

# Indigenous Women's Political Movement to Eliminate Sex Discrimination in the Indian Act in Canada in the 1970s

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## Inception

This paper was written in Dr. Mary Jane McCallum's class, 'Indigenous Women's History' in the Department of History.

## Abstract

This essay discusses the history of Indigenous women's determination to eliminate sex discrimination in Canada's *Indian Act* and Indigenous women's involvement in political organizations. By examining historical case studies and analyzing section 12(1)(b) of the *Indian Act*, this essay will show how the efforts of Indigenous women—in particular First Nations women in New Brunswick and Alberta—brought national and international awareness to sex and gender discrimination Indigenous women faced in Canada, which ultimately forced political change.



During the 1970s, the concerns of Indigenous women were being ignored by their own communities' political organizations, as well as the Canadian Government. The voices of Indigenous women were by undervalued and the issues that affected Indigenous women and children dismissed; they were excluded entirely from participating in their bands' political organizations. This essay discusses the history of Indigenous women's determination to eliminate sex discrimination in Canada's *Indian Act* and Indigenous women's involvement in political organizations. It reviews several different historical case

studies beginning in 1971, revealing how Indigenous women faced division over and community resistance to removing sections of the *Indian Act* that disenfranchised women band members upon marriage to non-status Indigenous men. It shows how Indigenous women political activists were portrayed in mainstream media and how the women portrayed themselves in their own media, as well as how they reflected on this history. By examining historical case studies and analyzing section 12(1)(b) of the *Indian Act*, this essay will show how the efforts of Indigenous women—in particular First Nations women in New Brunswick and Alberta—brought national and international awareness to sex and gender discrimination Indigenous women faced in Canada, which ultimately forced political change.

Section 12(1)(b) of the *Indian Act* has its roots in the *Gradual Enfranchisement Act*, which was introduced by the Canadian Government in 1869 as an Indian policy deliberately focused on assimilating Indigenous peoples. It subjected Indigenous women to sex discrimination by restricting them from voting in band elections and running for council. Moreover, it introduced male lineage as the only way of determining Indian status. Sex discrimination against women only continued with the introduction of the *Indian Act* in 1876, which used the same patrilineal terms from the *Gradual Enfranchisement Act* to define who an “Indian” was. These Acts impacted Indigenous societies significantly because historically Indigenous women and their roles were highly valued and respected. As a result of the *Indian Act*, Indigenous women were treated unequally and unfairly; ineligible to receive the same privileges given to Indigenous males.<sup>1</sup>

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<sup>1</sup> Sharon Donna McIvor, "Aboriginal Women Unmasked: Using Equality Litigation to Advance Women's Rights," *Canadian Journal of Women and the Law* 16, no. 1 (2004): 108.

In 1951, the Canadian government made amendments to the *Indian Act*, which gave Indigenous women the right to vote in band elections, but further disadvantaged Indigenous women and their children through section 12(1)(b). In *Disinherited Generations: Our Struggle to Reclaim Treaty Rights for First Nations Women and their Descendants*, Nellie Carlson and Kathleen Steinhauer—both born in Saddle Lake Cree Nation, and who lost their status after “marrying out”—stated that, while those who were eligible to be registered as band members had the legal right to live on-reserve, to share in band resources, own or inherit property, vote for band council and chief, or be buried on the reserve, First Nations women who were stripped of their status would no longer have access to these benefits in their communities.<sup>2</sup> This amendment deeply impacted Indigenous women’s lives because it eliminated their access to housing, kinship networks, culture, education, and healthcare on their reserve; this deletion of membership status continued after separation or divorce. There was also a “double mother” clause introduced through the amendment which stated that “a person whose parents married on or after September 4, 1951 and whose mother and paternal grandmother had not been registered Indians before their marriages, would lose status and band membership on his or her twenty-first birthday.”<sup>3</sup> The “double mother” clause, along with the “marrying out” clause did not pertain to status males; in fact, if status males married a non-Indigenous woman, the non-Indigenous woman would gain status, and her status would be passed on to her children and future generations. By “marrying out” Indigenous women were permanently disenfranchised, while non-Indigenous women who married status men became enfranchised. Ultimately, the *Indian Act* allowed the government to gain the most powerful

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<sup>2</sup> Nellie Carlson, Linda Goyette, and Kathleen Steinhauer, *Disinherited Generations: Our Struggle to Reclaim Treaty Rights for First Nations Women and Their Descendants* (Edmonton: University of Alberta Press, 2013), xxxiii.

