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Fact Sheet
Rights Of Aboriginal Women On- and Off-Reserve
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Euro-Canadian women were considered legal 'non-persons' until 1930. But by the end of the 1800s they had acquired the right to vote, to enter into contracts, and to own property, including land.

By contrast, Indian women, under the *Indian Act*, were considered legal 'non-persons', and did not have the right to vote or enter into contracts until 1951. Some of their rights to own property, such as an interest in the matrimonial home on-reserve, are still hampered by Canadian laws.

The *Indian Act* was patrilineal, and defined 'Indians' by lineage. Therefore, women were defined as Indians if their fathers were Indians or if they married Indians, but were not defined as Indians if their mothers were Indians. However, many, if not most, Aboriginal societies were matrilineal, and defined lineages through the mother, not the father. In many Aboriginal societies, women were chiefs. In Iroquois culture, for example, clan mothers selected and deposed chiefs, and men and women had equal rights to participate in major decisions, such as those concerning land surrenders.

Because it applied patrilineal reasoning, the *Indian Act* allowed only men to stand as chiefs and councilors, to vote, and to make decisions concerning land surrenders. These prohibitions remained in place until 1951. As well, under the 1876 *Indian Act*, a woman who married a non-Indian, and their children, lost their status as 'Indians'. Once a registry of Indians was introduced in 1951, 'status' or 'registered' Indians had the right under the *Indian Act* to live on-reserve, to vote for chief and council, to share in band monies and to own and inherit property on-reserve. But non-status Indians had no such rights.

Under Section 12 of the 1951 *Indian Act*, a woman who married a non-Indian was not entitled to be registered, and thus lost her status. Section 12 also removed status from a woman whose mother and paternal grandmother had not been status Indians before their marriages. These women could be registered but they lost their Indian status as soon as they turned 21. Indian men, however, did not lose their status when they married non-Indian women.

Between 1958 and 1968 alone, more than 100,000 women and children lost their Indian status as a result of these provisions.

Aboriginal Activists

Although non-Aboriginal women's rights activists such as Nellie McClung and the 'Famous Five' are remembered for their legal battles to gain full legal status for women, other Aboriginal activists also engaged in similar legal battles to regain the status lost by women as a result of Section 12 of the *Indian Act*. Mary Two Axe Early, Jeannette Lavell, Yvonne Bedard, and Sandra Lovelace are some of

those who challenged Section 12 of the *Indian Act* through court cases, political appeals and lobbying, and in Mrs. Lovelace's case, an appeal to the United Nations.

The 1960 *Canadian Bill of Rights* proclaimed that all Canadians had an equal right to not be discriminated against on the basis of race or sex, among other things, and were entitled to the protection of the law. Despite this, the Canadian courts ruled that Section 12 of the *Indian Act* did not discriminate against Indian women.

When she lost her Indian status on the breakdown of her marriage, Sandra Lovelace took her case to the United Nations. The United Nations Committee on Human Rights agreed with Mrs. Lovelace that the *Indian Act* provisions were discriminatory as they had the effect of denying ethnic, religious and linguistic minorities their rights to enjoy their own culture, to profess and practice their own religion, and to use their own language.

Despite this, Section 12 of the *Indian Act* was not amended until 1985, after Section 15 of the 1982 *Charter of Rights and Freedoms* had taken effect. Section 15 - proclaimed on April 17, 1985 - promised equality to men and women, and the right not to be discriminated against on the basis of race, national or ethnic origin, colour, religion, age, sex, or mental or physical disability.

Bill C-31

Bill C-31, *An Act to Amend the Indian Act*, was passed on June 17, 1985. Section 6 allowed for women who had lost Indian status because they 'married out,' and their children to apply for reinstatement. However, the grandchildren of a woman who married out are not eligible for reinstatement although the grandchildren of men who married out are. As well, Section 6 excludes children of two successive generations of Indian and non-Indian parents from registration.

Since Bill C-31 was passed, there have been close to a quarter million requests for registration. Mary Two Axe Early became the first woman whose status was officially restored. As of December 31, 2000, 114,512 people had gained Indian status based on Bill C-31 amendments, while 44,199 applications had been denied. Overall, Bill C-31 has restored Indian status to roughly 118,000 Indians.

Because so many Indian women lost their status, most of them, including many of those who have regained status, live off-reserve. Off-reserve Indians have fewer rights than on-reserve Indians. Off-reserve band members have only partial tax exemptions and may not be exempt from provincial tax laws. The extent to which Indian women living live off-reserve are entitled to federal program benefits is unclear. The rights of non-status Indian women living on-reserve are also limited. Since they are not band members, they do not have a right to vote, do not enjoy treaty benefits, and do not have tax exemptions.

Canadian Human Rights Act

Status or non-status, Aboriginal women who are separated or divorced can be excluded from programs such as housing and education due to discrimination by band councils. Where discrimination occurs on the basis of gender, however, the *Canadian Human Rights Act* does not always provide protection.

While Section 3(1) of the *Canadian Human Rights Act* prohibits discrimination on the basis of race, sex,

and marital status, among other grounds, Section 67 of the *Act* makes the *Human Rights Act* inapplicable to 'any provision of the *Indian Act* or any provision made or pursuant to that *Act*'.

The application of the *Canadian Human Rights Act* turns on whether the *Indian Act* explicitly provides authority to the band council or the Department of Indian Affairs to undertake the action complained of. If it does, Section 67 exempts review by the Tribunal. As a result, Indian women who are discriminated against cannot use the *Human Rights Act* even in clear cases, if the band council or Department of Indian Affairs is acting within its express authority under the *Indian Act*.

Domestic Issues

Indian women face other problems as a result of Canadian laws. Because lands on-reserve fall exclusively within federal jurisdiction, provincial laws concerning matrimonial property do not apply. A court, therefore, cannot decide who has the right to live in a house on-reserve, as under the *Indian Act* only a band council can do so. However, the court can order the husband to compensate the wife for her share of the property.

Aboriginal women are more likely to face domestic abuse than other women in Canada. While one in ten women in Canada is abused by her partner, almost one in three Aboriginal women is abused. If an Aboriginal woman leaves the reserve to escape domestic abuse, she can lose her home. There are long waiting lists for housing on-reserve and often a great deal of pressure on band councils to re-allocate housing as soon as possible. Many Aboriginal women who wish to live on-reserve cannot do so, because of a lack of housing.

Conclusion

At present, Indian women do not have the same human rights or protection of their rights as Canadian women. Canadian laws such as the *Indian Act*, and specific provisions of the *Canadian Human Rights Act*, allow Aboriginal women to be discriminated against on the basis of both their race and their gender.

About the Scow Institute

The Scow Institute is a non-partisan organization dedicated to addressing public misconceptions about issues relating to Aboriginal people and Aboriginal rights. For more information, please visit our website at www.scowinstitute.ca.