac News*, March 1972, 11.



administration of their reserves and, at least some women hoped that they would be able to remove the classification of Aboriginal people.<sup>100</sup>

Martin did not want to make a decision to join a national group too soon – a decision that she may have regretted as the classification issue was a divisive one that could seriously hinder a national organizations' ability to operate effectively. In June 1971, the *Micmac News* published reports from all of the existing provincial women's groups; the reports clearly illustrated just how divisive the classification issue was. While few of the reports were ambivalent about the classification issue, most were either adamantly opposed or overwhelmingly in favor of reinstating women who had lost their status as a result of "out-marriage". Leona Willier, author of the Alberta Native Women's Association report, wrote that "treaty women" (status), and especially the older women were not being involved in these conferences because many were not proficient in English and were too poor to attend the meetings and conferences. Further, Willier felt that women with status should have had the most input at the meetings, instead of Métis women, who according to Willier, made up the majority of women in attendance. Wilier argued that the reserves in Alberta were already too crowded and that reinstating lost status would mean that conditions would only worsen on reserves that already lacked adequate space and funding. Willier also argued that Aboriginal women were aware that they would lose their rights if they married a man without status and so, they should have married men with status to avoid losing their status. Willier did not even feel that her daughters (who married men without status) deserved to regain their lost

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<sup>100</sup> "Native Women of Canada: What it is and Their Recommendations," *Micmac News*, September 1971, 7.

status.<sup>101</sup> At the other end of the classification debate was Monica Turner of Ontario, who wrote that she had been fighting for the reinstatement of lost status for all women since she had lost her own. For Turner, reinstatement was the most important issue facing Aboriginal women. The polarization caused by the classification issue continued to be an issue during the second national meeting and was the primary reason why the provincial organizations were struggling to come together as a unified national group.

Early on in the NSNWA's existence, the group was associated with the women's movement and the term "women's lib" or "women's libber" often came up in various articles published by the *Micmac News* or was brought up by association members themselves. In the early 1970s, the association felt the need to remind the general public that they were not "women's lib", as the association felt that the connection to the women's movement was not helpful.<sup>102</sup> It is hard to tell if members of the NSNWA genuinely disliked the association to the women's movement or if they thought that it was necessary to reject the label because of the possibility of being discredited within Aboriginal communities for being associated with the women's movement. But considering that one of the group's central objectives was to end the discrimination against women in the *Indian Act*, bringing about gender equality and unifying all Aboriginal women regardless of the government imposed classification system, the group looked very much like a feminist organization. NSNWA meetings resembled consciousness raising group meetings, typical of the feminist movement of the early 1970s; they were made

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<sup>101</sup> "Native Women's Reports," *Micmac News*, May 1972, 12.

<sup>102</sup> In "Women's Corner: The President of Nova Scotia Native Women's Association Elaborates," *Micmac News*, June 1972, 9, Martin is quoted as saying that the group is not "women's lib". Three years later, in the 1975 CBC radio broadcast, "Taking the Power Back," Helen Martin talks about being labeled a "women's libber" and how she came to accept that label.

up of small groups of women, talking about issues important in their daily lives, trying to find solutions and trying to determine the next step to take.<sup>103</sup> It was not a surprise that the NSNWA were labeled “women’s libbers” given the parallels between the women’s movement and the native women’s movement in the early 70s. And by 1975, Helen Martin and the NSNWA stopped denying they were not “women’s libbers”. Martin told the CBC in a radio broadcast that while travelling around to Aboriginal communities in Nova Scotia to organize small local meetings, she was confronted by men and called a “women’s libber”. Martin simply said that she accepted the label, and continued explaining to men on reserves that she wanted to have women’s meetings. Martin went on to report that despite the tension women did attend the meetings, often with small children in tow, and she concluded that these meetings were successful.<sup>104</sup>

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<sup>103</sup> For a general description of a consciousness-raising group, see Pamela Allen, “The Small Group Process,” in *Radical Feminism: A Documentary Reader*, ed. Barbara A. Crow (New York: New York University Press, 2000), 277-281.

<sup>104</sup> CBC, “Taking the Power Back.”

## Chapter 3

### Section 12 1 (b) of the *Indian Act* and Bill C-31

Beginning with the *Indian Act* in 1876, the identity of Aboriginal women in what would become Canada, became defined by the state and determined by the status of their husbands.<sup>105</sup>

Section 12 1 (b) of the *Act* dictated that if an Aboriginal woman married a man without status she would lose her status and would therefore cease to be an “Indian” within Canadian statutes and laws. No such restrictions applied to Aboriginal men upon marriage. In 1985, the “Act to Amend the *Indian Act*,” commonly referred to as Bill C-31, was passed to eliminate this and other discriminatory rules by allowing women to regain their Indian status lost through the “out-marriage” clause. While the purpose of the amendment was meant to end discrimination, it created confusion and, depending on its application, allowed for other forms of gender discrimination. The most significant target of criticism of Bill C-31 from women was the “second generation cut-off rule”. Under this rule, children of reinstated women had limited abilities to pass on status to their children; this limited ability did not apply to the children of those with status prior to 1985, thus creating a new class of “Indian”. In addition, Bill C-31 gave band councils control over their band membership codes which created the opportunity for discrimination against reinstated women in cases where bands resented the state’s imposition of increased membership. If Bill C-31 was applied to change reserve by-laws, women could have

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<sup>105</sup> The 1876 *Indian Act* consolidated earlier laws, policies and procedures in the various colonies.

less protection from abuse under the law on such reserves.<sup>106</sup> The gender discrimination that existed within the statutes for more than a century had become entrenched in the minds of many Aboriginal men and policy makers; Bill C-31 was insufficient in dealing with this history of embedded discrimination. This chapter will address the new rules governing Aboriginal identity and the problems created by certain applications of the amendment including the tensions created among and within Aboriginal communities, the indignity of the proof of paternity requirement, the potential dangers resulting from band control over reserve by-laws and the bureaucratic processes that hindered the reinstatement of Aboriginal women and their children. In order to provide a broadened contextual understanding of the issue, the chapter will elaborate on the discussion of the opening chapter, focusing on the history of the *Indian Act* in terms of the way in which it shaped the experiences of Aboriginal women.

A number of theoretical lenses could be employed in analyses of the impact of Bill C-31. It has been addressed from both colonial and post-colonial perspectives.<sup>107</sup> Bill C-31 could also be analysed using a focus on class and economics. But above all, an analysis of Bill C-31 cannot be done without considering the gendered nature of Aboriginal identity. At its core, Bill C-31 was primarily about redressing gender discrimination. It was an attempt to end Aboriginal women's social exclusion upon marriage to a non-status man; social exclusion that saw women being denied access to their heritage and identity based on gender. Bill C-31 was rooted in a sexually discriminatory ideological foundation. The discrimination inherent in the amendment

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<sup>106</sup> Sections 6 (1) and 6(2) of the amended *Indian Act* outline the new classification and provisions governing Indian Status. Section 10 enables Aboriginal bands to enact their own band membership codes.