<sup>3</sup> Carlson, Goyette, and Steinhauer, *Disinherited Generations*, xxxiii.

position because it treated Indigenous peoples as wards of the state and the discriminatory policies created division among the communities between women, men, as well as between non-status and status “Indians.” The amended act continued to be another tool of assimilation because it allowed the government to determine who could be defined as “status” or “registered Indians” and it removed legal status from women who married a non-status Indian, a Métis, or non-Indigenous man.<sup>4</sup> This amendment caused extreme difficulties for Indigenous women and their children. The voices of Indigenous women were silenced and thousands of Indigenous children who were descendants of disinherited First Nations families grew up without knowing their Indigenous identity.<sup>5</sup>

Indigenous women eventually protested the *Indian Act's* discriminatory policies against sex and gender in court. In the early 1970s, Jeanette Corbiere-Lavell, of Wikwemikong Reserve on Manitoulin Island, Ontario protested her loss of status in a court case against the Government of Canada.<sup>6</sup> Lavell had lost her status and band membership when she married a non-Indigenous man. She claimed that this treatment was unequal and discriminatory on the basis of sex because status males did not lose their status or band membership when they “married out.” According to Sharon Donna McIvor, Lavell did not win her trial because the judge “compared married Indian women to Canadian married women and held that Lavell had equality of status with all other Canadian married females”<sup>7</sup> who gained the status of the man they married. Lavell appealed the judge’s decision and won in the Federal Court of

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<sup>4</sup> Ibid., 58.

<sup>5</sup> Ibid., xxxviii.

<sup>6</sup> Joanne Barker, “Gender, Sovereignty, and the Discourse of Rights in Native Women’s Activism,” *Meridians: feminism, race, transnationalism* 7, no. 1 (2006): 136.

<sup>7</sup> McIvor, “Aboriginal Women Unmasked”: 113.

Appeal in 1971.<sup>8</sup> Lavell's case eventually made it to the Supreme Court of Canada (SCC) in 1973, where it became linked with a similar case, *Issac v. Bedard*.<sup>9</sup> Yvonne Bedard, an Iroquois woman from Bratford Reserve in Ontario,<sup>10</sup> also experienced sex discrimination through the *Indian Act* and her case used the same arguments as had Lavell; however both women lost their cases when the SCC upheld the original trial judge's decision from Lavell's first case.

Lavell and Bedard were the first Indigenous women to formally protest through court the inequalities Indigenous women faced through the *Indian Act*. They also faced criticism from the National Indian Brotherhood (NIB) and Indigenous male leaders who believed the *Indian Act* provided Indigenous peoples special rights and privileges and if the women won, those special rights would be removed, along with their sovereignty. Although the women lost their cases, their determination, courage, and bravery gained public attention through media and inspired a movement among Indigenous women and Canadian women.<sup>11</sup>

Women's groups began to mobilize and organize in an effort to bring awareness to the discrimination faced by Indigenous women. Carlson and Steinhauer established their own group in Alberta to protest section 12(1)(b) of the *Indian Act* and its discrimination against women. Their efforts were inspired by Lavell's case, as well as by Florence Bird, who was advocating for the abolition of section

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<sup>8</sup> Mclvor, "Aboriginal Women Unmasked": 112.

<sup>9</sup> Rauna Kuokkanen, "Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights," *Human Rights Quarterly* 34, no. 1 (2012): 234.

