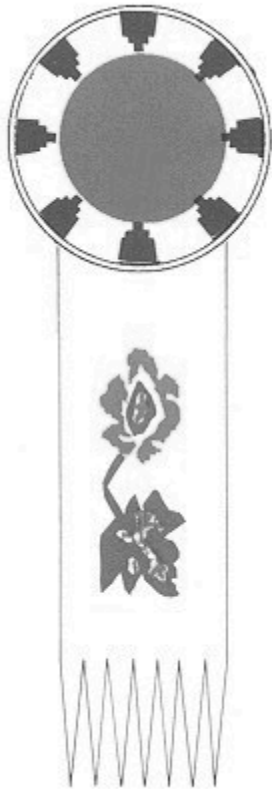


Native Women's Association of Canada



BILL C-31
AMENDMENT

Individuals Reference Guide

An NWAC Literature Review

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Introduction

On June 12, 1985, Bill C-31, An Act to Amend the Indian Act was passed into law, and since then, there have been a significant amount of publications, articles, reports and studies written on this particular topic throughout Canada. Both Aboriginal, non-Aboriginal authors, scholars, teachers, journalist and government employees have put together a number of articles, books, government documents and reports that discuss the Bill C-31 Amendment and the impact it has had on Aboriginal Women and First Nations Communities throughout Canada.

The main purpose of this document is to provide individuals a reference guide that is relevant to the study of the Bill C-31 Amendment. It contains references to varies types of written material. Qualitative and quantitative data both prove to be helpful when studying a topic such as this.

This paper consist of three parts. Part one, which gives a short preview of the material found and reviewed. It will also provide a short list of written thesis on Bill C-31. Part two will provide a number of court cases that went to Federal and Supreme court. Part Three consist of a bibliography on Bill C-31 references and other relevant resources.

Where possible, web-site location were included. The articles and/or cases can be located by entering the site in the location bar, or if you are viewing this paper by disk and have access to Internet, you can just click on the linkage.

As a final note, a special thanks goes to the Native Women's Association of Canada for allowing me the opportunity to gather this information for them and also the opportunity to work along side of them through the summer months as while working as a student. I wish you all the best in all work being done to help Aboriginal Women all across Canada, and the future generation.

Roseanne Sark

Literature Review

1. Aboriginal Law: Cases, Materials, and Commentary by Thomas Isaac

This publication is designed to provide accurate and authoritative general information on the subject matter. It is one of four Aboriginal Issues series. The previous titles are, *Aboriginal Self-government in Canada: Current Trends and Issues*; *The Cypress Hill: The Land and its People and Indigenous peoples of the World: An Introduction to their Past, Present, and Future*. Purich publishing specializes in Aboriginal, agricultural, legal, and western Canadian issues. *Aboriginal Law: Cases, Materials, and Commentary* is comprised of nine Chapters that discuss Aboriginal Title; Treaty Rights; Federal / Provincial / Territorial Legislative Authority; Hunting, Fishing and Trapping Rights; The Métis and Inuit; Taxation; Aboriginal Rights and The Constitution Act, 1982; Self Government; and most relevant in Chapter Nine, Aboriginal Women. Chapter Nine has 7 sections that discuss Aboriginal women's issues such as Relevant Legislative and Constitutional Provisions (*Indian Act, s 12(1) and 12(2), selected provisions of Bill C-31 Amendments, Canadian Charter of Rights and Freedoms, ss. 15(1), 25(a)(b), 28, Constitution Act, 1982, ss. 35(1), 35(4)*); *R. v. Drybones*; *Attorney-General of Canada v. Lavell*; *Isaac et. al. v. Lovelace*; *Coutois v. Canada (DIAND)*; *Corbiere v. Canada*; and *Native Women's Association of Canada v. Canada*. This book provides Table of Cases, Table of Authorities that can be drawn from for future references (Isaac).

2. Aboriginal Constitutional Issues

This is a publication of the John Howard Society of Alberta - 1992 Legislative Initiatives. (Excerpt) ...the Act to Amend the Indian Act (Bill C-31), gave band councils the authority to determine band membership, to pass by-laws on alcohol consumption on reserve land, and to pass bylaws regulating residence on reserve land (Cassidy & Bish, 1989; Moss, 1990). <http://129.128.19.162/docs/constjhs.html#issues>

3. Aboriginal People In Canada: Contemporary Conflicts by James S. Frideres

This publication is the fifth edition (1998) of *Aboriginal Peoples In Canada: Contemporary Conflicts*. The first section of this book provides the historical context essential to the understanding of issues faced by Aboriginal people. It also reviews the legal and political negotiations that have been concluded between Aboriginals and government. It gives an up-to date discussion of the land claims now being presented. Part two covers socio-demographic profile of Aboriginals in Canada. It discusses population growth, including births, deaths and migration. It also provides age; residential patterns; language Use and retention; religion; marital status; Socio-economic status; education; living conditions and quality of life; social assistance; health; and Aboriginals and the law. Part three, chapter nine discusses The Native Women's Association of Canada, where it covers the Impact of the Women's

Movement; The Lavell and Bedard Cases; The Native Women's Association of Canada and the National Committee on Indian Rights for Indian Women; Negotiating Indian Women's Rights During the 1970's; Métis and Inuit Women's Rights; the Constitutional Prelude and the Struggle for Indian Women's Rights in the Early 1980's (Lovelace Case and the "option clause"); The Constitution Repatriation Process; What does the Native Association of Canada want; and the Bill C-31. The remainder of the book discusses Self-determination and Self Government, Aboriginal of the North and Settler Society: the Political Economy of Aboriginals (theory) (Friedres).

