Native Women's Association of Canada

BILL C-31:

UNITY FOR OUR GRANDCHILDREN

~ March 23-25, 1998 ~

1st National Conference on
Bill C-31 held in Ottawa, Ontario

An NWAC Report

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BILL C-31: UNITY FOR OUR GRANDCHILDREN CONFERENCE PROCEEDINGS

Executive Summary

In March 1998 the Native Women's Association of Canada hosted a conference on the impact of Bill C-31 since its inception 13 years ago. The intent of the conference was to bring delegates together families to discuss how their lives have been affected.

The conference drew 170 delegates from across Canada. Speakers and facilitators were chosen from all areas. The overall feelings of the delegates to the conference was that Bill C-31 has created many more divisions than was previously found in First Nation communities and families. Many applauded the Bill because it gave Indian status back to their women and children. But at the same time they condemned the federal government for allowing First Nations to develop strict and rigid band membership codes that blocked many women and their children former returning to their home communities.

Although the implementation and interpretation of Bill C-31 has divided First Nation communities and families, there appears to be one common unifying thread. It was felt that Section 6(2) of the revised Indian Act serve no other purpose than to further advance assimilation into mainstream society and reduce the status Indian population. There was general agreement that Section 6(2) of the Indian Act which barred the second generation from gaining status or restricted their marriage choice must be eliminated.

Many participants expressed the hurt that they have experienced when they attempted to go home to their communities. They are labeled as "Bill C-31" and "Paper Indians" even today. This points to the fact that there is still a great deal of misinformation and lack of communication.

Out of this conference, two main resolutions were passed that will provide a future action plan for the NWAC. Other recommendations can be found on page 25 of this report.

Resolution # 1: United Nations

Whereas we have inherent rights as defined by Canada's Indigenous people, and under treaties and rights under the Canadian Charter of Rights and Freedoms, the Constitution Acts and International law,

Be it resolved that the Native Women's Association of Canada immediately take to the United Nations and other international communities or tribunals, the residual discrimination in Sections 6(2) and 11 of the Indian Act as introduced by Bill C-31, which led to the extinguishment of the rights of our grandchildren and of our communities, and also draw international attention to the need to amend the Indian Act so as to remove the discriminatory effects of Bill C-31.

Passed by Consensus

Resolution # 2: Follow Up Conference

Be it resolved that the NWAC host a follow-up conference on Bill C-31 to be held in September 1998.

Passed by Consensus

1. Native Women of Canada's Litigation Background

In March, 1992, NWAC and two of its executive members, Gail Stacey-Moore and Sharon McIvor, brought proceedings in the Federal Court - Trial Division (reported as *Native Women's Association of Canada et al. v. Canada (1992), 53 F.T.R. 194*) challenging the Government of Canada's decision not to fund NWAC's participation in the constitutional renewal process then underway. NWAC argued that the government deprived Aboriginal women of their equality rights, guaranteed under the Charter, by refusing to provide funding commensurate with that provided to the Aboriginal groups which were invited to the consultations. On August 20, 1992, a unanimous panel of the Federal Court of Appeal rendered judgment in favour of NWAC (reported at [1992] 3 F.C. 192), finding that the voice of Aboriginal women had been unconstitutionally silenced in the consultation processes by virtue of the lack of funding provided to NWAC.

In this case, NWAC was described by Mr. Justice Mahoney, speaking for the Court, as follows:

> *The evidence establishes that it is a grassroots Organization founded and led by aboriginal women...*
>
> *Among its objectives is to be the national voice for native Women, to advance their issues and concerns and to assist. And promote common goals toward native self-determination. The record is replete with evidence of NWAC's activities in pursuit of those objectives including the publication of reports and position papers and appearances before judicial inquiries and Parliamentary committees. NWAC is a bonafide, established and recognized national voices of and for Aboriginal women. (p.199-200).*

The Supreme Court of Canada, by judgment released October 27,1994, (reported at 11994] 3 S.C.R. 627), allowed an appeal from the decision of the Federal Court of Appeal brought by Her Majesty the Queen, and dismissed NWAC's application. The Court did not find that NWAC's exclusion from the consultations had infringed the *charter*, but the Court's majority decision, written by Sopinka J., did not challenge NWAC's standing to bring the case to the Federal Court on behalf of Aboriginal women. Sopinka J, referred to NWAC's at the beginning of his reasons as "a group representing the interests of Aboriginal women" [p.633]. Later in his reasons he states that "I wish to stress that nothing stated in these reasons is intended to detract in any way from any contention by or on behalf of Aboriginal women that they face racial and sexual discrimination which impose serious hurdles to their equality" [p.664].

a) Bill C-31: Indian Act Amendment

An Act to Amend the Indian Act (S.C.-1985, C. 27), commonly referred to as Bill C-31, was passed in April 15, 1985 to coincide with the coming into force of s. 15 of the *Charter of Rights and Freedoms*, to restore band membership to thousands of women

who lost their Indian Status when they married non-Indians, pursuant to former s. 12(1)(b) of the *Indian Act*.