<sup>107</sup> For example, see Napoleon, "Extinction by Number,," Jamieson, "Sex Discrimination and the Indian Act."

was masked by seemingly non-discriminatory rhetoric, but the gender discrimination that was carried over from the *Indian Act* to Bill C-31 has been acknowledged by many.

As previously acknowledged in this study, the gender discrimination that became entrenched within the laws that regulated Aboriginal lives and subsequently became embedded within the social fabric of Aboriginal communities was rooted in 19<sup>th</sup> century colonial policies. According to Beverly Jacobs, the legally sanctioned discrimination against Aboriginal women began in 1857 with the passage of the colonies' civilization and enfranchisement policies through the *Gradual Civilization Act*. The legal process of enfranchisement – whereby an Aboriginal male would voluntarily or be forced to terminate his Aboriginal identity under the law in exchange for gaining full Canadian citizenship – if enforced, could also exclude an Aboriginal woman from her band and community. A male could be enfranchised if he could read and write either English or French, and was free of debt; upon marriage his wife would be enfranchised automatically. An Aboriginal widow of an enfranchised man could only live on the land of her deceased husband if she remained unmarried and if colonial officials deemed her to be living respectably.<sup>108</sup> This gender discrimination was maintained when the 1876 *Indian Act* developed criteria to determine who could be legally declared an Aboriginal person. If one met the requirements they would have the legal identity of “Indian status”. The *Indian Act* of 1876 stated that in order to have status a person must: be a male person with Indian blood who is reputed to belong to a certain band, be a child of such person, any woman who is or was

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<sup>108</sup> *An act to encourage the gradual civilization of the Indian tribes in this province and to amend the laws respecting Indians*, Statute of the Province of Canada, C. XXVI (assented to 10<sup>th</sup> June, 1857), Early Canadiana Online, [http://www.canadiana.org/ECO/mtq?doc=9\\_07030](http://www.canadiana.org/ECO/mtq?doc=9_07030) (accessed July 20, 2012).

lawfully married to such a person.<sup>109</sup> For an Aboriginal woman, being “Indian” then was exclusively dependent on the status of a woman’s husband – not a reflection of Aboriginal ancestry. The *Indian Act* only applied to those with legal Indian status, and so Métis or Aboriginal people who did not meet the criteria to gain legal status under the law were not eligible for the rights and benefits that were conferred to those with status. The *Indian Act* of 1876 carried over these rules found in Section 12 1 (b). Many Aboriginal women lost their “Indian” identities, not only through the rules that made her identity dependant on the status (or lack thereof) of the man she married, but also because these rules forced her to disassociate from her home community.<sup>110</sup>

Kathleen Jamieson wrote that prior to the 1985 amendment, “the consequences for the Indian woman of the application of Section 12 1 (b) of the *Indian Act* extend from marriage to the grave – and even beyond that.”<sup>111</sup> The consequences of Section 12 1 (b) were aptly described below:

[Upon marriage to a non-status or non-Indian man], a woman must leave her parents’ home and reserve. She may not own property on the reserve and must dispose of any property she does hold. She may be prevented from inheriting property left to her by her parents. She cannot take further part in band business. Her children are not recognized as Indian and are therefore denied access to cultural and social amenities of the Indian community. And most punitive of all, she may be prevented from returning to live with her family on the reserve, even if she is in dire need, very ill, a widow, divorced or separated. Finally, her body may not be buried on the reserve with those of her forebears.<sup>112</sup>

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<sup>109</sup> Department of Indian Affairs, *The Indian Act*. (assented to April 12, 1876), Library and Archives Canada, <http://epe.lac-bac.gc.ca/100/205/301/ic/cdc/aboriginaldocs/m-stat.htm> (accessed January 12, 2011).

<sup>110</sup> Department of Indian Affairs, *The Indian Act*. (assented to April 12, 1876), Library and Archives Canada, <http://epe.lac-bac.gc.ca/100/205/301/ic/cdc/aboriginaldocs/m-stat.htm> (accessed January 12, 2011).

<sup>111</sup> Jamieson, *Indian Women and the Law*, 1.

<sup>112</sup> Mary Two-Axe Early and Philomena Ross, Minutes of Proceedings and Evidence of the Standing Committee on Indian Affairs and Northern Development (Issue No. 53, May 25, 1956), 12, 23, in Jamieson, *Indian Women and the Law*, 1.

The impact of this section of the policy resulted in cultural, psychological and material loss for Aboriginal women. The consequences were grave to say the least. Any degree of autonomy that an Aboriginal woman held prior to marriage was eliminated and her voice silenced by this discriminatory legislation.

Prior to the 1985 amendment, there were two amendments to the *Indian Act* that affirmed the gender discrimination in the *Act* and extended the discrimination in new ways. In 1951, Section 12 1 (b) was upheld and another piece of discriminatory legislation was enacted: Section 12 1 (a), the “double mother clause”. The double mother clause ensured that if a child’s mother and paternal grandmother were non-status or non-Indian, the child lost status at age 21. Again the ability to pass on Indian heritage and rights were dependant on gender. This section served to accelerate the process of assimilation and extermination policies through denying status to these children. According to Harry Daniels, former president of the Congress of Aboriginal Peoples, “the integration of Canada’s Indian population into mainstream society... have always been at the heart of the federal Indian Act regime.”<sup>113</sup> And these policies of assimilation and integration weighed most heavily on women and their children.

The amendment to the *Indian Act* in 1970 retained both Sections 12 1 (a) and 12 1 (b): the most contentious and inequitable for Aboriginal women. However, in 1970 these provisions were disputed at the Supreme Court of Canada by Jeanette Corbière-Lavell and Yvonne Bédard. In 1973, they argued that Section 12 1 (b) should be rendered inoperative by Section 1(b) of the Canadian Bill of Rights that provided for equality before the law. The women’s argument was

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<sup>113</sup> Harry Daniels, “Bill C-31: the Abocide Bill,” Congress of Aboriginal Peoples, <http://www.abo-peoples.org/programs/C-31/Abocide/Abocide-1.htm> (accessed February 8, 2010).



that the *Indian Act* discriminated against them because it denied them equality before the law by reason of sex. Both women had previously lost status as a result of “out-marriage” – they were no longer members of their communities and were exiled from their homes.<sup>114</sup> Kathleen Jamieson explained, “their argument was eloquent in its simplicity: that the *Indian Act* discriminated against them on the basis of race and sex and that...the Bill of Rights prohibiting such discrimination should override the sections of the *Indian Act* which discriminated against them as Indian women.”<sup>115</sup> The Supreme Court of Canada ruled that Indian women were not being discriminated against. In *Thunder in my Soul: A Mohawk Woman Speaks*, Patricia Monture-Angus provided an evaluation of the court’s decision:

The best I can do at explaining what the Chief Justice said was to direct you to look at who was being discriminated against. The men are not being discriminated against. Therefore, there is no discrimination based on race. Look at women. All women are not being discriminated against because this does not happen to White women. Therefore, there is no gender discrimination. The court could not understand that this pile of discrimination (race) and that pile of discrimination (gender), amount to more than nothing. The court could not understand the idea of double discrimination. Double discrimination is not an acceptable legal category of equality.<sup>116</sup>

As illustrated by Monture-Angus’s evaluation, an analysis of the discrimination against Aboriginal women by the state reveals both race and gender inequality. Further, gender discrimination against Aboriginal women was deeply entrenched within state policy.<sup>117</sup> The Court was clearly unwilling to rectify the state-imposed discrimination against Aboriginal women.