4. Background Documentation on Bill C-31 (1985) Implementation: Submission of Indian Organization to the Standing Committee on Aboriginal Affairs

Each of the following Aboriginal organizations had presented their own submissions as follows:

Assembly of First Nations

- Presentation to Parliament on Bill C-31, June 26th, 1987
- Position paper to Department of Indian Affairs Department, July 29th, 1988

Native Council of Canada

- Financing the implementation of Bill C-31: Concerns and positions of The Native Council of Canada, August 9th, 1988
- Proposal for Policy Development and consultation with respect to Outstanding Issues relative to Bill C-31

Native Women's Association of Canada

- Report of the Native Women's Association of Canada on Preliminary Impacts and Concerns Flowing From the Implementation of Bill C-31 (The Amended Indian Act): Submitted to the Department of Indian and Northern Affairs Internal Task Force C-31, August 10th, 1988

Ontario Métis and Aboriginal Association

- An Evaluation of the Impacts of Bill C-31, September 1987

Quebec Native Women's Association

- A report consisting of Seven Sections discussing their implementation program.

5. Basic Departmental Data - 1999

Section one of the *First Nations and Northern Statistics Section Corporate Information Management Directorate Information Management Branch* provides Bill C-31 populations in the following perspectives:

5. *Annual Percentage Change in Registered Indian population, Canada, 1974 - 1998*
6. *Registered Indian Population Distribution by On/Off Reserve Residence, Canada, 1892, 1987, 1992, 1998, 2003 and 2008, (population projections).*
7. *Bill C-31 Population*
8. *Population by Region*

6. Bill C-31: Its Impacts, Implications and Recommendations for Change in British Columbia: Final Report

Written by Audrey Huntley and Fay Blaney with the assistance of: Rain Daniels, Elizabeth Hall and Jennifer Dysart. A project of the Aboriginal Women's Action Network (AWAN). December 1999. c/o Vancouver Status of Women.

This report examines the effects of Bill C-31 on the lives of Native women in British Columbia. It involved many stages, each including a high degree of consultation with Native women affected by the legislation and/or working to change it.

7. "Bill C-31 Equality or Disparity? The Effects of the New Indian Act on Native Women" Canadian Advisory Council on the Status of Women by Joan Holmes

A background paper titled "Bill C-31 Equality or Disparity? The Effects of the New Indian Act on Native Women" was written in 1987 by Joan Holmes. The Canadian Advisory Council on the Status of Women commissioned the background paper on the impact of Bill C-31 to help women's groups, both native and non-native, to understand how the changes to the Indian Act will effect Indian women. The paper focused on the impact on women, because the majority of Indians who lost their status were women. The information for this paper was gathered from position papers presented by native organization. Interviews were done with women who were reluctant to have themselves or their communities identified. Several government officials, who also provided information on program and policies, requested that they too not be identified due to political sensitivity.

This paper concluded that Bill C-31 had made profound changes to the Indian Act that will affect the rights of Indian people to be recognized as Indians and to belong to bands. Although blatant discrimination against Indian women had been removed from the Act, the effects of that discrimination persisted, an new areas of inequality arose. It mentioned two types of status, one of which is difficult for a parent to transmit to her/his children, also that it will affect all Indians, male and female, by limiting the number of Indians eligible for status. Further, it mentions that some women have had difficulties getting services and benefits their bands or exercising their rights as reinstated band members, and at the time, they feared that their rights and the rights of their children are ignored by bands and that they have no protection. Many women felt that the charter of rights and freedoms, or a similar Indian rights charter, need to be applied to all band membership codes, review processes, and protest provisions to assure that on one is unfairly treated. Treatment of children of single mothers is a strong concern for many Indian women who believe that where there is no father present, children should receive their status and band membership through their mother only. It also concluded, organizations and individuals had identified a need for information and assistance programs to help eligible people to follow up their applications access benefits, and to assist bands to understand the amendments and to develop membership codes. Only after most of the applications for registration have been processed and will an assessments of the impacts be possible.

8. Bill C-31 Unity of our Grandchildren Conference Proceedings

After Bill C-31: Unity for our Grandchildren Conference was held March 23-25th, 1998 in Ottawa, Ontario, hosted by Native Women's Association of Canada, a document was put together by the Association. This document explains the processes of what took place through its three day duration. It provides the litigation background of Gail Stacy-Moore and Sharon McIvor litigation (Native Women's Association of Canada al. v. Canada (1992), 53 F.t.r.1994).

Day one of the conference began with guest speakers. Tony Belcourt from Métis National Council; Harry Daniels for the Congress of Aboriginal Peoples; Aalice Jeffery, hereditary Chief of the Gitksan People; Joan Holmes. Participants stories and Legal panel presentations also took place on the first day.

Day two consisted of three workshops; Impediment to Inequality; Residual Discrimination Relating to Bill C-31 and National International Rights Implications. Day three concluded with summary reports followed by a discussion of strategy, where there was an expression of momentum in terms of following up on the conference. It was noted that Bill C-31 is an issue for all and must be addressed, resolutions were made, the following was added in this document:

1. That the NWAC file a class action suit against the federal government and First Nations with restrictive membership codes.