In the 12 years since its passage, Bill C-31 has not resulted in substantive equality for Aboriginal women in Canada. It has erased many of the offensive sections of the Act, but it has not restored reinstated women and their descendants to their former position. It has not given them access to their communities, their culture and their languages. Some bands are willing to have Bill C-31 women and their families move back onto the reserve, but lack the funds to create housing for them. Few bands have the resources to comply with Bill C-31 registrants from their share of Band resources.

The enactment of Bill C-31 redefined who is and who is not an Indian within the meaning of the *Indian Act*. Since 1985, all status Indians are now registered under Section 6 of the *Indian Act*. This section is broken down into two sub-sections 6(1) and 6(2). If an individual can prove he/she has two parents entitled to Indian status he/she would be registered under Section 6(1). If an individual is deemed to have only one Indian parent he/she is registered under Section 6(2). Those individuals registered under Section 6(2) must marry a status Indian to pass the status on.

Bill C-31 also provided Indian bands in Canada with a means to assume control over who had band membership and to establish their own rules\codes for eligibility. Previously Indian status and band membership were synonymous. To be a registered Indian was also to be a band member of the band you were registered to. Bill C-31 separated the two categories. People now registered as a status Indian must apply to the band if the band has developed a band membership code. If the band has not established a membership code, individuals are added automatically by the Registrar. First Nations were given two years to develop these codes by June 1987, if a community wanted to exclude Section 6 (2)'s from band membership.

Following the enactment of Bill C-31 many First Nation communities across Canada welcomed the return of reinstated women and their families while many others treated reinstated individuals with hostility viewing them as a threat to the community resources and cultural identity. Even today thirteen years after the passage of the Bill women and their families are still being treated with hostility in many of their communities.

b) Bill C-31: Unity for our Grandchildren Conference

In March 1998, the Native Women's Association of Canada hosted a conference titled **"Bill C-31: Unity for our Grandchildren"**. The intent of the conference was to bring women, men and their families together to discuss how Bill C-31 has impacted their lives since 1985. We found out that Bill-31 has had a tremendous impact on Aboriginal families in Canada. Although we applauded the elimination of discrimination based on gender to the first generation, we are still concerned about the ongoing discrimination, which is still prevalent in the revised Indian Act. The enactment of Section 6(2) now known as the "second generation cut off clause", has left many aboriginal families and communities divided and at odds with each other. The membership codes were

developed in a rush with no thought to impact on future generations. This has left an administrative and social disaster in many First Nations in Canada.

2. Day 1: Proceedings

Marilyn Buffalo, President, Native Women's Association of Canada (NWAC) opened with welcoming remarks to all delegates and guest speakers. She noted that the federal government of today does not place Bill C-31 as a high priority issue, as it took many meetings with the Department of Indian and Northern Affairs to secure a funding commitment to examine this issue. She felt that this issue was not just a woman's issue but it was a human rights issue. The long term impact will result in genocide -fewer and fewer status Indians will be left in our communities. She stated that our grandparents and ancestors fought hard for our treaty rights and the number one treaty right is the right to citizenship. She encouraged people to fight for this right just as our ancestors did.

a) Guest Speaker Presentations

Tony Belcourt from the Métis National Council (MNC) gave a presentation on his experience with Bill C-31. The MNC feels that Bill C-31 was a noteworthy move on the part of the government. However, Indian Affairs still continues to define who is Indian and who is not. This is an atrocity and has caused many hardships and pain among aboriginal people.

The Métis people have also been affected by the passage of Bill C-31. In fact, Bill C-31 has created new fears. Métis people must now choose between their identity as a Métis and the material benefits of becoming a status Indian. Unlike status Indians the Métis do not automatically get band membership, access to subsidized housing, education needs etc. If they choose Indian status then they are no longer able to be included as a Métis which are a distinct group.

They would like to see a process where Métis people are also recognized. He noted that the Royal Commission on Aboriginal Peoples report states that all Aboriginal people have rights. He feels that the Métis people have a future as a nation of people. Many status Indians are also part of the Métis Nation. He commended the Native Women's Association for bringing the issue forward again. The time has come for discussion of a manner in which resolution can be brought forth.

Harry Daniels from the Congress of Aboriginal People also presented. He stated that he was proud to address the delegates. On the contentious issue of Bill C-31 he stated that "the more things change the more they stay the same". He said that "we had so much hope in 1985, because Bill C-31 promised to make positive changes". Many people had expectations that equality for Indians both on and off-reserve would finally be realized. When Bill C-31 was passed the belief was that a non- status Indian would be a thing of the past, and that all aboriginal people would finally be recognized as status Indians. It was hoped that Indians off reserve would finally be treated as Indians

by their home communities and the government. Yet, after more than ten years, experiencing Bill C-31 it has become clear that it has not lived up to the expectations. In fact, it has retained the same regime that the *Indian Act* always had.

