

"The Queen and I"

Discrimination Against Women

BY LYNN GEHL

Cet essai rapporte les procédures que plusieurs femmes autochtones et leurs descendants doivent entamer pour obtenir leur statut d'Indienne, suite à la loi des Indiens. L'auteure nous fait part de sa propre expérience et dénonce la discrimination toujours présente en dépit des amendements apportés en 1985 à la loi des Indiens.

How would you answer the question, "What is your cultural identity?" There are many people living in Canada today who struggle with issues of identity in terms of their culture, ethnicity, minority status, sexuality, and race. Many people have relocated to Canada against their will, while others, for many reasons, made a conscious choice. These dislocated and relocated people at some point in their lives, if not all their lives, will wrestle with their identity and their sense of belonging. However, for many Aboriginal women and their children, this is not a question of belonging and being but rather a question of law. The oppression of Aboriginal women is of a particular nature as their cultural identities are entangled with legislation.

In Canada, the federal *Indian Act* determines who is and who is not an Indian. Legislation titled the *Indian Act* was first formalized in 1876. In 1869, "patrilineage was imposed" on Aboriginal peoples and *Indianness* was defined as any person whose "father or husband was a registered Indian" (Stevenson 67). Eventually, the *Indian Act* underwent one of its infamous amendments known as section 12 (1) (b). Here the *Indian Act* dictated that Indian women who married non-status men were no

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longer Indian. The goal of the *Indian Act* was one of assimilation and the arduous task of civilizing the savages—a national agenda. Ironically, what this type of policy did was subjugate women to the status of "chattel of their husbands" (Long and Dickason 100). It stripped women of their rights socially, politically, and economically and made them dependent people. By European standards, this was the proper location for women on the social evolutionary scale (Stevenson 55).

The struggle to have the gender inequalities removed from the *Indian Act*, which continues today, has been a difficult journey. The paternalism is so well entrenched in Aboriginal communities that Native women have been struggling internally as well as externally to have their rights acknowledged. The oppressed have often proven to be the oppressor.

One of the first women to speak out publicly about section 12 (1) (b) was Mary Two Axe Early in the

1950s (Bear). Legally, the first women to argue the discrimination set out in 12 (1) (b) were Jeanette Lavell and Yvonne Bedard (Bear). In 1973, the Supreme Court of Canada determined that the *Indian Act* was exempt from the Canadian Bill of Rights. Part of the problem in the fight to remove the discrimination was the lack of unity and support the women had from the National Indian Brotherhood (NIB) (Assembly of First Nations). The NIB feared changes to the *Indian Act* would jeopardize the federal government's legal responsibility to status Indians (Bear). In 1977 Sandra Lovelace took her complaint against 12 (1) (b) to the United Nations Human Rights Committee and in 1981 they found that Canada was "in breach of the International Covenant on Civil and Political Rights over sexual discrimination" (Bear 210). In 1979, the Tobique Women's Group of New Brunswick² organized a grassroots march from Oka, Quebec to Parliament Hill in Ottawa³, the country's capital, to raise awareness of Aboriginal human rights specific to women.

In 1985, the *Indian Act* was apparently amended to conform to the equality provisions of the *Charter of Rights and Freedoms*. I add apparently to this statement because, despite what many people think, much of the sex discrimination still exists. Myself, my family, and many other First Nations people⁴ continue to be excluded from registration as Indians. Aboriginal people who wish to pursue registration as a status Indian⁵ with the Department of Indian Affairs and Northern Canada must have extensive knowledge of

in the *Indian Act* Continues

their family history, great determination, as well as awareness of the continued discrimination against women and their descendants perpetuated by section 6 of the current *Indian Act*.

First, I will take you on a genealogical journey of five generations of my family history. Second, I will discuss the difficulties I encountered when forced to fulfill the documentation requirement of the application process for registration with the Department of Indian Affairs and Northern Canada. Finally, I will explain how Indian Affairs exercises section 6 of the *Indian Act* to my application for registration and how it continues to discriminate against me and my family on the basis of sex and marital status.