2. A challenge should also be launched regarding the effects of Section 6(2) on the international level on the basis of human rights violation.
3. That the NWAC begin discussions with the Assembly of First Nations for Support.
4. The NWAC must take the issue back to the United Nations as ongoing discrimination is still inherent in the revised legislation.
5. That the NWAC hold another conference in the fall to discuss the progress mad on thus issue.
6. That a National Day of Action be held across Canada to highlight the issue.

9. Congress of Aboriginal People's

Harry Daniels, former President, Congress of Aboriginal Peoples writes a report for CAP's Website. It provides an clear overview of the Bill C-31, it also discusses Equality and Continuity. There are also tables that present population distribution of Aboriginals by group and class; the number of bands that have assumed control of membership and the annual C-31 additions to the Indian Registry. Daniels writes: The time has come to consider alternative ways of dealing with the issue of status, what it means and who should obtain it. While this is not the place to devise alternative solutions t Bill C-31 rules, there are few principles that any new solution should, in our opinion, respects: He lists five statements, These can be found on the site: www.abo-peoples.org/programs/dblsc-3.html. In addition to this report Daniels provides his speaking notes that were presented at a conference, 'Unity for Our Grandchildren Conference' hosted by Native Women's Association of Canada on March 23rd, 1998.

10. Discussion Paper on Corbiere v. Canada

http://www.anishinabek.ca/uoi/roj_0310.htm

Anishinabek Nation March 10, 2000. This discussion paper focuses on the effect of the Corbiere decision on Indian Act band elections for Chief and Council. There is some discussion on the application of the Corbiere decision on First Nations that select their leadership through band custom. The purpose of this paper is to provide you with sufficient background information to allow you to discuss the possible options on implementing the principles outlined in the Corbiere decision.

(Excerpt from the paper)... The Supreme Court of Canada briefly reviewed the history of the establishment of the Batchewana Band's Reserves and the impact of Bill C-31 on the band in the factual background recorded in the Court decision.

11. Enough is Enough: As Women Speak Out

Enough is Enough: Aboriginal Women Speak Out is a book written by Janet Silman. It consists of Stories are told by a group of women from Tobique Reserve in New Brunswick on how they struggle with fighting against the discrimination they faced because they married non-Natives. This two part book reveals how the Tobique women actually began to form as an "entity" in the mid 70's, not initially to change the Indian Act, but to improve local living conditions for women and children. In Chapter one, individual women recall what growing up on the reserve was like for them. Chapter two traces the growing awareness women were gaining in the early to mid-1970's of the injustices they bore as women and the subsequent movement for consciousness to action. In Chapter three the women recall those emotionally-charged times where they rapidly learned to value publicizing their story. Tobique women were unaware of the far-reaching implications of marrying out until they later sought to move back to the reserve. Chapter four covers the walk, the chain of events leading up to it and the continuing protests continuing into 1980. In 1981 the U.N. Human Rights Committee ruled in Sandra Lovelace's favor. In Chapter five, the women most involved in lobbying recall the high and low points of their determined campaign to change the Indian Act. It is a story of truly strong women who have survived hard times and overcome tremendous odds to regain their Indian birthrights. Very good book.

12. Entitlement to Indian Status and Membership Codes

This Book written by Larry Gilbert is a two part manual that discusses, Law of Entitlement (Indian Status) Under the Indian Act and Membership Codes. Part one discusses the Department of Indian Affairs and Northern Development; Concepts in former versions of the Indian Act and the related rights under the new Act; The 1985 Indian Act; Customary Law; the Application Process; Protests and Appeals (Protest, the Investigation, The Duty of Fairness and Natural Justice, Appeals and the Powers to Apply Section 52 of the Constitution). Part two discusses Section 10 of the Indian Act; Steps a First Nation must complete in order to assume control of its membership; excerpts from existing First Nation Membership Codes (preamble, purpose/objects, definitions, eligibility for membership, First Nations who assumed membership, application procedure, ceasing to be a member, appeals procedures, administrative matters, amendments, case law concerning membership, and Membership codes, the Indian Act and the Canadian Charter of Rights and Freedoms.

13. "Equality for all in the 21st Century": 2nd National Conference on Bill C-31

This is a report of the 2nd National Conference on Bill C-31, it was said to be a successful conference, achieving its objectives with high participation. The workshops led by the facilitators resulted in fifty-two recommendations, which was said to form a basis of the strategy, along with the five recommendations from the first conference. The plenary sessions of the conference were video taped, and mention of a documentary will be produced for community distribution. It makes mention to the

enthusiastic moments of the conference, which were the key speakers. It also makes mention that AFN and MNC were notably absent. A Summary of Specific Recommendations, for the purpose of presentation were organized into six categories, which were: Legal; Immediate and Ongoing Action; Communication and Networking; Research and Consultation; Political and Advocacy; International Approaches and Alliances. In summary of these recommendation, it was clear that the expectations of both of the Assembly participants with to see the NWAC take a lead role in implementation of the strategy for a variety of reasons. I was clear that in order to further carry out the direction of the people, there must be a continuance of financial resources with at strong commitment for the federal government to do so. There must be a coordinating body, supported by technical resources to enable the extensive work that must be done to fulfill the mandate given through these gatherings. It is clear that there is very little support from the aboriginal community especially after it is understood what the total impact of the bill is and what it is designed to do. A process of consultation research and communications and networking must take place and be funded by the appropriate government bodies. The process of healing was also mentioned in this report, where this legislation has made a dramatic and long term effect upon the lives of every individual within our Nations, in order to gain dignity and respect that belongs to everyone.