The major reason for Bill C-31's implementation was that the old Indian Act discriminated against women and would not have passed a test of the equality section of the Charter of Rights and Freedoms. He felt that the government of the day could have given women the same powers as men whereby all status Indians had the power to pass on status. This did not happen. Instead, the third generation is no longer entitled to be registered. The rules still have the genocidal effect of eliminating Indians He stated that “this is not just a woman's issue it is an aboriginal peoples issue”.

Reinstatement has run its course and will soon no longer be needed. The current generations will be the first victims to no longer be eligible for Indian status. They will have to have both parents registered as Indian. If communities have a high out-marriage rate many will not be able to pass their status on. The Indian status registrations will decrease. Our numbers will fall. He noted that we must take action today to avoid the consequences of tomorrow. The government has no right to say who is and who is not Indian. There is a need to develop an alternate way based on Indian ancestry and cultural ties. Whoever is defined as Indian should be accepted by the government.

Many communities have excluded Bill C-31 people and their children in their membership codes. He felt that Aboriginal and Treaty Rights are in the nature of human rights. It is still in keeping with the old policies to get rid of Indians. Indians with status on reserve are not treated the same as Indians with status off -reserve. He feels that all Indians have equal rights, equal access to rights and benefits. It is time to act now and consider alternate ways to determine Indian status. The principles used should be based on respect for our ancestry. Indians should not be forced into the trap of proving their race. Everyone's eligibility for Indian status should be based on ancestry and self-identification. All persons who are accepted as members of a band and should be recognized regardless of residence.

Bill C-31 has served to confuse the issue of Indian rights. In the old Indian Act, the Métis were non-status, now Bill C-31 has created Métis and status Métis and they still cannot access their rights. The Congress of Aboriginal Peoples fought against discrimination and elimination in 1985. We must now turn the page and work together. Common sense must prevail and must guide us. We collectively know who we are. We need to get together as a people as did the ancestors who gave us this country .It matters not who the government assumes we are. The Congress of Aboriginal People will make this a major issue for the organization. We can no longer allow the government to take our ancestral right from us.

Alice Jeffrey who is a hereditary Chief of the Gitksan people gave a presentation on the Delgamuuk Court Case. She noted that this case also recognized the traditional matrilineal society that has been there forever. She stated that the Gitksan never had a

band council before 1958. She felt that the introduction of a band council within the Gitksan people broke down the hereditary Chief system and almost destroyed it. In the Delgamuuk case the people went with their oral history with evidence to back their claim. The ruling was that oral history had to be considered while before it was not. This has set a precedence across the country and the Gitksan people hope it will assist First Nation peoples in their struggles.

Joan Holmes gave an overview of Bill C-31. She stated that she was hired to write a paper for the Advisory Council on the Status of Women in 1987. She was asked to give an assessment on how successful the government had been in addressing the removal of gender discrimination in the *Indian Act*. What she found at the time was that a great deal of discrimination still existed in the revised *Indian Act*. She gave a overview of the previous history of Section 12(1)b of the previous *Indian Act*. She stated that the revised Indian Act still defined who was an Indian. She felt that the principles behind the status provisions of the *Indian Act* was that Indian people would die out or assimilate as a distinct group. She provided an overview of the enfranchisement provisions of the *Indian Act* as well as those people that took scrip and gave up their status.

She noted that there are courageous women who spoke out and attempted to make some changes. Jeannette Lavall and Yvonne Bedard. They challenged the system that was in place and won at a lower court level. It was the United Nations presentation by Sandra Lovelace that embarrassed Canada and forced them to look at the Indian Act and make changes. She noted that these women were to be congratulated for their strength. The United Nations presentation was a bold and powerful move. In 1985, Bill C-31 was passed.

She stated that Bill C-31 was a complicated piece of legislation. Many problems arose from its inception including the separation of band membership and status. At the time Indian women and their children were reinstated as well as those who had enfranchised. Her research in 1987 showed that some of the problems that people had who were reinstated or registered for the first time had to do with Section 6(1) and 6(2). Those who were registered under Section 6(2) had less of a chance to pass their status on to succeeding generations. Another concern that was highlighted in 1987, was that women were now required to name the father of their child or Indian and Northern Affairs would assume that the father is a non-Indian and the child would be registered under

b) Section 6(2)

The creation of band membership codes also created a problem. Some of the people who were registered under Section 6(1) were automatically put on a band list. Many others got a conditional membership or no membership. Indian bands were not required to give those registered under Section 6(2) band membership. Some people can have band membership and status, some can have band membership and no status and some can have status with no band membership. Coupled along with the status sections of the Indian Act the membership provisions of the Indian Act has created more

divisions in First Nation communities. She also noted that the *Act* purported to remove gender inequality, however, it still exists. One example is a brother and sister both have status. Both married non-native people. The woman lost status. She was reinstated under Bill C-31. Both their children have the same heritage and same blood. The woman's children will be registered under Section 6(2) while the brother's children are registered under Section 6(1). If you draw a picture of what happens in a few generations more of the sister's grandchildren will have lost status than the brothers. Therefore, the inequality is still there.