<sup>10</sup> Barker, "Gender, Sovereignty, and the Discourse of Rights in Native Women's Activism": 136.

<sup>11</sup> Sarah A. Nickel, "'I Am Not a Women's Libber Although Sometimes I Sound Like One': Indigenous Feminism and Politicized Motherhood." *The American Indian Quarterly* 41, no. 4 (2017): 316.

12(1)(b), while she was the chair of the Royal Commission on the Status of Women in Canada in 1971.<sup>12</sup> Steinhauer and Carlson wanted to focus on eliminating the discrimination in section 12(1)(b) because they believed it would unify and strengthen Indigenous rights, so that all descendants would gain treaty rights. Other organizations such as the Native Women's Association of Canada (NWAC) wanted them to focus on child welfare issues and issues that related to motherhood and the domestic sphere, but Steinhauer and Carlson were determined to deal with section 12(1)(b). Eventually, their local Alberta women's organization grew into the National Committee of Indian Rights for Indian Women (IRIW) and became a registered association.<sup>13</sup>

Steinhauer and Carlson's experiences demonstrated the division among the people, families, and within communities. Family members and males were against the women for speaking out because they viewed it as a threat to their own treaty status, along with non-Indigenous women who had gained status through marriage to a status male. The women were met with opposition for speaking out, but refused to let opponents intimidate their group and they persevered. Steinhauer stated, "The women who were most hostile to us and our cause had married into band membership. They would give us dirty looks and they would cross the street to avoid us...[they] felt threatened. My own mother was against us."<sup>14</sup> Even though the women faced criticisms from their family members and community for speaking out, they continued to work towards their goal of achieving better conditions for Indigenous women.

Although Steinhauer and Carlson had minimal resources and faced funding barriers, they were able to gain the support of Mary Two-Axe Early. Two-Axe Early, an elder and single mother from

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<sup>12</sup> McIvor, "Aboriginal Women Unmasked": 113.

<sup>13</sup> *Ibid.*, 68.

<sup>14</sup> *Ibid.*, 66.

Kahnawake, Quebec had lost status when she married an Irish-American. Her friend also had a similar experience when she lost her status after marrying a Mohawk man from another community. As a result, when Two-Axe Early's friend passed away, her body could not be buried on the reserve because she no longer had status or band membership. These experiences motivated Two-Axe Early to establish her own provincial organization, which eventually joined forces with the national IRIW.<sup>15</sup>

Indigenous women continued to organize and protest publicly against the government's policies, eventually gaining the support of the Canadian feminist movement. In 1975, with the support of IRIW and the feminist organization National Action Committee of the Status of Women, Two-Axe Early attended the first World Conference on Women in Mexico City. As a non-status Mohawk who lived on her reserve, Two-Axe Early used her platform at the conference to explain to representatives of how Indigenous women were discriminated against by the Canadian government's policies.<sup>16</sup> That same year, Two-Axe Early's band used the *Indian Act* in their attempt to evict her, but the eviction was withdrawn.<sup>17</sup> However, the eviction notice demonstrated how her band attempted to keep her from protesting, by using the Act's policies as a threat, to remove her from her own community. The treatment she received from her band was similar to the type of treatment Indigenous women from Tobique experienced. Instead of supporting Two-Axe Early, or bringing awareness to the sex discrimination section 12(1)(b) subjected her to, her band decided to find a way to keep her quiet, by threatening to evict her using similar tactics that the government did when anyone would attempt to speak up about the injustices Indigenous peoples were subjected to through the *Indian Act*. Two-Axe Early's band responded this way because they felt that

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<sup>15</sup> Ibid., 56.

<sup>16</sup> McIvor, "Aboriginal Women Unmasked": 113.