14. First Nation Information Project

This site provides various informative links on First Nation Issues. This particular paper on Bill C-31 provides an overview on the amendment. It mentions the Registration (status), Band Membership; New Bylaw Powers such as the Section 81 of the Indian Act; enfranchisement Abolished; Intoxicants; and Funding. It also makes mention of a two year review submitted to the Parliamentary Committee in June 1987. In general this site on Bill C-31 serves as an information sheet. http://www.johnco.com/bill_c31.html.

15. First Nations Chiefs of Police Association

<http://www.soonet.ca/fncpa/hrdc/mod2-3/module2.htm>

Policing Sector Study Module 2 & 3 Summary Report Sixdion Inc. (Six Nation Company)
August 22, 2000

The Module 2&3 Summary Report was written by Sixdion based on research undertaken by previous consultants in 1999/2000 for the First Nations Chiefs of Police Association (FNCPA). In some communities where there has been an increase in population as a result of Bill C-31, certain "types" of crime have emerged. Some Police Services attribute this to the fact those individuals who have lived in the city all of their life are now moving to the First Nations communities and bring with them a more "experienced" urban perspective on crime. In some cases this has resulted in an increase in sophisticated criminal activities (Report).

16. Frosty Amerindian Indian Act

<http://www.mail-archive.com/frostysamerindian%40yahoogroups.com/msg01056.html>

Notes on the Indian Act Date: Wed, 09 May 2001

It states in these notes that with section 15 -- the equal rights provision of the Charter -- coming into effect in April, 1985, Bill C-31 was enacted to remove the discriminatory provisions: R.S.C. 1985, c. 32 (1st Supp.). In fact, Bill C-31 went much further, reinstating those who had previously lost status and their children. This move greatly increased the status Indian population, creating increased demands upon community and government resources which have yet to be resolved. In the current act, there is no voluntary or involuntary enfranchisement and marriage is a neutral act: no one gains or loses status. In 1985, there were approximately 300,000 status Indians. In 1996, the number is more like 600,000.

17. Globe Conferences: Native Canadians: What Next?

http://forum.theglobeandmail.com/nc_January98_March98.html #4 of 76 by:
Clayton Sun 11 Jan '98 (08:51 PM)

Cultural Genocide: Canada's Final Solution? These provisions were included in the first Indian Act of 1876 and were not rescinded until 1985. Since then nearly 100,000 Indian women and their children have been reinstated under Bill C-31 as Indians. A later amendment, in 1920 gave the government the power to strip Indians of their legal status as Indians by forcibly enfranchising those Indians that it felt were ready for such a change. If a man were enfranchised under this amendment, his whole family was enfranchised with him.

18. "Hear Their Stories" 40 Aboriginal Women Speak

This is a final report written in 19971 by Claudette Dumont-Smith, for The Native Women's Association of Canada. It is a three part report. Part one is a literature review. Part two provides Stories from 40 Aboriginal women. The issue was Elder Abuse of Aboriginal female seniors in Canada. The third part discussed an Action Plan. The reason this article was include with this paper, is because it holds some stories from women who experienced the Bill C-31 effects. An interesting report.

19. Indian Status and Band Membership Issues

This document was prepared by Jill Wherrett, Political and Social Affairs Division in 1996, for general distribution for Canadian Parliamentarians for a background and analysis of issues that may rise in the course of their parliamentary duties. They are made available on the website as a service to the public. The document examines some of the current issues surrounding Indian Band Membership. It surveys Indian Act provisions regarding status and Band Membership and the changes introduced through

the Bill C-31, it also discusses some of the consequences of the Bill and outlines recent court cases (Courtoire, Corbiere, Sawridge Band and Goodswimmer) that focus on band implications of the resulting judgments and comments on membership issues on the context of self government for Indian communities.

20. Lakeland Aboriginal Issues Task Force

Lakeland Aboriginal Issues Task Force formed in 1997. The key objectives of this project was to available to all interested aboriginal people in the constituency, including grass roots citizens as well as chiefs chairmen, councils, and elders, in order to hear their concerns and problems; to seek the thoughts, ideas and opinions of all these people as to how, on a practical, day to day level, changes could be made to deal with these concerns; to take a concise summary of these suggestions to the Minister of Indian Affairs. The purpose of the project was to carry their practical suggestions directly to the Minister, in hopes of finding lasting solutions. They resolved to make grass roots voices heard on Parliament Hill. They produced a report that contained recommendations and were brought to four main categories which were: Financial accountability; Democratic Accountability; Education; and Membership and the Impact of Bill C-31. Recommendation 6 is subtitled, 'The Government Must Require Bands to Extended Full and Equal Rights to those Whose Membership has Been Reinstated under Bill C-31'. This can be viewed by going to: <http://www.leonbenoit.com/lakeAborTaskForceReport/recs.html>.

21. Native American Indian Resources

1986 Canadian Ethnic Population distribution (Excerpt from this site)... I wonder if these Native leaders are now planning legal action against the Creator, for similarly failing to consult them when new human beings come into the world, babies whose parentage makes them -- without any consultations with these sovereign Native leaders! -- automatically Band members. Why, some of those undesirable new First Nation citizens are sure to grow up to be troublemakers, who won't follow those fat cat Native leaders for their little handouts like good little Indians are supposed to... <http://www.kstrom.net/isk/maps/canpop.html>

22. Native Women: "A Voice of Many Nations" Recognizing Our Own By Nadine Hayes

This was a short publication written by a summer student for the Native Women's Association of Canada in 1985. It provides a history of the Native Women's Association of Canada, and the Past Executive and Board members. It is one of NWAC's publications.