She said that she looked at different scenarios about what will happen to First Nation communities if they continue to be managed by the Indian Act. Because of the creation of the Section 6(2) category there is a limited ability to pass on status. Over the years there will be fewer and fewer people who have registered Indian status. This has many implications for communities. As a registered population gets smaller, the non-status population gets bigger and people do not disappear. Therefore, there is a need to re-examine the issue and develop some concrete solutions.

c) Participant Stories

Some participants were invited to give their stories regarding how Bill C-31 has affected them since its inception 13 years ago.

Nathan Mcgillivary gave a presentation on his situation. He said that his daughter had a child who was registered under Section 6(2). This child is his grandchild and he will object to her registration in this category. He feels that a parent cannot tell a child who to marry and have children with and neither should the federal government. He is now lobbying through the court system to change the status of his grand daughter and have it moved to Section 6(1). He has the support of the Dakota-Ojibway Tribal Council and other political organizations. He took his case to the Assembly of First Nations meeting in Quebec City and they passed a resolution to lobby to change and remove Section 6(2) of the *Indian Act*. He stated that “we have to eliminate the section before that section eliminates us”. Section 6(2) is very genocidal and we will face elimination and extinction. More than 25% of Canadian Indians are affected by this Section. He stated that support is now mounting across the country for changing this section.

Elizabeth Poitras from the Sawridge First Nation also presented. She said that it was about time that someone addressed this situation and congratulated NWAC for bringing it forward. She felt that there is continuing discrimination and legal injustices in the revised *Indian Act*. This is demonstrated by the fact that some people are accepted back in communities while others are not and the band membership provisions has allowed for this. She feels that she should be compensated somehow for what she has been through. The Indian Act is the law but some First Nations seem to be exempt from obeying the law. Since 1985 she has been denied shelter, belonging, medicines, etc. because she cannot get band membership. If she has to see a specialist she has to travel 200 miles plus pay these expenses from her own funds.

Elizabeth read the Sawridge First Nation membership code (appendix a) and application for membership (appendix b). She noted that the membership code had 75 pages of questions. This alone was a violation of an individuals right to privacy under the Charter of Rights and Freedoms. Yet, Sawridge was allowed to get away with this.

Getting membership in Sawridge is a catch-22. You must have Council approval to live on the reserve and you must live on the reserve to have band membership. She felt that the time has now come for women to unite and lobby for changes. The 75 page application for Sawridge is intrusive and delves to much into the personal lives of people.

Agnes Gendron represented a group of 16 women from Cold Lake Alberta. She acknowledged that many communities have welcomed back women and their children. She felt that these communities understand the meaning of family and community. She stated that it was a pleasure to meet some of these people and her heart goes out to everyone who is struggling. She said that while Elizabeth was reading the Sawridge application she thought of her grandfathers. Two of her grandfathers signed Treaty. She felt that these Treaties are not being respected by First Nation's today. To have a nation of people you must include the grandchildren. She noted that Bill C-31 gave people so much hope and women felt they could finally go home. But this did not happen. They found that they were not wanted. They cannot even pick up the $5.00 on Treaty day. The reinstated women are told they not from there. She felt that this is wrong. Her grandfather signed those treaties for future generations, for all people. She is speaking now for her children and grandchildren. Her advice to the delegates was that it is time to think Treaty and not Indian Act.

Sandra Lovelace from Tobique First Nation provided some background on the fight for rights that the Tobique women had. She talked about the walk from Oka to Ottawa with women and children and demonstrated on Parliament. Support for changing the Indian Act came from many groups but people in her community called her a radical. However, they did not give up the fight and were happy to see the changes in 1985. However, she said even today after Bill C-31 's passage many children in the community are suffering. She felt sad that after 12 years women are having to start allover again, this time to fight for the grand children's rights.

Gina Russell from Cold Lake Alberta stated that she has five brothers and sisters. She is a sixth generation descendant of treaty 6. She noted that the government has been conditioning us for many years. They succeeded in taking away her pride and dignity when the freedom of marriage choice was made. She was not aware that who she married would affect her and her children's rights as an Indian. She feels that the effect of the residential schools also added to the low self-esteem some Native people are feeling. Over the years she stated that she has learned to live with fear and guilt.

She told participants that she is not allowed to vote in her community. She is frequently told that she does not belong there nor can she live there. She stated that the Chief has

even asked that a separate table be set up by Indian and Northern Affairs for the Bill C-31 people to pick up their treaty annuity.