<sup>17</sup> Carlson, Goyette, and Steinhauer, *Disinherited Generations*, 57.

by her bringing public attention to the discrimination of section 12(1)(b) it would threaten the political leaders' authority within their communities. Two-Axe Early became very involved in the women's movement challenging section 12(1)(b); she eventually joined the Native Women's Walk in support of the Tobique women.<sup>18</sup>

In 1977, Indigenous women from Tobique Reserve in New Brunswick protested the treatment Indigenous women experienced from their band and from the Canadian government through section 12(1)(b) of the *Indian Act*. The Tobique women organized a sit-in at their band council offices for three months, in an attempt to solve their issues within their community. However, the protests had been cut short when the band offices were set on fire. Sioui discussed the issues the women from Tobique had experienced and why they were protesting, she stated, "They wanted to draw attention of the public and the new government to poor housing conditions on reserves and to discriminatory sections of the Indian Act that allow band councils and courts to make Indian women third class citizens."<sup>19</sup> The Tobique women had made many attempts to have their concerns recognized by male leaders, but it was not until they organized the Native Women's Walk two years later in 1979, that they gained attention from members of the NIB. As was reported at the time, "[This] came as a surprise, because NIB had made it clear before that they were not supporting the walk. Now it seemed that all the publicity had reached the NIB's leaders and that they were willing to listen to the women's voices."<sup>20</sup> The objective of the walk was to create a "position paper,"<sup>21</sup> and pass it on to the new government upon their arrival in Ottawa. The position paper outlined the

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<sup>18</sup> Indian and Inuit Affairs Program, "Protest Poor Housing and Indian Act: Women and Children Walk for Change," *Indian News*, September 1979, 7.

<sup>19</sup> *Ibid.*, 1.

<sup>20</sup> *Ibid.*, 7.

<sup>21</sup> *Ibid.*, 7.



Indigenous women's issues that stemmed from section 12(1)(b), such as housing, health, and discrimination.

Around the same time of the women's walk, the NIB had also been making attempts to "block patriation of the BNA [*British North American Act*], Canada's Constitution and the origin of the Indian Act."<sup>22</sup> These were part of the issues, that stemmed from Prime Minister Pierre Trudeau's 1969 *White Paper*, which proposed to abolish the *Indian Act* and the "collective rights promised to the First Nations in the treaties,"<sup>23</sup> but Indigenous peoples did not want to lose the act because it recognized their treaty rights, lands, and their special status as "Indians." As a result, Indigenous peoples challenged the oppression of the *Indian Act*. They rejected the government's authority over their lives and wanted to have authority over their own lives through self-government, but the NIB and other male leaders continued to ignore the issues that affected Indigenous women through section 12(1)(b). Sarah Nickel observed how male-dominated Indigenous political movements "consistently resisted women's mandates, either ignoring their political participation or arguing that their political claims to citizenship and gender equality undermined the overall Indigenous rights movement...as traitors to the communal nature of Indigenous communities and...Indigenous sovereignty."<sup>24</sup> Indigenous women were not just looking at the issues they faced as individuals; they also saw how these discriminatory laws were affecting their children and communities. The social trauma was causing breakdown in families that were directly affecting their children. They wanted to demonstrate that women could raise awareness to the issues that affected Indigenous women and children.<sup>25</sup>

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<sup>22</sup> Ibid., 3.

<sup>23</sup> Carlson, Goyette, and Steinhauer, *Disinherited Generations*, 55.

<sup>24</sup> Nickel, "I Am Not a Women's Libber Although Sometimes I Sound Like One": 302.

<sup>25</sup> Ibid., 321.

Indigenous women continued to face the same erasure of band membership and status. In the late 1970s a Maliseet woman from Tobique Reserve, Sandra Lovelace, lost her status and band membership after “marrying out” to a non-Indigenous man.<sup>26</sup> Upon separating from her husband, Lovelace returned to her community where her reserve’s chief and council attempted to have her removed for trespassing and living on her reserve. After learning about the treatment Lovelace faced from her community’s chief and council, other women in her community facing similar circumstances joined her struggle to remain in the community. They understood that Indigenous women’s living conditions were getting worse, especially single mothers who were suffering from poor housing. The situation for women was the result of the “corruption and favouritism on the reserve,”<sup>27</sup> as well as the discriminatory laws of section 12(1)(b). This section of the *Indian Act* removed Indigenous women and children from their home communities, culture, and families; depriving them from the support and benefits they would have received if they lived on the reserve. It also created an atmosphere in which Indigenous women were not seen as equal.