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<sup>114</sup> Jacobs, “Gender Discrimination Under the *Indian Act*,” 181.

<sup>115</sup> Jamieson, *Indian Women and the Law*, 86.

<sup>116</sup> Patricia Monture-Angus, *Thunder in my Soul*, 136.

<sup>117</sup> Many historians of the welfare state have pointed out the gendered nature of state policies. For example, see Monture-Angus, *Thunder in My Soul*; Bonita Lawrence, “Gender, Race and the Regulation of Aboriginal Identity,”; Lisa Perley-Dutcher and Stephen Dutcher, “At Home But Not At Peace.”

Fuelled by the loss of the Corbière-Lavell & Bédard case, Aboriginal women throughout the country organized and rallied to eliminate the gender discrimination within the *Indian Act*. The loss of the case also spurred Sandra Lovelace to take her case to the United Nations Human Rights Committee when she lost her status upon marrying a non-Indian man who she later divorced. Upon returning to Tobique, she and her son were denied access to education, health and housing benefits. In protest, Lovelace

... pitched a tent on band land because she had no other place to stay. Because of the controversy around her fight, her tent was burned to the ground. The struggle for public support led her to occupation of the band office, which was also later burned down. Leaders were not supportive: they told her to go back to where she came from and asked her what she was trying to prove.<sup>118</sup>

In her case, Lovelace argued that the discriminatory section of the *Indian Act* violated four articles of the International Covenant on Civil and Political Rights. She won on the grounds that the *Act* violated article 27, which provided for the right of individuals belonging to minorities to enjoy their culture, practice their religion, and used their language in community with others of their group.<sup>119</sup> Despite this finding, the cases of Corbière-Lavell and Bédard and the lobby groups that emerged after the cases were decided, the *Indian Act* remained unchanged. Aboriginal women still had Section 12 1 (b).

Throughout the remainder of the 70s and into the 80s, Aboriginal women in all parts of the country continued to challenge Section 12 1 (b) on both national and local levels. In 1976, a group of five Aboriginal women including Helen Martin, Philomina Ross, Jeanette Corbière-Lavell, Mary Two-Axe Early and Margaret Thompson appeared for the first time in history to

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<sup>118</sup> Presentation by Sandra Lovelace at the "Equality for All in the Twenty-first Century: Second National Conference on Bill C-31 Report," Edmonton, Alberta, May, 1999, quoted in Jacobs, "Gender Discrimination Under the *Indian Act*," 183.

<sup>119</sup> Jacobs, "Gender Discrimination Under the *Indian Act*," 182-83.

address Aboriginal women's issues before a Parliamentary Committee in Ottawa to present their case for Aboriginal women's rights. In her address, Corbière-Lavell eloquently presented her case and importantly pointed out that although her case was started in 1970 and ended in 1972, this was the first time she was able to present her case to a group that could actually change and/or influence policy – 6 years after she initiated the law suit against the federal government. The delay could have been attributed to a number of factors; of particular importance was that the National Indian Brotherhood, which was arguably the most influential Aboriginal group in Canada, sided with the federal government in the Corbière-Lavell case. One could not expect that the federal government would acquiesce to this group of non-status women who were proposing important changes to the *Indian Act*. Further, the political complications, funding and bureaucratic processes involved in making changes to even one section of the *Act* would have been substantial for both band and state governance, to say the least. If the courts found that Section 12 1 (b) of the *Indian Act* violated Corbière-Lavell's rights as protected by the *Canadian Bill of Rights*, Section 12 1 (b) would be rendered inoperative. Further, if this section was changed to allow Aboriginal women and their children to regain their lost status, band membership and subsequent demands to bands for funding were guaranteed to significantly increase. The women understood that this was the motivation behind the NIB's decision to support the state rather than Corbière-Lavell but they felt that the NIB's lack of support hindered a sustainable solution to the inequity.

Mary Two-Axe Early passionately presented her own situation and the impact of 12 1 (b) on the group of women she represented from her Ontario reserve. Two-Axe Early told the committee,

I represent a group of women in their sixties and seventies who are widows, who have been married to non-Indians years back, and yet have no status, no right to inherit land...I was born and brought up on my reserve. All I am asking for is the right to live in my little cabin and die there, and that has been denied to me. For speaking out for saying I want my birthright back from the government, that I want the right to live on my reserve, I have been given an eviction notice because we dared defy our band council...Yet Ottawa listens and says nothing about it. I cannot understand the Canadian government which I thought was such a democratic government, doing this to their own native people, for one of us to be evicted from our own land. Give us back our birthright. We are not immigrants who just came over. If I just came over from Europe I would have more rights here. The government would take care of me, house me and give me the right to inherit property to me. All persons of Indian blood are Indian. That is a fact and not something to be tossed about by uncaring politicians.<sup>120</sup>

Margaret Thompson spoke after Two-Axe Early and echoed and added to the women's appeal for justice. Thompson first pointed out that the women were not there solely to criticize the government but rather to change the law to end the discrimination of Aboriginal women.

Thompson referred to a study done by Barbara Wyn and told the committee:

Native women suffer undue hardships when they lose their status. Without the reserves to go to, when their husbands did desert them or died, they remained in the towns. Without education, special skills or training, they did domestic service or the unfortunate ones became prostitutes and drags in skid row towns and cities. These women are forbidden by law to return to their reserves where they were born and where their relatives live. They are forbidden by law to inherit property left to them in a will and they are denied Indian rights to which they were born.<sup>121</sup>

The injustice of the situations so clearly described by Two-Axe Early and Thompson makes it seem as though changing at least Section 12 1 (b) of the Indian Act would be an immediate necessity. But again, even though there is no doubt that the Parliamentary Committee realized the injustice, they must have felt that to change the *Indian Act* at that time was too daunting a task.

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<sup>120</sup> Teresa Nahanee, "Historic Presentation Made by Native Women." *Micmac News*, September 1976.