There are many women who still live with the pain of discrimination because of who they chose to marry. Their children also have to bear this pain. She felt that the injustices have to stop. She suggested that we all walk together as a nation of people and that we ask the people of Canada to support us in our endeavours.

d) Legal Panel Presentations

A legal panel was held in the afternoon of the first day. Four lawyers gave an overview of court cases relating to Bill C-31 as well as their thoughts on the issue.

Mary Eberts a lawyer from Toronto said that there is a role that lawyers and the legal system can play in this struggle. There are numerous case studies and stories across Canada. In the past, Native people have won some victories regarding their legal entitlement. She noted that the litigation process of suing a band or government can be adversarial and the experience prolonged. Lawyers can playa part but they are not the beginning or ending, they are only a part of it. They can only help. She feels that lawyers must take direction from the community as to where the want to go. One of the most important thing a lawyer must have is to have good listening skills. These skills will allow a lawyer to help translate what you hear into action. You have to tell the story in the courtroom so that they can make the ruling you want. To do this you need to understand what clients want to do and be a listener and a translator.

Sometimes when the fighting is over, it is still necessary to go back to the table. She felt that a major court case may convince the government to negotiate the next steps. And allow for some resolution of the issue. However, litigation can stretch out over a number of years and you must be prepared for that. When you look at Bill C-31 and what is going on you must look at the Charter of Rights and Freedoms and some principles which would be called into play in a court case. Several areas of the Constitution come into play, Section 15, 25 and 35 of the Constitution, equal benefit and protection of the law without discrimination of the law, including race or gender. An important weapon in challenging Bill C-31 is Section 15 of the Canadian Charter of Rights and Freedoms.

Section 35 would be used when individuals challenge band membership codes, denial of services, education, health, housing, etc. Some First Nations will say that they are entitled to keep you off reserve because they are exercising their Aboriginal rights. Two main sections of the Indian Act which are creating problems today are Section 6, the registration categories and section 11, giving authority for band membership. It is possible to find direct and indirect discrimination by using Section 15 of the Charter of Rights ad Freedoms. This is because some band membership codes are aimed at a particular group of people. Some clearly use the second generation cut off and treat a certain group of people differently than others. Section 6(2) grandchildren are discriminated against based on their family status.

With Section 11 of the Indian Act you see direct discrimination depending on family status. There is a huge systematic structural race discrimination built into the Indian Act. This is affecting large amounts of generations of people. The actions of bands in denying housing assistance and treaty rights is wrong.

Observations can be drawn from the Corbiere case. When they began that case they were hoping to make a case against the whole of the Indian Act by arguing that in all First Nations in Canada it is illegal to deny anyone a vote. However the federal court of appeal ruled that the prohibition of voting for off-reserve Indians is only illegal in Batchewana. They are saying it is an inherent right of the community to deny a voice to those living off-reserve.

NWAC is going to take a case to court. It is not preferable to go band by band. The better approach is to make one ruling so people do not have to litigate allover the country. The Corbiere case shows the strength and weakness of litigation. It achieved a victory but sometimes the victory runs risk to question. A cooperative action comes into place.

Jonathan Faulds a lawyer from Alberta spoke on the Twinn Case. He said that he had been a lawyer for the Native Council of Canada in Alberta and had intervened on the Twinn Case on their behalf. He noted that much time had been taken up with this case. The Twinn Case started 12 years ago. Walter Twinn of Sawridge and five other Chiefs claimed that Bill C-31 interfered with their rights to decide who and who would not be a member of their community. They stated that as bands they had a right to exclude people, particularly those who were restored under Bill C-31. In fact, Sawridge lobbied hard in Parliament against Bill C-31. It was a long and drawn out trial with no resolution.

We are now waiting for another case at the federal court of appeal level. No steps have been taken for a new trial and no final decision has been made. There was a lot of time energy and resources by many good people. It was hoped this case could be used as a stepping stone. But now the political agenda has changed. The commitment of the federal government to fair principles is open to question. Their enthusiasm to return rights and eliminate discrimination is not as strong as it was in 1985. This creates a major challenge. There is a need to relight the fire to try and eliminate the ongoing discrimination. It needs to be made a high priority again. Strong efforts should be made to protect the principles in Bill C-31 but at the same time the overall system of aboriginal and treaty rights must not be weakened. The challenge for people at this conference is to find ways to achieve this. It is time to find means to have a united front. In Canada today people are not actively challenging this. No man's land has been created and the onus is on the people with rights to take some kind of action. You do not want individual court decisions, you need one major decision that will be applied to everyone in the country. Otherwise when an individual claim is brought forward they will do what they did in the Twinn Case and say that it is unconstitutional.