In response to the discrimination Lovelace received in her home community, she took her case to the United Nations Human Rights Committee in 1977. She argued that the loss of her status after marrying a non-Indigenous man “constituted sex discrimination in violation of Articles 2, 3, and 26 of the *International Covenant on Civil and Political Rights* (ICCPR).”<sup>28</sup> The committee found section 12(1)(b) “violated Article 27 (the right to culture, religion, and

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<sup>26</sup> Barker, “Gender, Sovereignty, and the Discourse of Rights in Native Women’s Activism”: 138.

<sup>27</sup> Indian and Inuit Affairs Program, “Protest Poor Housing and Indian Act,” 1.

<sup>28</sup> Mclvor, “Aboriginal Women Unmasked”: 115.

language) under the ICCPR”<sup>29</sup> because it denied Lovelace access to her culture and language on her reserve. Unfortunately Lovelace married prior to when the ICCPR came into effect on August 19, 1976 so the committee declined to rule. However, the outcome made it clear that Indigenous women who “married out” and lost their status after 1976 could win their case before the Human Rights Committee for sex discrimination. This case gave Indigenous women a new legal option to bring forth their cases of sex discrimination under section 12(1)(b), since the SCC clearly resisted acknowledging and recognizing the sex discrimination Indigenous women experienced through the Canadian government’s imposed patriarchal structures. As a result, in 1985 the Government of Canada introduced provisions to the *Canadian Charter of Rights and Freedoms*, and passed Bill C-31. Bill C-31 amended the *Indian Act*, but did not fully eliminate gender discrimination; it only reinstated status to Indigenous women who lost their status from “marrying out” and their children. However, their children could not pass their status on to the second generation. This same law did not pertain to children who gained status from their father because status rights gained through the father could be passed on. As a result, Bill C-31 “transferred the responsibility from the government to the First Nations and further isolated women and divided communities.”<sup>30</sup> It was the new assimilation policy that replaced section 12(1)(b), which continued to allow the government to determine who is and who is not a status “Indian”.<sup>31</sup>

The determination and perseverance of Indigenous women evolved into a movement that eventually achieved political change and empowered women. Lavell and Bedard’s court cases brought

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<sup>29</sup> Ibid., 115.

<sup>30</sup> Brenda L. Gunn, “Self-Determination and Indigenous Women: Increasing Legitimacy through Inclusion.” *Canadian Journal of Women and the Law* 26, no. 2 (2014): 252.

<sup>31</sup> Carlson, Goyette, and Steinhauer, *Disinherited Generations*, 120.

awareness to the marginalization Indigenous women faced. The women's courage and resilience inspired other women such as Carlson and Steinhauer to take action and challenge the discrimination of sex in the *Indian Act*. Their IRIW organization recognized that women needed to be the ones to enforce change and they supported other Indigenous women's efforts at confronting the patriarchal gender norms that elevated men's power and erased women and their children's status and membership. Two-Axe Early and Lovelace persisted in bringing awareness to the challenges they experienced, even though they faced criticism and threats from their own communities; their voices were heard on an international level. The barriers individual women faced were part of the common collective experience of Indigenous women and children. Each of these women were mothers and they continued to find ways to adapt and maintain their culture, language, connection to land, and traditions in the face of colonialism that was disrupting their families and communities; silencing women's voices. Indigenous women's collective resistance and activism demonstrated that working together toward a common goal created change and challenged the division among Indigenous peoples that was created through discriminatory laws.

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