**23. Native Women Rail Against Bill C-31
by Duncan Thorne**

Edmonton Journal, Staff Writer (May 17th, 1999) quotes, at the time, President Marilyn Buffalo: "The government's action plan is to legislate away our rights by attacking (native) women and children directly". It also makes reference to the conference held in Edmonton, Alberta on May 14th, 15th and 16th, 1999.

24. Report to Parliament on the Impacts of the 1985 Amendments to the Indian Act (Bill-C-31).

ARC (Applied Research Consultants) prepared a Report to Parliament on the Impacts of the 1985 Amendments to the Indian Act (Bill-C-31). <http://www.cfgroup.ca/arc/firstnations/> and <http://www.cfgroup.ca/arc/firstnations/sr-c-31.html> The report begins with impacts on registrants as measured by changes in their circumstances. It then examines effects on bands and communities, as measured by changes in band membership, as well as consequences for individuals living on reserve. Effects on some non-reserve native communities were examined separately. Finally, the impacts on government programs as measured by the evolution of program expenditure are presented. ARC was also involved in a study that projects New Registrations Under Bill C-31 for the Assembly of First Nations. <http://www.cfgroup.ca/arc/firstnations/pnr-c-31.html>

25. Report of the Royal Commission on Aboriginal Peoples

The final report of the Royal Commission on Aboriginal Peoples provides a complete statement of the Commission's opinions on, and proposed solutions to, the many complex issues raised by the 16-point mandate set out by the Government of Canada in August 1991. Each of its five volumes presents the Commission's thoughts and recommendations on a range of interconnected issues. Chapters are devoted to major topics such as treaties, economic development, health, housing, Métis perspectives, and the North. Volume 5 draws all the recommendations together in an integrated agenda for change. The five volumes are entitled; Looking Forward, Looking Back Restructuring the Relationship; Gathering Strength; Perspectives and Realities; Renewal: A Twenty-Year Commitment... Volume 4, Perspectives and Realities, Chapter two looks at the Women's perspective. It presents a number of perspectives such as Historical Position and Role of Aboriginal Women; Reversing a Pattern of Exclusions; Aboriginal Women and Policy (Policy Development and its impacts on First Nation Women, Bill C-31, and the Indian Act and Bill C-31); Health and Social Services; the Need for Places of Refuge; The Rise of Aboriginal Women's Organizations; The Need for Fairness and Accountability; and The Family.

26. Resume Outlining the Historical Development of the Administration of Indian Affairs

http://collections.ic.gc.ca/treaties/text/rec_e_tx.htm

This site refers to the 1985 - June 28 Bill C-31, An Act to Amend the Indian Act, was proclaimed in the House. Changes were designed to remove sex discrimination from the Indian Act, abolish the concept of enfranchisement, and grant bands control over their own membership. The legislation expressed a change in direction for DIAND and emphasized Indian self-government, economic development, quality of community life, and protection of the special federal government / Indian relationship. A major restructuring of DIAND was begun to accommodate this change in direction. The amendments were retroactive to April 17, 1985.

27. 1989 Study on Bill C-31 Impacts

In 1989 a study was begun to determine the impacts and to build a reliable base of information for use by both the government and native people. It was developed and conducted in a unique consultation with national Aboriginal institutions, including the Assembly of First Nations, the Native Women's Association of Canada, and the Native Council of Canada. Four research reports were the result of this study. Through the study there were key areas of Program Impact. Housing Health Post Secondary Education, Social Services Requirements, Land Management and Employment Opportunities. Major areas of concern included were: Discrimination Under Bill C-31 Provisions; Control over and Membership Lists; Fear for the Future, and Funding.

The study reports are titled as:

- Impacts of the 1985 Amendments to the Indian Act (Bill C-31)
- Survey of Adult Bill C-31 Registrants (Module 2)
- Impact on the Indian Band, Tribal Council and Off-reserve Communities (Module 3)
- Report of the National Aboriginal inquiry on the Impact of Bill C-31
- Impact of the 1985 Amendments to the Indian Act (Bill C-31) Summary Report Info about Government Program and Statistics (Module 4)

28. Turtle Island Native Network News By James Parker

Turtle Island Native News had cited an article that appeared in the Saskatchewan Star Phoenix, October 22, 1999, written by James Parker. It mentions the decision in favour of Mary Vicky Scrimbitt. Judge Andrew Mackay said the Sakinmay Indian Band Council violated the Indian Act, its own band membership code and the Charter of Rights and Freedoms when it struck Scrimbitt's name from its voting list. They were ordered to restore Scrimbitt's voting rights for future band elections.

29. The Canadian Journal of Native Studies

The Indian Act: A Northern Manitoba Perspective Robert Robson, Department of History, Brandon University writes an article published in the Canadian Journal of Native Studies on Bill C-31. He notes that Bill C-31 has neither met its intended objectives nor adequately dealt with the needs of the Aboriginal population.