Ken Purchase an Ottawa lawyer spoke about his experience with the Congress of Aboriginal Peoples on the Twinn Case taken before the Supreme Court of Canada. He

stated that there were difficulties in bringing this case forward. Along the way many of the witnesses died. The appellants main argument of the Twinn Case is that they had a right to exclude people from band membership. They did not support the position of the trial judge that returned women had to be given band membership. Therefore, they took it to the Supreme Court. It is an aboriginal right to determine membership. They feel it is a right to deny birthright to persons from the same community. Because no clear decision was made everyone finds themselves back at the beginning. Because we have come full circle it is now time to force a decision from the government.

Sharon McIvor a lawyer from British Columbia gave an overview of her case. She stated that in 1985 she applied for status for her children and herself. She received her status but her children did not. In July 1990 she took her case to court. They are now in their eighth year. She feels that the government negotiates to try and get people not to go to court. It has been a long road to get this case to court. She is looking for support from those who will support a Charter challenge. The government fears the Corbiere-Lavall case and do not want to end up fighting in the courts. The issue in her mind is one of fairness and equality .Her children and grandchildren do not have status. However, her male cousin's children and grandchildren have status even though the situations are the same. The difference is she is a female and the cousin is a male. The whole issue of waiting for a decision in court case is not good. We tend to just sit back and wait for a decision rather than initiating action. We must question the Minister's responsibility? Many Native Bands are outright denying services to women. The Minister also has a responsibility to First Nations women. The Minister is not willing to revisit the Indian Act nor intervene with the bands. All we want is to be treated fairly.

It takes about fifty to seventy thousand dollars to bring a case to court and one hundred and seventy thousand to take it to the Supreme Court level. There is a lot of work to be done. If we had lost of money we would not need to concern ourselves with court costs we would just proceed with a challenge. However, the courts are not our only avenue to bring our issues forward. We need to have marches and demonstrations and not sit back and wait for the courts to decide our fate.

Marilyn Buffalo thanked all the speakers for sharing their stories. She noted that every year the Canadian Human Rights Commission makes a recommendation that the Indian Act must be revisited but the federal government chooses to ignore this. We must also make them aware of these problems and force them to listen to us.

Participants were given an opportunity to question the legal panel on their presentations and day one came to a close.

3. Day 2: Proceedings

Three workshops were held on day two. The intent of the workshops were to provide participants with an opportunity to discuss their situations and to provide feedback for developing a strategy for NWAC.

a) Workshop 1: Impediments to Inequality

The workshop was facilitated by ***Eric Tootoosis*** of Saskatchewan. He provided an overview of pre and post-confederation treaties. He noted that treaties were made with various groups and North American Indian tribes. He indicated that Inter-tribal treaties are non-written and non-recorded and rarely in text form. It is well know that many nations in British Columbia did not sign treaties.

In 1993/94 after Charlottetown, Canada agreed to come to the table with the BC nations to commence treaty negotiations. The appointed a treaty commission to commence negotiations and debate on land issues.

Canada is now a monarchial republic which means it is independent to the commonwealth. In 1931, Canada became a nation therefore it has full rights as a republic to commence negotiations legally. They have done so in Saskatchewan with the Pheasant Rump First Nation. They are comprised of Saulteaux, Asssiniboine Cree and Sioux. They are a multi-linguistic band. He felt that by having all of these nations in one area the government wanted to put natural enemies on one reserve. There is a lot of dissatisfaction among band members. He said that Mrs. McArthur got her Bill C-31 people together. Today this band is all Bill C-31 people.

There cannot be a more opportune time for Bill C-31 people to form their own organization. We are the Fort Carlson Treaty 6 Council. I am suggesting that to make things easier a Fort Carlson Bill C-31 Association be developed. If the numbers are adequate they can then move for a land claim on their reserve. There are fears in Saskatchewan that some bands have an open door policy. We have 28 people eligible to come back. Today, we are in the planning stages of how this process will occur. This process could be through ceremonies or whatever it takes to make it legal from a Cree law perspective. He felt that everyone who is Native was 1 entitled. He stated that "In the federal coffers there are designated federal monies for you people". There are people here who know how to access treasury funding. Within the government there is a status list of all Indians in Canada. Each sector and each Ministry gets money for these people. We are all included there.

Mr. Tootoosis felt that the "crying and the bickering" has to stop. Bill C-31 people say we want land we want a government. There has to be a Bill C-31 bundle. Operate with the principles and values right here. Our relatives will have their own fire. We have a heck of a fight ahead of us. He felt that we need to get control of our share of the 200 billion dollars. How much has been taken since oil turned to money? We need to get more resourcing, we are the ones that want to be the change agents. He felt that it was time to ask; "what did I do to bring chaos to my community? You have to face the truth. There has to be accountability".