I am often asked, "Why is registration as a status Indian so important?" This question is difficult to answer because, as my understanding of my identity and my right to identify with the Aboriginal First Nations has evolved, so has my reply. Most people living in Canada are fortunate enough to identify with their place of origin. This is not true for many Aboriginal people, including myself. One can argue that identity to Native people is not a subjective process but rather something that legislation provides. For Native people, registration as an Indian with Indian Affairs is an important component of their cultural identity. Denial of Indian status has excluded many Aboriginal women and their descendants from residing on the reservation and from sharing in the benefits available to the community. Registration as an Indian in Canada is required to

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participate in rights to land, education, health care and, most importantly, to share in similar cultural values. Larry Gilbert articulates this challenge well in the preface to his book,

... as an aboriginal person.... I am acutely aware of the identity crisis suffered by many aboriginal people separated from their home land, their tribe or clan, their language and their culture. Seeking and protecting one's identity is a personal and a very human aspiration. It is seldom that the state intervenes and declares persons are not who they really are. That is the legacy and the reality of the Indian Act. (iii)

On January 2, 1945, my great-grandmother wrote a letter to Ottawa. She explained that she was having some difficulty with her nationality and was wondering if they

could help in any way. "I would like to know if I am counted as an Indian. Please let me know soon" (Gagnon 1945). Four weeks later, she received a reply which read as follows:

Dear Madam:

I am in receipt of a copy of your letter recently sent to Indian Affairs Branch, Ottawa, with regards to your status as an Indian. In reply I wish to inform you that you are not an Indian as defined by the *Indian Act*. At the time of your marriage to Joseph Gagnon, a white man, any rights you had as an Indian of the Golden Lake Band ceased, (section 14 of the *Indian Act*), and you became a *white woman* [my emphasis].

Yours very truly,
H .P. Ruddy, Indian Agent

Prior to the implementation of Bill C-31, the *Indian Act* discriminated against Indian women by revoking an Indian woman's status upon her marriage to a non-Indian man. "She was stripped of her *Indian identity* [my emphasis] and not able to live on the reserve with her extended family" (Long and Dickson 101). However, an Indian man was allowed to retain his status and pass it to his non-Native wife. This inequity prevented Indian women from passing Indian status on to their children (in their own right), while permitting Indian men to do so. This is how my great-grandmother lost her status and, as a result, so did my grandmother. Of particular interest is that my great-grandmother's husband was also a

Native person through his mother (my great-great-grandmother), not his father. Hence, because of the male lineage criteria he too was deemed a *white* person. His mother Angeline married a white man and became *white* as well.

My *kokomis*⁶ Viola was born and raised on the reservation. In 1927, at the age of 16, she and her parents were *escorted off* the reservation by the Royal Canadian Mounted Police. They lost their home, most of its contents and, from what my *kokomis* tells me, they were given nothing to start their new lives as free people. Welcome to civilization. After all, this was the intent of the *Indian Act*, to protect the Indians until they had assimilated into white society and then to set them free⁷ (Jamieson 13).

Consequently, when my father was born, Viola recorded her racial origin as French despite the fact that both of her parents, Annie and Joseph, were Native. By this time, it had been deeply ingrained in her soul that she was French. My *kokomis* gave birth to my father where she was born, on the reservation, where she felt most at home. He was born of unknown paternity. The midwife who attended my *kokomis* was my father's great-aunt Maggie, and this is the person with whom he spent his early years. His life on the reservation came to an end, just as his mother's before him, when his Aunt Maggie was also *escorted off* by the RCMP.

When one considers the legacy of the oppressive legislation, the effects of residential schools, and the poverty, it should not be difficult to understand the deleterious effects on Indian women and their children materially, culturally, and psychologically (Jamieson). These effects leave people lacking confidence and self esteem, which makes them vulnerable to illiteracy, hostility, alcohol, and suicide. "Data on the health of registered Indians from Health and Welfare Canada for 1992 found that the suicide rate itself was at least three times the national average...." (Long and Dickason

205). This scenario is a reality all too familiar for Native people. For myself this also proved to be the legacy of the *Indian Act*. My father died suddenly in 1988. I know that this was the direct result of the oppressive nature of the *Indian Act* and the forced assimilation process. A few years later, I proved his eligibility for registration;

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however, I was too late.