<sup>121</sup> *Ibid.*

It was not just the Canadian state that was reluctant to deal with the gender discrimination inherent in sections of the *Indian Act*: Aboriginal governance at both the national and local levels were reluctant to take on the responsibility of working to amend these discriminatory sections. And without the support of band councils in changing the *Indian Act*, women's efforts to change the discriminatory section of the *Act* would work to increase the divide within Aboriginal communities between genders and between those with status and those without. Alternatively, the support of band governance would mean that the state would have little choice but to amend the most discriminatory section the *Indian Act*. In Nova Scotia, the reluctance of the Union of Nova Scotia Indians to acknowledge the injustice of Section 12 1 (b), and more importantly, the impact of that particular section on Nova Scotia women, was one important reason why the non-status and Métis group in Nova Scotia officially separated from the Union in 1975. This issue was clearly the most important cause of tension between Aboriginal women and the UNSI during the early 1970s, although there were others that prompted the separation.<sup>122</sup>

The case of Sandra Lovelace and the Tobique women offers another important example of the lack of support (and in this case disdain) that a local band council had for women impacted by 12 1 (b). No doubt frustrated by this lack of support among Aboriginal governance, in the summer 1979, the Tobique women and their supporters made a week-long walk from Oka to Ottawa in protest of the discriminatory section of the *Act*, a grass-roots effort to bring attention to their cause. The national media followed them along the way which brought the

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<sup>122</sup> Some members and Presidents of the UNSI had been criticized by members of the Aboriginal community in Nova Scotia for general incompetence. There were also reports of administrative, communication and organizational problems. For example, see "Knockwood's Credibility Lost Completely," *Micmac News*, March 1975, 4.

plight of Aboriginal women into the national spotlight. Despite the national attention and the efforts of women, the federal government was slow to respond and it would be years before the *Indian Act* was amended to eliminate the discriminatory provisions. Both the women of Tobique and the Feminist Alliance for International Action attributed the slow pace at which the federal government moved to amend the *Act* to the reluctance of the federal government to take an action (amend the *Act*) that was contrary to the position of the mostly male dominated Aboriginal lobby and political groups of the time.<sup>123</sup> Leading up to 1985, the reinstatement of Aboriginal women was controversial: Aboriginal women were critical of the *Act*, an *Act* that many male dominated Aboriginal groups felt was essential in securing special rights and having treaty rights honoured. But in spite of the slow pace, the actions of Aboriginal women and their supporters forced the federal government to amend *Indian Act* in 1985 to bring it “into accord with the Canadian Charter of Rights and Freedoms to ensure equality of treatment to Indian men and women.”<sup>124</sup>

Bill C-31 introduced three key changes: the first was to eliminate discrimination from the *Indian Act*, the second was to restore Indian status to individuals who may have voluntarily or involuntarily lost their status and the third gave Aboriginal bands control of their membership codes. All of these changes would have profound impacts upon Aboriginal women in Canada.<sup>125</sup> Initially, Aboriginal women and their supporters applauded the efforts of the federal government to rid the *Indian Act* of the discriminatory elements and to give greater

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<sup>123</sup> Janet Silman, *Enough is Enough*, 239-241; Ginette Petipas-Taylor, “Sharon McIvor Taking on the Indian Act,” April, 2008, Feminist Alliance for International Action, <http://www.fafia-afai.org/en/news/2008/sharon-macivor-taking-indian-act> (accessed January 10, 2011).

<sup>124</sup> Thomas Isaac, *Aboriginal Law: Cases, Materials and Commentary* (Saskatoon: Purich, 1999), 570.

<sup>125</sup> For example, see Lisa Perley-Dutcher and Stephen Dutcher, “At Home But Not At Peace,”; Native Women’s Association of Canada, “Aboriginal Women and Bill C-31.”

autonomy to Aboriginal bands in self-government. However, it did not take long for issues with the application of the amendment to emerge.

Under the amended *Act*, no one gained or lost status through marriage and women who lost their status as a result of 12 1 (b) would be eligible for reinstatement of band membership and reinstatement of status. The first generation grandchildren of all those who enfranchised for any reason can apply for status but are not entitled to band membership. Thus, the amendment created two categories of “Indians” who have different rights: (1) a group that had band membership prior to 1985, their children, and reinstated women minus their children; (2) a group who have status but not band membership.<sup>126</sup> Having registered status ensured eligibility for non-insured health benefits and secondary education assistance; however, depending on band membership codes, exclusion from band membership could mean that one did not have the right to live on reserve, participate in band elections or share in band assets. While C-31 created opportunities for bands to exercise control over membership – an important step towards self-government – bands who resented the state’s decision to impose an increase in numbers on limited band monies created restrictive band membership codes that limited the rights of the recently reinstated in Aboriginal communities.<sup>127</sup> This created a new element of discrimination between children of those with status prior to 1985 and the children of reinstated women.

The children of reinstated women were also disadvantaged in terms of their ability to pass on Indian status to their children. The Bill provided that all status Indians would be

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<sup>126</sup> Jamieson, “Sex Discrimination and the Indian Act,” 133.

<sup>127</sup> Parliament of Canada, “Indian Status and Band membership issues, Library of Parliament,” <http://www.parl.gc.ca/Content/LOP/ResearchPublications/bp410-e.htm#2bandtx> (accessed June 30, 2012)

registered under Section 6 of the *Indian Act*. Section 6 contains two subsections. A person who demonstrated that he/she has two parents entitled to Indian status would be registered under Section 6(1). A person who has only one parent of Indian status would be registered under Section 6(2). Those individuals registered under Section 6(2) must marry a status Indian to pass the status on to their children. Many of the children of reinstated women were registered under 6 (2), consequently making them subject to the second generation cut-off rule. The Native Women's Association of Canada explained that, "a non-Aboriginal woman who became Status Indian under Section 12 before 1985 had the ability to pass on full Indian Status. In contrast, the children of women who were reinstated after 1985 cannot pass on Status to their children: the second generation cut-off."<sup>128</sup> This second generation cut-off is the extermination policy that Henry Daniels described. It has also been termed "generational genocide" and "Abocide". And because most of the Aboriginal people who were reinstated with Bill C-31 were women, the state continued to direct its assimilationist or extermination policies at Aboriginal women.