30. The Indian Act Exemption - Options for Reforming the Canadian Human Rights Act - Summary prepared by Larry N. Chartrand

The Canadian Human Rights Act Review Panel is conducting a full review of the Canadian Human Rights Act (CHRA). The Minister of Justice has requested a comprehensive report with recommendations for changes to the CHRA by April, 2000. One specific portion of this review involves s.67 of the CHRA which exempts the Indian Act or any provision made under or pursuant to it from the application of the CHRA. This paper is designed to promote discussion and dialogue on whether s.67 is meeting the needs of Aboriginal peoples and Canadians. In particular should the exemption provision be repealed, modified, strengthened or remain unchanged? Various options for reform are presented for discussion and feedback...A number of claims have been made against Band Councils for discrimination. These claims often involve restrictions on services or membership to individuals reinstated by Bill C-31 or their children. In some cases, non-Indian spouses or non-Indian adopted persons living on reserve have been discriminated by Band Councils. In other cases, Band members living off-reserve have been denied services. If a Band Council is able to show that their discriminatory actions or decisions are made pursuant to the Indian Act, then the CHRA will not apply to the case and the complainants will not be able to obtain a remedy. If the Band Council is unable to prove that their decision or action was made pursuant to the Indian Act, then the CHRA will apply (<http://www.chrareview.org/pubs/indact1e.html>.)

31. The Politics of Legislated Identity by Pam Paul

The Politics of Legislated Identity was prepared by Pam Paul, for the Atlantic Policy Congress Of First Nations Chiefs. The report was intended to be a discussion paper for the Atlantic Policy Congress of First Nations, which consists of two parts. Part one, consists of defining the Issue of the Bill C-31 amendment, which gave background information on the amendment; information of the rules for establishing Indian Status; a literature review of three major reports that were completed; it made reference to two court case; Population of 6(2) individuals in the Atlantic Provinces along with case samples that helps to understand the types of situations people are in. Part two, titled "First Nations Government and Constitution: Building the Process" Gives a background of the Royal Commission on Aboriginal Peoples' findings, where it recognizes that First Nations must create their government institutions as a Nation and begin a Nation building process. The other items explained were, what Constituted Cultural Identity, What is Membership, and the First Nations Constitution. Included with the two part description of the situation in the Atlantic Region, were four recommendations. It included, where an examination of the Atlantic communities numbers of 6(2) registrants

must be undertaken to determine if they are better off/worse off than the national ratios; to develop proper constitutions which define who their citizens are; examining Micmac, Maliseet traditional methods of identity; and defining areas of equalization payments. Included with this report were appendices of registered population in Atlantic Provinces; projected population graphs and inheritance rules diagrams and graphs.

32. Thesis Collection

A Sociological Analysis of Bill C-31 Legislation

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The Trojan Horse: an analysis of the Social, Economic and Political Reaction of First Nation People as a result of Bill C-31

Paul, Pamela (Sept 1990) Bill C-31: The Trojan Horse: an analysis of the Social, Economic and Political Reaction of First Nation People as a result of Bill C-31. A Thesis Submitted in partial Fulfillment of the Requirements for the Degree of Masters of Arts in the Department of Anthropology. The university of New Brunswick Pg.115.

Who and what is a Canadian Indian? The Impact of Bill C-31 upon demographic and epidemiologic measures of the registered Indian population of Manitoba

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"Real" Indians and others: Mixed Race Urban Native People

Lawrence, Bonita (1999) "Real" Indians and others: Mixed Race Urban Native People. The Indian Act and the Rebuilding of Indigenous Nations. A thesis submitted in conformity with the requirements for the degree of Doctor of philosophy, Department of Sociology and Equity Studies, Ontario Institute for Studies in Education of the University of Toronto.

33. Virtual Law Office: Bill Henderson

<http://www.bloorstreet.com/200block/brintro.htm>

This site is with an Ontario lawyer providing a range of services to clients from several provinces, including general litigation and advice on issues of Aboriginal, treaty and other rights and concerns of First Nations.

Henderson writes, It was the Constitution Act, 1982 that finally forced change. Section 15, the equality provision of the Charter, came into effect in April of 1985 and it was recognized that the differential treatment of Indian men and women would not survive another challenge. Bill C-31, enacted to come into effect before the Charter, not only ended any status consequences of marriage (no gain, no loss) but also restored status to those who had previously lost it and their children. Canada greatly underestimated the number of individuals who would become entitled to Indian status and Band membership. The result was a major change in the demographics of some Indian communities, in some cases more than doubling the membership rolls. The Twinn case challenged Bill C-31 on the basis of its incursion on tribal rights of self-government, but the Federal Court Trial Division rejected that challenge in 1995. The decision is under appeal (Henderson).

34. Where are the Women?

Mavis A Erickson, BA., LL.B., LL.M. January 12, 2001

This is a Report of the Special Representative on the Protection of First Nations Women's Rights. Written for the Honourable Minister Nault in Satisfaction of the Special Representative Requirement.

This report consists of a Historical Background; a special representative process which involved focus groups at each region. The report provides a consolidated summary of the focus group sessions. It notes three critical areas of concern: The administration of the Indian Act, potential gaps in the Indian Act; and areas outside the Indian Act that may challenge the new relationship.

