"The Queen and I"

Discrimination Against Women

BY LYNN GEHL

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.

In 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 Brunswick organized a grassroots march from Oka, Quebec to Parliament Hill in Ottawa, 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 people continue to be excluded from registration as Indians. Aboriginal people who wish to pursue registration as a status Indian 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 regis-
tration with the Department of
Indian Affairs and Northern Canada.
Finally, I will explain how Indian Af-
airs 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 im-
portant?” This question is difficult
to answer because, as my un-
derstanding 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
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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 aborigi-
nal people separated from their
home land, their tribe or clan,
their language and their cul-
ture. Seeking and protecting
one's identity is a personal and a
very human aspiration. It is sel-
dom 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,
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 dis-
criminated 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 Dicka-
son 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
to their children (in their own right),
while permitting Indian men to do
so. This is how my great-grand-
mother 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* 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 free (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.

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 9:00 a.m. to 5:00 p.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 Angelina’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 Angelina’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 Angelina was at the home 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 Angelina 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—Angelina’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:

| 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: Angelina 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.

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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’s 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
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 ununouttered 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.

References


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.