This rule limits the number of Aboriginal people who are eligible to be registered under the *Indian Act*. The eligibility to be registered as status, and to passing this status on to children is dependent on who an Aboriginal person decides to marry. If "out-marrying" continues, and it inevitably will, the proportion of Aboriginal people who will be eligible to transmit status will decrease from generation to generation. While a woman who "out-married" prior to 1985 is more disadvantaged than her male counterpart in terms of transmitting her status, both Aboriginal men and women who "out-married" after 1985 will be affecting the entire Aboriginal

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<sup>128</sup> NWAC, "Aboriginal Women," 2.



population in their ability to transmit status in the not-so-distant future.<sup>129</sup> Jo-Anne Fiske poignantly described the trauma that Indigenous cultures have experienced as families were divided by the implications of Section 6 of Bill C-31. She wrote,

Women describe being raised outside the community and finding it difficult to return. They experience divisions between cousins as young children in extended families become aware that some of them will have rights to inherit property while some will not. Within families, some women who are cultural leaders do not have status. Other leaders are listed as 6 (2) and their children, who are reared in the culture do not have status. This created uncertainty for the future of the community.<sup>130</sup>

Aside from the inability to pass on status and identity equally, certain applications of Bill C-31 made Aboriginal women vulnerable to other forms of discrimination as well. Bill C-31 required single mothers to name the father of the child; otherwise he was assumed to be non-Indian, the child would be registered under Section 6(2) and he/she may not be able to secure band membership. This was unfair discrimination against women who raise children without a partner.<sup>131</sup> Not only was this unfair discrimination, it could sometimes have dangerous consequences. Jo-Anne Fiske reported that “the excessive affliction of domestic violence registered as the number one concern of women reporting to the Royal Commission on Aboriginal Peoples.”<sup>132</sup> Considering this, it is safe to assume that a significant number of Aboriginal women have or have had abusive relationships that resulted in the couple having children. Indeed, some Aboriginal women may be raising children that were conceived out of

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<sup>129</sup> Joan Holmes, “Bill C-31 Equality or Disparity?: The Effects of the New Indian Act on Native Women,” Background Paper (Ottawa: Canadian Advisory Council on the Status of Women, 1987), 25.

<sup>130</sup> Jo-Anne Fiske and Evelyn George, “Seeking Alternatives to Bill C-31: From Cultural Trauma to Cultural Revitalization through Customary Law,” (Ottawa: Status of Women Canada, 2006), 43.

<sup>131</sup> *Ibid.*

<sup>132</sup> Jo-Anne Fiske, “Political Status of Native Indian Women: Contradictory Implications of Canadian State Policy,” in *In the Days of Our Grandmothers: A reader in Aboriginal Women’s History in Canada*, eds. Mary-Ellen Kelm and Lorna Townsend (Toronto: University of Toronto Press, 2006), 337.

rape. It is not only a serious invasion of privacy, but in the case of women who have children with abusers, it is preposterous to require a woman to go back to that abuser for proof of paternity. In addition to this, nowhere in the legislation were Aboriginal men required to name the children they have fathered.<sup>133</sup>

Joan Holmes pointed out another area of concern brought to light with the application of Bill C-31: the lack of family law protection under the amended *Indian Act*. In March, 1986, the Supreme Court of Canada ruled that provincial family laws do not apply on reserves.

Holmes observed that

because provincial laws do not apply on reserves, and because the *Indian Act* does not make specific regulations for division of reserve property upon divorce or separation, most Indian women are left with no legal rights to occupy their family home, keep household goods, or bar an abusive partner. While in practice a band council may support and assist a woman, she has no legal rights on which to depend. Because reserve housing is so often in critically short supply, a woman may have to take her children off the reserve in order to find shelter for them.”<sup>134</sup>

Importantly, Bill C-31 did not require that band codes conform to the Canadian Charter of Rights and Freedoms. Understandably, some women saw this as a lack of protection for the rights of women and children and felt that their only choice to rectify the situation is within the court system.<sup>135</sup>

Since 1985, numerous cases have gone before the courts over the divisive issue of band membership. As previously noted, one of the key changes provided by Bill C-31 was to give Aboriginal bands the choice of controlling their own membership. While each membership code

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<sup>133</sup> Holmes, “Bill C-31: Equality or Disparity?” 25.

<sup>134</sup> Ibid, 27.

<sup>135</sup> Susan Bazilli, “Confronting Violence Against Women,” The International Women’s Rights Project, York University Center for Feminist Research, October 2000, [http://www.iwrp.org/pdf/womens\\_hrguide.pdf](http://www.iwrp.org/pdf/womens_hrguide.pdf) (accessed July 20, 2012).

had to be approved by the Minister of Indian Affairs, subsequent amendments were not subject to this approval. The Native Women's Association of Canada reported that bands' application of Bill C-31 to create their own band membership codes sometimes resulted in discrimination against reinstated women. Those who were registered under Section 6 (1) would be automatically placed on a membership list. However, if a band chose to create their own codes, they had authority to place those registered under 6 (2), mainly reinstated women, on conditional lists or to not place them on the list at all.<sup>136</sup> Mary Eberts noted:

Bands are permitted to shape their own membership codes, and there is no requirement for these codes not to discriminate against Bill C-31 reinstates. There is essentially no oversight mechanism for these codes, and it is very difficult to access them. In addition to these flaws, the separation of status and Band membership penalizes those band who do wish to be inclusive; the federal government allocations to Bands cover only status Indians, so that a band which includes in its membership the non-status spouses and children of reinstates must care for them out of the funds provided for those band members who are status Indians.<sup>137</sup>

Here, Eberts explained the crux of the problem. Further, this forces bands into a tenuous position, one in which they are either financially punished for being inclusive or deemed sexist for being exclusive. And herein lays one of the major difficulties created by the application of Bill C-31 which attempted to both afford rights to individuals and to a collective: Aboriginal women fighting for rights within the new autonomy provided to Aboriginal bands.

Membership in an Aboriginal band became separate from having legal status. Having status did not guarantee having band membership and having band membership did not guarantee having status. Consequently a third category of "Indian" was created by Bill C-31: an

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<sup>136</sup> NWAC, "Aboriginal Women," 2.

<sup>137</sup> Mary Eberts, "Aboriginal Women's Rights are Human Rights," *Canadian Human Rights Act Review*, [www.chrareview.org/pubs/ebertse.html](http://www.chrareview.org/pubs/ebertse.html), in Jacobs, "Gender Discrimination Under the *Indian Act*," 191.

unregistered Indian with band membership.<sup>138</sup> In addition to this, an increase in the number of Aboriginal people to be reinstated and an increase in band membership required bands to spread their funds even further. Many felt as though there was not enough to go around in the first place. Finally, the systemic gender discrimination that had underlain Indian policy for more than a century was entrenched in the minds of many Aboriginal men; unfortunately for women, men made up the majority of band councils. Indeed, centuries-old state policies had a profound effect on the gender relationships created between Aboriginal men and women. Fiske noted that scholars have referred to the oppression of Aboriginal women by Aboriginal men as internalized colonial oppression: the state imposed a sexist regime on all of the oppressed while privileging male power under this regime. Hence, over time and under this regime, Aboriginal men came to fill the role of the oppressor.<sup>139</sup>

Besides band membership issues, the process of being reinstated was also complicated by the lack of education and services to help the mostly women who were going through the reinstatement process. Locating proof of identity could be arduous as some records simply did not exist or church records were lost or destroyed in fires. Some women reported waiting years for their applications to be processed.<sup>140</sup> Sadly, some Aboriginal women and their children still wait for housing and services on reserves.<sup>141</sup>

While many Aboriginal women and their supporters initially applauded the governments' efforts to rid the Indian Act of discriminatory elements, it became clear that Bill C-31 was insufficient in dealing with the deeply rooted level of discrimination created by Indian

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<sup>138</sup> Fiske, "Political Status," 341.