35. Visions of the Heart

by David Long and Olive Patricia Dickason

Second Edition of Visions of the Heart provides information about Canadian Aboriginal Issues. Chapter four discusses Contemporary Aboriginal Women in Canada Aboriginal Women in Canada and the Law, from the Native Law Center of Canada. This chapter provides a brief description of the subject, as well as a select bibliography and links. Attorney-General of Canada v. Lavell and Isaac v. Bedard - text of the proceedings. "Canada's Experience with United Nations Human Rights Treaties" by Philippe LeBlanc. It includes a description of the Sandra Lovelace case (in section V); an information sheet on Bill C-31 from the federal government. "Aboriginal Women & Bill C-31," a brief article from Action Now! Newsletter of the National Action Committee on the Status of Women (<http://lwww.history-canada.com/links/link3.htm#CHAPTER%20SEVEN>)

Court Cases

1. Attorney General of Canada v. Lavell

<http://library.usask.ca/native/cnlc/vol07/236.html>

Attorney General of Canada v. Lavell; Isaac v. Bedard

2. Barry v. Garden River Band of Ojibways

<http://www.usask.ca/nativelaw/awomen.html>

1997 Ontario Court of Appeal. Reported at: [1997] Ontario Judgements No.2109 and [1997] 4 C.N.L.R. at page 28. "The respondent Indian Band received money as part of a land claim settlement in 1987. The Band declared that \$1 million of the amount received would be distributed to Band members on a per capita basis. The adult appellants were women who had lost their Indian status as a result of marrying non-status Indians and who had been reinstated to Indian status and Band membership as a result of amendments, introduced in Bill C-31 to the Indian Act. Bill C-31 was made effective retroactively to April 17, 1985. The minor appellants were children of the adult appellants who were born before April 17, 1985. While the adult appellants were restored automatically to Band membership, the minor appellants had to apply for membership. The application process required them to first obtain Indian status with the Department of Indian Affairs and Northern Development prior to applying for Band membership. The Department had a backlog of applications, which led to delays. At the date established by the Band for distribution of the settlement money, the minor claimants were not yet members of the Band, although in most cases they had achieved Indian status by applying to the Department. Accordingly, they were considered ineligible for participation in the distribution. The decision was also made to deduct from the shares of the adult appellants money they had received when they became enfranchised. Each of the adult appellants had received less than \$1,000 at the time she lost status. At the same time, the Band decided that no deductions would be made from any members who owed debts to the Band for other reasons, such as water charge uses. The appellants brought an action for an equal per capita distributive share of the settlement moneys. The trial judge dismissed the action, holding that on the date of distribution, the minor appellants could not claim membership in the Band and that there was "nothing sinister or deliberate in the sense of lacking fairness" or anything legally improper in the decision about the date of the distribution. He further found that the Band acted fairly and equitably in deducting the payments previously made to the adult appellants. The appellants appealed. Held, the appeal should be allowed." (Excerpt)

3. Canada (Canadian Human Rights Commission) v. Gorden Band Council

<http://www.fja.gc.ca/fc/1997/ori/1997fc21801.html>

Federal court

Date: 1997/12/30

Docket: T-4-97

Canada (Canadian Human Rights Commission)

4. Corbiere v. Canada

<http://www.lexum.umontreal.ca/csc-scc/en/pub/1999/vol2/>

Corbiere v. Canada addressed the rights of band members who reside off the reserve. A number of members of the Batchewana Band who lived away from the reserve challenged section 77(1) of the Indian Act, which requires band members to be "ordinarily resident" on reserve in order to participate in band elections. The plaintiffs argued that the provision violated section 15(1) of the Canadian Charter of Rights and Freedoms, as it prevented them from having a say in decisions related to the use of band moneys and lands.⁽³⁸⁾ In this situation, the band had seen a substantial increase in its population as a result of Bill C-31. Band membership grew from 543 to 1,426 between 1985 and 1991, primarily due to Bill C-31 registrants. While 69% of band members lived on-reserve in 1985, by 1991 the situation had reversed so that 68% of the band were residing off-reserve. A lack of housing made it unfeasible for those who wished to live on the reserve to do so in the near future. The court ruled that section 77(1), in so far as it prevents band members not ordinarily resident on reserve from participating in decisions affecting the disposition of reserve lands and Indian moneys, is invalid under section 15 of the Charter. The declaration of invalidity was suspended until 1 July 1994. In his decision, Justice Strayer distinguished between the right to participate in decisions regarding the disposition of Indian lands and moneys, and decisions regarding the ordinary governance of the reserve. While he concluded that non-residents could be justifiably limited in the entitlement to vote for band council as regards ordinary governance, the communal rights of non-resident members to vote directly or indirectly on matters related to the disposition of the reserve or Indian moneys should not be limited (excerpt).

5. Courtois v. Canada

<http://www.parl.gc.ca/information/library/PRBpubs/bp410-e.htm#>

A. Courtois v. Canada or see:

<http://www.citizensresearchinst.com/retaliation.html>

Courtois v. Canada illustrates some of the problems that have arisen regarding Bill C-31 registrants and their access to band-provided services. In this case, the Canadian Human Rights Tribunal considered the claims of two women, reinstated as status Indians but not as band members, whose children were refused admission to a band-controlled school by a band moratorium. The moratorium suspended for two years the provision of services to reinstated women in all areas under the administrative responsibility of the band council. The complainants argued that this decision discriminated on the basis of sex and marital status. The tribunal dismissed the claim of one woman because she did not reside on the reserve. February 1990 decision the tribunal upheld the claim of entitlement to services on reserve. It found that, while bands may deliver the service, the Department of Indian Affairs is the supplier of education under the Indian Act and is obligated to provide education to Indians and not just to band members. The Department had offered to provide the child with off reserve schooling, which was refused by the mother. The tribunal supported her position, holding that different schools for reinstated children also amounted to discriminatory treatment (excerpt).

6. Corbiere v. Canada (Minister of Indian and Northern Affairs)

http://www.lexum.umontreal.ca/csc-scc/en/pub/1999/vol2/html/1999scr2_0203.html

File No.: 25708.