When Bill C-31 came into effect, I was aware that the major changes were to reinstate women previously enfranchised because of whom they married. My grandmother Viola and her mother Annie would regain their status. I was also aware that Annie's husband Joseph was entitled through his mother Angeline. This was where the challenge presented itself. In order for me to have my father entitled, I had to prove that both of his grandparents were entitled. Alternatively, I had to prove that both Annie and Joseph were entitled to be registered with Indian Affairs, so that status could be passed to my grandmother Viola in such a manner that she, in her own right, could pass it to my father; otherwise, he would be affected by what is known as the "second generation cut-off rule," which results in the loss of Indian status after two successive generations of parenting by non-Indians (Wherrett).

I started by spending many hours with my *kokomis* learning my family history via the oral tradition. Without this opportunity, I would not have been successful, and for this I am eternally grateful. It was difficult, though, because she was bitter and often sad about her life on the reserve. She did remember our family history well. She told me about her mother Annie, and her father Joseph. I was most interested in finding more information about Joseph's mother, Angeline. My *kokomis* did not know much about Angeline, although she did repeatedly say that, "Angeline was a black Indian from the Lake of Two Mountains who adopted two French boys whose mothers were unwed."

After the family history lesson, I constructed a family tree and began the formidable task of searching for the documents to prove my ancestral link to a past band member. This proof is required to fulfill the Registrar's demands that "... the applicant connect the ancestor to an existing band as the basis of his [sic] entitlement regardless of the date of evidence" (Gilbert 16). I sent away to the Office of the Registrar General for birth certificates of my father, my *kokomis*, and myself. I also sent away for the marriage certificate of Annie and Joseph as well as the death certificate of Angeline. The Registrar General holds the records of births, marriages, and deaths for 95 years, 80 years, and 70 years respectively. After this time period, the records are microfilmed and then held at the Archives of Ontario located in Toronto.

When I first entered the Archives library, I was overwhelmed. The library essentially consists of numerous filing cabinets stuffed with microfilm. There are archivists on staff to assist in your research, from 9:00a.m. to 5:00p.m. Needless to say I was discouraged, especially when I read an outline that was prepared by the archives which explains various Aboriginal sources. It explained the difficulty with Native surnames and

how they vary widely in records written by people who did not speak their languages. An additional blow was a caution that read: "Aboriginal ancestors more than three generations away from you may be hard to document and therefore very difficult to claim status from" (Archives Ontario 3). I had an enormous task ahead of me with having to research back five or possibly six generations to Angeline's male family members.

A person requires a variety of skills in order to do this type of work, many of which I acquired on the job. I spent many hours using microfilm readers searching, compiling, and analyzing documents. I had to be very organized in my research and, as a result, made many purchases along the way such as a filing cabinet, a large magnifier, and many reference books on how to do genealogical research. I also had to spend hours becoming proficient on the microfilm readers, printers, and learning how the actual microfilms are organized. When I would find a birth, marriage, death, or census record that I felt might have significance, I would photocopy them. I would then take everything home and construct and reconstruct my extended family tree in an attempt to look for clues as to where I could find Angeline's male family members. It became such a difficult task that at times I would stop for weeks or even months at a time. I had stopped for a period of several months when I once again began to act on my desire to be a registered Indian.

This turned out to be the day that I found what I needed. It appeared that Angeline was at the home of the birth of her brother's child. The date of the birth was August 20, 1882. For unknown reasons, the child's birth registration was delayed until December 1934, 52 years later. It seems his mother was missing and, since Angeline was present at the time of his birth, she was the only person qualified to sign the declaration. This declaration of delayed birth stated her brother's

name as the father and herself as the child's aunt (Gagnon 1934). This document was the "patrilineal link" that tied the two surnames together—Angeline's married name with her brother's—and which could connect her to a band member. I knew that what I held in my hand was the necessary document, and I quickly sent all the documents and necessary affidavits along with several applications to Indian Affairs.