<sup>139</sup> *Ibid.*, 337.

<sup>140</sup> Jacobs, "Gender Discrimination Under the *Indian Act*," 186.

<sup>141</sup> NWAC, "Aboriginal Women," 3.

policy.<sup>142</sup> Over time, problems with the application of the amendment became apparent, and a number of Aboriginal women's groups and scholars have made recommendations to rectify the flaws. Both Jo-Anne Fiske's study, which focused on seeking alternatives to Bill C-31, and the Native Women's Association of Canada made a number of important recommendations that would serve to remedy the issues associated with Bill C-31. Fiske supported revoking the power of Indian and Northern Affairs in determining citizenship, the removal of Section 6 of the *Indian Act* and an end to proof of paternity policies. Aboriginal people themselves should decide on citizenship criteria recognized by the state. Fiske also recommended that family laws on reserves must adhere to human rights laws and conventions.<sup>143</sup> The Native Women's Association of Canada recommended a thorough review of Bill C-31 to address the discrimination of the amendment, specifically the role played by government policy and actions taken by self-governing bands. NWAC wanted a commitment from the federal government to resolve the issues with meaningful consultation with Aboriginal women. In addition, NWAC demanded that Aboriginal bands develop equitable band membership codes.<sup>144</sup> Of particular significance, the NWAC proposed that all future legislation and policy be analysed through a gender based analysis process within an Aboriginal context.<sup>145</sup> As it stands, Aboriginal women and their children continue to face state-sanctioned discrimination through Bill C-31 which limits their ability to pass on their heritage and identity to their children and their ability to access housing, education and social programs. The only way to resolve these issues is to have

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<sup>142</sup> For example, see NWAC, "Aboriginal Women," 3; Jacobs, "Gender Discrimination Under the *Indian Act*", 185; Silman, *Enough is Enough*, 246-247.

<sup>143</sup> Fiske, "Seeking Alternatives," 70. Fiske based these recommendations on data collected from interviews with Aboriginal women in Canada.

<sup>144</sup> NWAC, "Aboriginal Women," 3.

<sup>145</sup> *Ibid.*, 4.

the federal government and Aboriginal bands take these recommendations seriously, and importantly, to take action.

In conclusion, the gender discrimination inherent in applications of Bill C-31 can be attributed to the entrenched legacy of gender discrimination that became sanctioned by state policies as early as 1857. These policies that posited Aboriginal women as property of their husbands continued to appear as legislation until 1985. Not only were these policies detrimental to the cultural and psychological well-being of Aboriginal women, the policies became accepted as tradition within Aboriginal communities and among policy makers. This serves to explain why both the Supreme Court of Canada and band councils did not support Aboriginal women in their struggle for equality. The Canadian government only acted to amend the *Indian Act* after it was shamed by the national coverage of the women of Tobique, the cases of Corbière-Lavell, Bédard and Lovelace, and was subject to intense lobbying by Aboriginal women's groups. In order to appease both Aboriginal groups made up of predominantly men, such as the National Indian Brotherhood and Aboriginal women, the government developed a policy that provided for increased collective rights and increased individual rights. This juxtapositional policy was misguided, as the rights of the collective clashed with the rights of the individual; understandably, tension and confusion ensued. The creation of different categories of "Indian" who did not have equal rights to transmit their status, heritage and identity were divisive. Moreover, it was often reinstated women and their children who fell into the category of "Indian" that had the fewest rights and most challenges in transmitting status, passing on heritage and identity, and securing adequate housing and services due to restrictive band membership codes. The proof of paternity policies in Bill C-31

put Aboriginal women at risk of further sexualized violence. The lack of family law regulation on reserves stipulated by Bill C-31 put Aboriginal women and their children at risk for abuse. As Jo-Anne Fiske argued, "The *Indian Act* and its attendant policies [including Bill C-31] violate Canada's obligations to protect women from all forms of discrimination and to protect children's social, ethnic, cultural and political rights."<sup>146</sup> Indeed, certain applications of Bill C-31 initiated continued gender discrimination and caused division within Aboriginal communities. Despite this, Aboriginal women have shown tremendous strength and determination in the agitation against the *Indian Act* and Bill C-31. Without question, Aboriginal women will continue to fight for the right to have equal opportunity to pass on their status and heritage to their children.

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<sup>146</sup> Fiske, "Seeking Alternatives", 69.





## Conclusion

This study contributes to our understanding of Aboriginal women in a number of ways. The study provides insight into the issues that were important to Aboriginal women in Nova Scotia and, through this, some understanding of the issues important to Aboriginal women nationally. This study also provides further historical context to the voices and experiences of Aboriginal women in Nova Scotia, which are sometimes lacking within the Canadian historical narrative. Connecting elements of the feminist movement to the actions of Aboriginal women and to the broader activism of Canadian women broadens our understanding of the strategies used by Aboriginal women. This study illustrates that Aboriginal communities were divided on some important issues, a reflection of the complexity and diverse interests within those communities. The research also deepens our understanding of the importance of gender in activist discourse in this period. In a small way, the research pays tribute to an important actor among Aboriginal women in Nova Scotia, Helen Martin, and allows the audience to witness her significant contribution to Aboriginal women's activist work. Overall, a study of this kind promotes greater understanding of the nation as it illustrates the integral role of Aboriginal women of Nova Scotia in their struggle to change discriminatory elements of the *Indian Act*, legislation which affected all Aboriginal women in Canada.

There is an important relationship between the early history and the more contemporary experiences of Aboriginal women. Historical accounts of the colonial period by scholars such as, but not limited to A.G Bailey, L.F.S. Upton, Wilson and Ruth Wallis and John Reid offer invaluable insight into the significant ways in which the relationship shifted over

time.<sup>147</sup> The historical relationship evolved to change the terms that existed between Aboriginal people and the state. The state established the legal framework under which later struggles would take place, such as the establishment of reserves. The state created an administrative infrastructure in the Department of Indian Affairs and disrupted methods of traditional governance by creating (male) band councils. All of these impositions had long lasting legacies for Aboriginal women.