May 20, 1998; October 13, 1999

Indexed as: Corbiere v. Canada (Minister of Indian and Northern Affairs)

7. Goodswimmer v. Canada

<http://www.indigenousbar.ca/cases/goodswimmer.htm>

This case considered whether someone who is not an elector of a band is eligible to be candidate for and may be elected as chief of the band. In March 1992, Darlene Desjarlais was elected chief of the Sturgeonake Indian Band, located in Alberta. While Ms. Desjarlais was married to a band member and living on reserve, she was neither a status Indian nor a member of the band and, as a result, was not eligible to be an elector in the band election. Appeals of the election of Ms. Desjarlais were filed, but were denied by the Minister of Indian Affairs and the Federal Court Trial Division. In

1994, the Federal Court Trial Division held that a person who is not an elector of the Sturgeon Lake Indian Band is eligible to be a candidate for and may be elected as chief of the band. The court reviewed the history of legislative provisions governing election of a chief, and found that there is no requirement for the candidate to be an elector of the band. While section 75(1) of the Indian Act specifies that only band members may be elected as councillors, the Indian Act does not specify any eligibility requirements for the office of chief. An appeal of the Trial Division decision was dismissed by the Federal Court of Appeal on 21 March 1995. Application for leave to appeal to the Supreme Court was granted 19 October 1995 (excerpt).

8. Hodgson v. Ermineskin Indian Band No.942

<http://decisions.fct-cf.gc.ca/fct/1997/t-2553-91.html>

Federal Court of Canada

Date: 1999/09/10

Docket: T-2553-91

Theodore Hodgson, Harley Hodgson, Dennis Hodgson, Larry Hodgson, Amy Pugh, Peggy Lunde, Alma Duwar and Carol Lee B

9. L'irondelle v. Canada

http://decisions.fct-cf.ac.ca/fct/1998/t-66-86_3.html

Date: 1998/09/23

Docket: T-66-86

10. Bertha L'hirondelle

Suing on her own behalf and on behalf of all other members of the Sawbridge Band

11. Lubicon Lake Band v. Canada

<http://www1.umn.edu/humanrts/undocs/session45/167-1984.htm>

Submitted by: Chief Bernard Ominayak and the Lubicon Lake Band (represented by counsel) Date of decision on admissibility: 22 July 1987

12. Martel v. Samson Indian Band

[Http://decisions.fct-cf.gc.ca/fct/1998/t-2391-88_1.html](http://decisions.fct-cf.gc.ca/fct/1998/t-2391-88_1.html)

Date: 2000/05/08

Docket: T-2391-88

Louise Martel, Mary Gross, Dora Thomson, Monica Gladeau, Mildred Baril, Cora Arnold, Emily Stoyka, Flora Anderson, Patricia Jones, Hazel Freeman, Joyce P. Cook, Sara Schug, Elizabeth Perrott, Nora Orr, Mary Mierau, Marlene Coutoreille, and Janice Wanda Lightning

13. Native Women's Association of Canada v. Canada

http://www.lexum.umontreal.ca/csc-scc/en/pub/1994/vol3/html/1994scr3_0627.html

March 4, 1994; October 27, 1994

File No.: 23253.

Gail Stacey-Moore and Sharon McIvor

Native Women's Association of Canada

14. Roan v. Canada

http://decisions.fct-cf.gc.ca/fct/1998/t-66-86_3.html

Date: 1998/09/23

Docket: T-66-86

Wayne Roan suing on his own behalf and on behalf of all members of the Erminskin Band.

15. Sandra Lovelace v. Canada

<http://www.ofifc.org/Page/Reports/Corbiere.asp>

Date of decision: 31 July 1980 (tenth session)

State party: Canada

Sandra Lovelace

16. Sawridge Band v. Canada

http://decisions.fct-cf.gc.ca/fct/1999/t-66-86_4.html

Sawridge Band v. Canada considers the rights of reinstated women and the rights of band councils to determine membership, and is the most significant decision to date on these issues. (40) Three Alberta bands, Sawridge, Ermineskin and Sarcee, challenged sections 8 to 14.3 of the Indian Act on the grounds that these infringe upon the rights of Indian bands to determine their own membership, as protected by section 35 of the Constitution Act, 1982. The bands also applied for a declaration stating that the imposition of additional members on the bands constituted an interference with the latter's rights under section 2(d)(freedom of association) of the Charter. In a decision released 7 July 1995, the court upheld the 1985 amendments, finding that there were no existing aboriginal or treaty rights under section 35(1) of the Constitution Act, 1982 to First Nation control of membership. The decision stated that even if such rights had existed, they had been extinguished by section 35(4) of the Constitution Act, 1982, which guarantees aboriginal and treaty rights referred to in section 35(1) equally to aboriginal men and women. In his comments, Federal Court Judge Frank Muldoon also condemned blood quantum as a means to determine who is and is not an Indian. A notice of appeal to the Federal Court of Appeal was filed on 29 September 1995 (excerpt).

17. Starlight v. Canada

http://decisions.fct-cf.gc.ca/fct/1998/t-66-86_3.html

Date: 19980923

Docket: T-66-86

Bruce Starlight suing on his own behalf and on behalf of all other members of the Sarcee Band

18. Scrimbitt v. Canada

<http://www.fja.gc.ca/fc/1998/ori/1998fc23660.html>

Date: 19981202

Docket: T-1804-97

Mary Vicky Scrimbitt

19. Noade v. Blood Tribe Chief and Council

<http://decisions.fct-cf.gc.ca/fct/2000/t-2243-95.html>

Docket: T-2243-95

Court No. T-2243-93 Edward Noel Noade

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