By this time I was familiar with section 6 of the *Indian Act*. I was certain my great-grandmother, my great-grandfather, my grandmother, and my father would all be reinstated or registered. I was uncertain about myself because I did not know how my father's unknown paternity would be interpreted.

How Indian Affairs applies section 6, the main entitlement section of the current *Indian Act*, is summarized in Tables A and B.

Table A:⁸

6(1) = a person with two Indian parents
 6(2) = a person with one Indian parent
 N = a non-status or non-Indian parent

Table B:

6(1) + 6(1) = 6(1)
 6(1) + 6(2) = 6(1)
 6(2) + 6(2) = 6(1)
 6(1) + N = 6(2)
 6(2) + N = N

Indian Affairs applied section 6 to my family in the following manner: Angeline was reinstated as 6(1) status, her son who was also Annie's husband was registered as 6(2) status. Annie was reinstated as 6(1). My grandmother, the child of a 6(1) parent and a 6(2) parent, was registered as a 6(1) as above. My father's combination of parents was applied as 6(1) + N, and registered as a 6(2). The Registrar, when applying section 6, assumed a negative

presumption for my father's unknown paternity as being a non-status or non-Indian person (Harrison). This means that he cannot confer status to myself in his own right, because a 6(2) + N (my mother is a non-status person) = N.

All previous registered Indians in the Indian register as of April 16, 1985 were granted 6(1) entitlement (Wherrett). This was also the situation when reinstating women who lost status through marriage "...however, their children are entitled to registration only under section 6(2)" (Wherrett 10). In contrast, the children of Indian men who married non-Indian women, whose registration before 1985 was continued under section 6(1), are able to pass on status if they marry non-Indians. (Wherrett). Alternatively, the new rules of section 6 were being applied retroactively to Indian women and their children, which creates an inequity, because 6(1) registration permits a person to pass on status to their children yet 6(2) does not.

I became acutely aware of the continued discrimination within the amended *Indian Act* and how it was affecting me. I was denied registration. With this denial it became evident to me that, if my female ancestors had been male, I would be entitled to Indian status today. Had they been male, they would never have lost registration and they could then pass it to me. Since all previous entitlement continues, I would be a 6(1) in my own right and I could therefore pass status onto my children. The present day *Indian Act* continues with the theme of discrimination on the basis of sex (Gilbert). Furthermore, the *Indian Act* continues to violate section 15 of the *Canadian Charter of Rights and Freedoms*. Section 15(1) provides that all individuals are equal before and under the law.

The 1985 amendments to the *Indian Act* (Bill C-31) corrected only part of the discrimination against women who lost their status upon marriage to non-Indian men.

However, these amendments failed to address the discriminatory aspect which does not allow Indian women, who married non-Indian men, to pass their status to their grandchildren. The result is that the current *Indian Act* continues to discriminate against the children and grandchildren of Indian women who lost their status. Alternatively, the children of Bill C-31 Indian women are treated differently than children born to Indian men. The former are granted status under section 6 subsection (2), whereas the latter are granted status under section 6 subsection (1).

My application was denied entitlement on February 13, 1995. I submitted a letter of protest on March 16, 1995 and on February 4, 1997 I received a letter from the Registrar which concluded that my name was correctly omitted from the Indian Register. I filed an appeal claiming discrimination on the basis of sex and marital status. Indian Affairs denied my appeal in April 1998. I am now content with my identity, partly because of my new understanding of these huge issues as well as my realization, achieved in the process, that legislation cannot tell me who I am. It is, as a matter of principle, that I continue to appeal to the appropriate court as outlined in section 14.3 of the *Indian Act*.

In conclusion, I would like to suggest a very simple, fair, logical and equitable remedy to eliminate the continuum of discrimination within the *Indian Act*. All children, including their descendants, born prior to 1985 to an Indian man or an Indian woman regardless of who they married should be entitled registration under 6(1). The new rules of entitlement should then, and only then, be applied to all births equally after 1985. This would resolve the continued inequities in the current *Indian Act* between men and women, and would then bring it in accord with the *Charter*. This would also resolve the issue of unknown paternity before 1985 as

unknown paternity is also being interpreted in an unequal manner.