Under Cree law Poundmaker reaffirmed customary law, by the will of the people. They also reaffirmed the band custom. Our institutions and governments we have to re- built and our own fire must be lit. He noted that when agreements were made there were no

organizations. We need resources so indigenous governments will flourish. There is a need to find ways and means to address this situation. First Nations are in a predicament. They are tired and ready to give up. That is the cost of the struggle. Come and see human rights function in our circle, our Bill C-31 circle. Establish your own communication system. "It is time to rise up and quit the crying". This is how he sees this working. In the end when we are successful in obtaining this we will be in a situation to help when hard times come. It is a peacemaking treaty instrument.

He asked "how many have a card that says you are a treaty Indian and not a status Indian". He stated that there are treaty cards that existed that were taken away in 1951. They ended up in the archives. The only people that carry a treaty card are the 160 people in the Poundmaker Band.

He noted that rightfully, the Indian Act is a parliamentary law so under the Charter, Canada is obligated to provide the basic human needs to every person. They labeled this Indian status funding. In terms of programming you could get funds directly from the government.

There are 48 people reinstated under Bill C-31 on my reserve. We have watched other bands that have adopted Canadian law. We had the choice to adopt Canadian or Cree law. Other bands that have adopted Canadian law are left with an open door policy. This means that they have to reinstate anybody that applies. When it comes to voting on land issues the people eligible to vote are the people on the band list. Now when the people voting in favour are the people who initially over-populated the area, there is a great fear in the bands.

He told participants that they should form a Bill C-3l organization in their own community. This is how you will get to exercise your rights. But at the same time you must understand that you will always be fighting First Nations. You Bill C-3l people are red ticket Indians and you must accept that. You will never gain entry to the band lists.

Discussion on Impediments to Equality Workshop Material

Participants were very upset by many of the facilitators comments. They felt that referring to people reinstated under Bill C-31 as Red Ticket Indians was hurtful. However, the facilitator responded with the comment that the truth is truth and sometimes it hurts. This is the category that people are now under. The BNA Act recognizes Indians and lands reserved for Indians.

A comment was made that the majority of Indians live off reserve and as a result are kept out of the treaty process in BC. There was a concern that these nations would make decisions for them without consultation.

Another comment was made that the workshop facilitator consistently referred to Cree Law. However, in reality what he was referring to was Poundmaker Cree Nation law. It

was noted that it was very presumptuous of the facilitator to assume that all Cree's agree with Poundmaker Cree Nation's assumptions.

One participant noted that the facilitator's comment that Bill C-3l people form their own community and organizations was simply ludicrous. There was a need to work with the bands not separate from them. We are already in the position of separation and this is what we want to change.

b) Workshop 2: Residual Discrimination Relating to Bill C-31

The workshop was facilitated by ***Tony Smith*** from Living Dimensions in Ottawa, and ***Debbie Thomas***, from the Akwesasne First Nation. Debbie Thomas began the workshop with a history of the laws contained within the Indian Act from 1850-1985. She also had participants fill out a family tree which would outline how they or members of their family would lose status. An overview was provided on how Indian people are added to the Indian Registrar by Ottawa. At that time if a person was added to the Indian Register the community had an opportunity to protest a persons name on the list. After the protest was made the decision would be final and conclusive. You could protest a Registrars decision in the courts, but the judges decision would be final. If someone's name was deleted then the family was also deleted.

She noted that it was very important that we know the laws surrounding Indian registration and band membership. If we are looking at seven generations then we need to know the laws. It is time to start with positive recommendations. We have to develop a strategy for the next seven generations. Our grandmothers survived. We are here that is all the proof you need. It is more important to know than not to know.

There were several questions which were entertained by the facilitator regarding Indian status inheritance and the effect of Section 6(2). He gave an overview of the entitlement areas. If a person registered under Section 6(2) marries a non-Indian the child will not be entitled. There was a great deal of concern expressed about Section 6(2) of the Indian Act. As well, there was concern about the provision that women must now name the father of their child, otherwise the father is deemed to be a non-Indian and the child is registered as a 6(2). There was also a great deal of concern regarding the government's refusal to recognize Native Americans as Indians.

A male participant from the Haida People noted that the government made the criteria that establishes status. He stated that people who have Haida blood are members. They are establishing their territory. The Government has no right to tell us where to go or how to think. He felt that he was proud to be sitting in the meeting with the Native women of this country. We have the will to survive and we can change things.

A participant from the Northwest Coast of BC, stated that we are still fighting for our basic human rights. The more united we are the stronger we will be. We need to take the government to court and sue for hurting us this way. They must be forced to look at

their mistakes. We must do it collectively and not just individuals fighting on their own. Use more of our youth and educate our youth to the issues.

A participant from the NWT questioned when a child is registered under the mother or father's status. Under the law the child from two native parents is registered as a 6(1). A person used to fill out their child's papers at the hospital but now the band does it. Many times the child's father is not there to be added and people will have to pay a fee to change the certificate so the child can be registered properly. She told people to remember to put the baby's father on the birth certificate. If the parent is silent then it is automatically assumed it is a non-native and the process to change this could be a costly one.