Despite the state's imposition of the policies, and the legacies the policies created, Aboriginal communities often resisted the state's assimilationist aims throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries. State efforts to encourage Aboriginal people to take up farming in Nova Scotia were culturally inappropriate and hence, largely ineffective. Early 20<sup>th</sup> century policies created to ensure Aboriginal children's attendance at state-run day schools did not effectively increase attendance levels and children continued to be educated at home. Although reserves were created as early as the 1840's, the Mi'kmaq in Nova Scotia continued to be engaged in traditional self-sustenance off reserves well into the 20<sup>th</sup> century. The centralization policy of the 1940s which aimed to consolidate all of the smaller reserves in Nova Scotia into two large reserves in Eskasoni and Shubenacadie, underestimated the housing needs, administrative efforts and funding required for the consolidation. Within less than a decade after the implementation of the policy, many of the families who initially relocated simply made their

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<sup>147</sup> Alfred Goldsworth Bailey, *The Conflict of European and Eastern Algonkian Cultures 1504, 1700: A Study in Canadian Civilization* (Toronto: University of Toronto Press, 1969); Upton, *Micmacs and Colonists*; Wilson D. Wallis and Ruth Sawtell Wallis, *The Micmac Indians of Eastern Canada* (Minneapolis: University of Minnesota Press, 1955); John G. Reid with contributions by Emerson W. Baker, "Amerindian Power in the Early Modern Northeast: A Reappraisal," and "Pax Britannica or Pax Indigena? Planter Nova Scotia (1760-1782) and Competing Strategies of Pacification," in John C. Reid with contributions by Emerson W. Baker, *Essays on Northeastern North America: Seventeenth and Eighteenth Centuries* (Toronto: University of Toronto Press, 2008), 130-152, 171-190, and *Nova Scotia: A Pocket History*.

way back to their home reserves.<sup>148</sup> This evidence illustrates that Aboriginal communities resisted state-imposed policies throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries; nonetheless, the roots of the contemporary social issues can be attributed to these same misguided colonial and state policies, including the *Indian Act*.

An analysis of a number of local studies on the Mi'kmaq of Nova Scotia in the 1970s indicated that some Mi'kmaq communities exhibited degrees of distress in such areas as housing, education, economic status and health: Marie Battiste, Fred Wien, Peter Twohig and W. D. Hamilton have documented elements of these conditions in Aboriginal communities in Nova Scotia.<sup>149</sup> Education was one of the more pressing issues for Aboriginal communities in general and was consistently considered by Aboriginal groups to be a top concern. Community members spoke out about the physical conditions of some of the band-run schools and the funding discrepancies between band and state-run schools. A major point of contention was the lack of Mi'kmaq culture and language included in school curriculum. These problems were also underscored by a general distrust in the state-run educational system; in part this distrust was the legacy of the residential school system. These physical, financial and curriculum issues combined with the distrust of the educational system in general resulted in comparatively high drop-out rates among Aboriginal youth in Nova Scotia. Not only was the drop-out rate high, the grades at which some Aboriginal youth were dropping out was alarming.<sup>150</sup>

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<sup>148</sup> Wien, *Rebuilding the Economic Base*, 31-36.

<sup>149</sup> Mary Battiste, "Micmac Literacy and Cognitive Assimilation," in *Indian Education in Canada: The Legacy*, eds. Jean Barman, Yvonne Hebert and Don McCaskill, 23-44. Vancouver: University of British Columbia Press, 1986; Wien, *Rebuilding the Economic Base*, and *Socioeconomic Characteristics of the Micmac*; Peter Twohig, "Health and the Health Care Delivery System: The Micmac in Nova Scotia" (master's thesis, Saint Mary's University, 1991); Hamilton, *The Federal Indian Day Schools*.

<sup>150</sup> Fred Wien, *Socioeconomic Characteristics*, 134.

Another concerning issue was the inability of state or band councils to meet the housing needs on reserves. Access to housing and the physical condition of housing on Aboriginal communities in Nova Scotia was dependent on whether or not a person lived on or off reserve and whether or not the person had official status; women with children and without status faced a double burden in securing available housing for their families. Without status these women did not qualify for reserve housing and if forced to move off reserve they were subsequently removed from any social support they may have had on reserve. Stories in the *Micmac News* indicated that there were non-status women with children living in condemned houses because they were not eligible for housing on reserve due to their lack of status. The marginalization and poor economic status of some non-status Aboriginal women created other challenges in securing housing off reserve. Those living in rural areas off reserve often endured inadequate housing and overcrowding. Funding was clearly the immediate issue in terms of housing conditions both on and off reserve but the root of the problem for Aboriginal women was related to identity. As long as the Canadian state legislated Aboriginal women's identity and as long as band governance approved the legislation, women who lost their status, and their children, would not be eligible to receive safe and adequate housing within their home communities among their families and support systems.

This study endeavored to identify the issues from an Aboriginal woman's perspective, and through a careful examination of the *Micmac News* it was determined that in addition to education and housing, the issue of Aboriginal identity was paramount to Aboriginal women in the 1970s, locally and nationally. The issue of divisive identities was articulated in Nova Scotia by groups of women who had lost their status as a result of 12 1 (b). The state-classification of

“Indian” identities created divisions between status and non-status Aboriginal women, locally and nationally, which hindered women from lobbying for change as a unified group. Identity was also implicated in divisions between Aboriginal women and men. The issue of who was “Indian” as legislated by the *Indian Act* became the impetus behind much of the activism among Aboriginal women in Nova Scotia.

Janet Silman’s study of the women of Tobique, First Nation reserve in New Brunswick illustrated that there was indeed agitation against Section 12 1 (b) among women in that area. In addition to this, activists such as Patricia Monture-Angus and Mary Two-Axe Early and a number of high profile court cases confirmed that Aboriginal women were agitating against the *Act*, rallying for equality for Aboriginal women in general and looking for solutions for social problems throughout the country. Aboriginal women in Nova Scotia were also participating in activist activities and working to change the status quo.

In the early 1970s, two Aboriginal groups were in existence or newly formed in Nova Scotia with mandates to deal with the identity issue: the Native Women’s Association of Nova Scotia and the Non-Status and Métis Association of Nova Scotia. While a few individuals stood out as leaders of these groups, in general the activism was collective in nature. Established in 1972, the Native Women’s Association of Nova Scotia, headed by Helen Martin, worked hard to advance the rights of Aboriginal women. Martin and her delegation of women publicly voiced dissatisfaction with the ways in which Aboriginal women’s issues and concerns were handled by the Union of Nova Scotia Indians, traveled to rural communities to mobilize Aboriginal women to fight for Aboriginal women’s rights and participated in national forums and conferences to work toward changing the most discriminatory section of the *Indian Act*. The Non-Status and

Métis Association of Nova Scotia made history when they elected an all-woman executive after years of having their concerns ignored by local band governance; this was the first time that an executive and board of a provincial Aboriginal organization was made up entirely of women. So, like the women of Tobique and women all over the country, these two all women's groups were agitating against local band governance, the Canadian state and against the most discriminatory section of the *Indian Act*, Section 12 1 (b).