The biggest challenge to having my family members reinstated or registered with the Department of Indian Affairs and Northern Canada was the Registrar's demand that I connect my ancestors to an existing band member as the basis of my family's entitlement. I found two official documents in which Angeline was recognized and recorded as an Indian: her death certificate and her marriage certificate. This was not enough. I had to further my search until I could prove a link. This is grossly unfair and an unreasonable request when one considers that, "...there are countless historical records of Indians who never belonged to a band" (Gilbert 15). Angeline was an Indian, regardless.

After reading this paper, one should be more aware of the research and analytical skills required to prove Aboriginal ancestry; in particular, being able to prove a link to an existing band member. It is an enormous task. Individuals require time, money, stamina and great determination to fulfill the Registrar's requirements. Many of Canada's⁹ Aboriginal people are poor, illiterate, or unemployed as a result of the forced assimilation process. When the *Indian Act* was amended, assistance in the form of guidance from genealogical researchers should have been made available to the non-status communities to help them in their quest for their identity as well as registration.

Sharon McIvor argues that the *Indian Act*, with its paternalism and colonial ideologies, has created a "fictitious body" of Indians (179). What McIvor implies by this is that the *Indian Act* is a legal construction based on Eurocentric notions of what defines an "Indian" excluding from that definition many Aboriginal peoples. I agree with McIvor's statement and I know now that the need to unmake these fictive communities must come from the First Nations Peoples themselves. Not

until women and the non-status population are included in the nation building process will we be a self-determined peoples. The first step in self-determination according to Patricia Monture-Angus will not begin until we are responsible. Monture-Angus proceeds to say that, "any effort to move toward self-determination which focuses on the reserve as the sole basis for any form of jurisdiction will be unsatisfactory to urban and Métis groups," (30) to do so would entrench colonialism. Women and the non-status communities must be included in the Nation building process at all levels. Specifically, I am referring here, to the need for representation at the negotiating tables and not just involvement at regional capacities.

I will never see myself as a Canadian first, but rather as a First Nations person. My ideologies of who I am and who my ancestors were will always extend beyond national policies and boundaries of control and assimilation. Neither identity nor human behavior can be constructed through rigid definitions such as the *Indian Act*. My identity as an Aboriginal person was achieved through political struggle and the need to realize the potential of my genetic memory. I feel this way despite the fact that I am not a "legal" Indian.

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Lynn Gehl is a student at York University. She intends to pursue her academic career in the area of issues of identity, and in particular the

ramifications of the Indian Act. Kimberly Murray of Aboriginal Legal Services of Toronto has recently tabled a Charter challenge in regards to her cultural identity appropriately titled Lynn Gehl v. The Queen.

¹The terms Aboriginal, Native, First Nations and Indian are used interchangeably and include all persons of Aboriginal descent.

²For the complete story see Silman.

³Parliament Hill is located on unsundered Algonquin territory. This is my Nation's traditional territory.

⁴During a five-year period (June 1985-June 1990), the Department of Indian Affairs received over 75,000 applications for registration (Indian and Northern Affairs Canada 1990: 8). Keep in mind here that women marrying non-status was not the only reason for enfranchisement, although they did make up the majority (Long and Dickason 1996: 104).

⁵A person who is registered as an Indian under the *Indian Act*, as defined by the *Indian Act*.

⁶This is the Algonquin word for grandmother.

⁷The author originally used the word enfranchised, but I substituted it with free. Enfranchisement was a goal of the *Indian Act* as a measure of civilization and could be achieved both voluntarily or involuntarily as in the case of Indian women marrying white. This freedom was imposed on them.

⁸Tables A and B are adapted from Brizinski.

⁹The apostrophe is intentionally left out as it implies ownership.

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LYNN GEHL

The Canadian Nation

I am not a person,
I am a prisoner.

The Pope and the Queen
they are my keepers.

I don't blame my parents
for their only crime...
my mother is French
my father was "red"
they did their best.

I have no feelings
yet pain, pain, pain
for I am a prisoner
of the Pope and the Queen.

They took my spirit
they took my identity
and made me a prisoner
of this Nation State.

Lynn Gehl is one of eight siblings who is presently on an intense healing journey.