The research determined that a few of the more well-known Aboriginal women activists in Nova Scotia including Rita Joe and Anna Mae Aquash did not have direct association with either of these groups. While Rita Joe was an important advocate for Aboriginal people, much of her activism took place after the time-frame examined in this study. Aquash was also an important Mi'kmaq activist for Aboriginal rights in North America but her involvement was generally with the American Indian Movement. Viola Robinson advocated for Mi'kmaq rights during the period and was involved with the efforts of Helen Martin and others associated with the Non-Status and Métis Association of Nova Scotia. The Native Council of Nova Scotia, of which Robinson was president starting in 1975, contributed financially to the Non-Status and Métis Association of Nova Scotia. Robinson also advocated for the separation of the Non-Status and Métis members from the UNSI and urged them to form their own official organization. We can safely assume then that Robinson identified with the groups' central goal of changing Section 12 1 (b). Further study on activism among women in Nova Scotia for changes to the *Indian Act* would greatly benefit from an examination of Robinson's work with the Native Council of Nova Scotia.

The agitation among Aboriginal women in Nova Scotia was a demand for recognition of an Aboriginal identity that was dismissed by the state and, because the dismissal had been confirmed by law in the *Indian Act* for so long, it had also come to be dismissed by band governance. This study highlights that heightened awareness of the issues faced by Aboriginal women, articulated through the activism of the women themselves, was frequently met with a dismissive response from local band councils. The reasons for this response are complex and in need of additional study. What is clear in the present study is the acceptance of a state-created, and divisive, Aboriginal women's identity by local band governance. On one hand it is understandable why local band governance was reluctant to join Aboriginal women in their fight to regain lost status – the financial responsibility involved in extending housing, benefits and services to reinstated band members would have seemed overwhelming given the fact that many Aboriginal communities were already underfunded. On the other hand, it was clear that because of gender alone, an Aboriginal woman who married non-Aboriginal man lost her state-recognized Indian identity and the ability to pass this status onto her children. It was impossible to deny the inequity in the provision. Furthermore, in the context of the 1970s – a decade in which various rights movements were taking place – women's and Aboriginal rights both garnered national attention.

Aboriginal women who were most significantly impacted by Section 12 1 (b) identified with aspects of the feminist movement. While many scholars have rightly pointed out that the women's movement was exclusive insofar as it did not always take into account important differences such as race and class in the struggle for gender equality, the actions of the Aboriginal women of Nova Scotia paralleled some aspects of activism associated with the

feminist movement of the late 1960s and 1970s. The women's movements' appeals for unification of all women and gender equality echoed the appeals of Aboriginal women without status within Aboriginal communities. The fact that Helen Martin was called a "women's libber" by members of Aboriginal communities in Nova Scotia, and that she eventually accepted that title, illustrates her identification with the feminist movement while concurrently showing that members of Aboriginal communities also associated the Aboriginal women's groups in Nova Scotia with those of the women's movement. The ways in which Aboriginal women assembled in small groups to discuss their personal experiences, and specifically the ways in which legislated gender discrimination affected their lives were similar to consciousness raising groups associated with the feminist movement. These connections between the women's movement and Aboriginal women's activism in the 1970s, and specifically how identity dictated the inclusion and/or exclusion from these activities within a national context could be further studied.

This study illustrates the fluidity of Aboriginal identity and the ways in which racial and gender identity was divisive. With respect to Aboriginal women of Nova Scotia in the 1970s, they navigated through various issues by identifying on the basis of race, class and gender. Identifying as an Aboriginal woman alone was troublesome for these women, as there were important distinctions between groups of Aboriginal women, distinctions that dictated where a woman could live, be buried and whether or not she could inherit land. Identity politics were at the heart of women's activism in the 1970s and 80s and most definitely were at the heart of the agitation against Section 12 1 (b) of the *Indian Act*. Numerous studies have been done on the impact of this particular legislation. The legal cases of Lovelace, Corbière-Lavell and Bédard



illustrated the reluctance of band governance and the state to address and rectify the problems created with state-created Aboriginal women's identity.

After being challenged in various courts, the state amended the legislation in 1985. The amendment – widely known as Bill C-31 – was positive in obvious ways, most importantly that women could regain their lost status and that of their children. But certain applications of Bill C-31 resulted in other forms of discrimination. As Lisa Perley-Dutcher and Stephen Dutcher pointed out, the state grossly underestimated the number of women who would be eligible for reinstatement so there were long delays and not enough money to handle the reinstatement process. Because Bill-C31 had become law, women were appealing to their local bands for assistance. If and when the band gave assistance before state funding became available, others in the communities went without. This sometimes created resentment towards reinstated women and their children among band members who were not used to going without.<sup>151</sup> In addition to this, while the legislation allowed reinstated women to pass their status onto their children, those children could not pass on their status to their children. Therefore, the grandchildren of these reinstated women would not have status. This second generation “cut-off” only applied to reinstated women, not to those who has status prior to 1985. Also, in order to be reinstated, women were also required to name the father of their children. As Jo-Anne Fiske argued, given the comparatively high incidence of domestic abuse in Aboriginal communities, this would require some women to return to their abusers for proof of paternity, putting these women at risk of further abuse.<sup>152</sup> Scholars such as Joan Holmes have explored

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<sup>151</sup> Lisa Perley- Dutcher and Stephen Dutcher, “At Home But Not At Peace,” 199.

<sup>152</sup> Fiske, “Political Status,” 7.

other issues that have emerged as a result of the amendments to the *Indian Act* in 1985. Of particular significance, is that provincial laws no longer applied on reserves and so, women were at an increased risk of abuse and were sometimes without legal rights in cases of divorce, separation or where division of property was required.<sup>153</sup> Changes were also made to band membership codes that provided bands with greater autonomy in determining band membership. While greater band autonomy was positive in many cases, in some cases women who were applying to regain status were placed on conditional lists or not placed on lists at all.

A study of the roots and the impact of the discrimination legislated by the *Indian Act* and the legacy of colonialism on Aboriginal women highlights the long-standing and entrenched nature of the challenges the women faced in their struggle to change the discrimination within the *Act*. The insidious nature of the colonial legacy and discrimination made Aboriginal women's struggle for equality particularly long and arduous; despite this, the activism of Aboriginal women effectively forced an amendment to end gender discrimination in *Indian Act*. While Bill C -31 was a momentous victory for Aboriginal women, the implications of the Bill, and the state's continued classification of "Indianess" has continued to engage Aboriginal women in a struggle for equality.

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<sup>153</sup> Holmes, "Bill C-31 Equality or Disparity?" 25.



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