Tony Smith gave an overview of a project he did in 1987 for the Meadowlake Tribal Council on the impact of Bill C-31. He noted that prior to 1985 we had the "double mother clause" and now we have the "double parent clause". If you look forward 50 years the situations in Indian communities will be much different. As out-marriage rates increase the status Indian population will decline. More and more people will be having children with non-Indians. 6(2) will be the next generation. Since 1985 we now have a. system whereby Indian status will be extinguished. The 6(2) new birth registrations since 1985, have been high. These figures represent children who are not reinstated under Bill C-31 but are being born into the communities since 1985. The Indian birth rate is higher than the Canadian rate. The death rate is also higher. This presents problems in maintaining the numbers in the status Indian population. He noted that he also examined the membership codes of the First Nations that were developed prior to 1987. Many had restricted Section 6(2)'s from membership. He stated that these First Nations developed their codes hastily in an attempt to keep the registration numbers low in their community by keeping reinstated children of Bill C-31 women out. They did not consider that these codes would also affect all children born and registered under Section 6(2) after 1985. But now it is time for everyone to take a look at what was developed and how we can change this. A great deal of discussion took place regarding the long term effects of Section 6(2).

c) Workshop 3: National and International Rights Implications

The workshop was facilitated by ***John Mohawk***, who is a professor at the University of Buffalo. The session began with a discussion of the difficulties experienced by Native people who reside in Canada but who marry Native people who are residents of the United States. Participants heard of the difficulties that children and parents are experiencing when they return to Canada. In one situation the Canadian government is in the process of deporting children back to the United States because they are not Canadian citizens. Also discussed were the problems encountered by some Native people when they attempt to cross the border. There was a discussion on the Jay and Ghent Treaties signed by the United States. It was suggested that this topic be a separate conference at a later date.

There was discussion about the differing court cases relating to Bill C-31. It was suggested that some form of communication be established so that people can be kept informed about the progress and results of each case. Some women expressed fear in raising the issue of Bill C-31 in their own communities because of the Twinn Case. Even though a number of these women have been reinstated they cannot return to their reserves or share in the wealth. There was a lot of pain and anger expressed about the immediate and long term effects of Bill C-31. Anger was also expressed because of the labeling Bill C-31 imposed. Native women end up referring to themselves, children and grandchildren as Bill C-31's or 6(2)'s. One of the greatest concerns is that Bill C-31 will eventually wipe out status Indians completely.

Participants noted that without women there would be no nations and that communities should respect them instead of trying to keep them out. They were appreciative of NWAC holding a conference. They felt that Canada is ultimately responsible for the pain and suffering occurring as a result of Bill C-31. Bill C-31 was a good thing but the after effects on people are horrendous.

A suggestion was made to explore a conference on the implications of Delgamuuk whereby the Supreme Court recognized the use of oral history. This could be used to challenge Bill C-31 where the oral history of women's traditional rights and position could be submitted to courts. It was also suggested that NWAC could sponsor a contest among graduate law students across Canada for the best essay outlining legal arguments that could be used to challenge Bill C-31 in the national and international forums. A final suggestion was made that NWAC could create a committee to investigate what legal remedies can be used to force negotiations between all parties. NWAC could create a second committee to negotiate but only if a majority of bands agree to negotiate.

It was felt that before anything got one there needed to be a healing process. There also needs to be education about the long-term effects of Bill C-31, through videos and media.

4. Day 3: Proceedings and Recommendations

Day 3 began with workshop summary reports followed by a discussion of strategy. Participants expressed the desire to keep up the momentum in terms of following up on the conference. The issue of Bill C-31 is an issue for all and must be addressed. A strategy to begin resolution of this issue was developed and the following recommendations were put forth.

1) That the NWAC file a class action suit against the federal government and First Nations with restrictive membership codes. This suit would be based on the ongoing discrimination still contained within the Indian Act aimed at the children and grandchildren. It would also be based on the discrimination in the membership codes aimed at restricting Section 6(2). It would also cover the hurts and pain families are being subjected to since 1985.

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. The Assembly had recently passed a resolution creating a gender equality secretariat and as such should be expected to work with the NWAC, a national women's organization.

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 made on this issue.

6) That a national day of action be held across Canada to highlight the issue.

5. Conclusion

"Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancements and its benefits"
(Article 27 of the United Nations Bill of Rights)

Although it has been thirteen years since the passage of Bill C-31, women are still being denied the basic rights that were set by the United Nations in 1978. This is the same clause that was used to rule in favor of the Lovelace case and may very well be the same clause that will be used for the next trip to the United Nations which was recommended by the participants. Women fought against discrimination within the old *Indian Act* because it alienated them from their children and families and created false divisions. There is little evidence that much has changed. Although women applauded the enactment of Bill C-31 in 1985, which restored their status, there are now concerns that the discrimination that was aimed at Indian women who married out prior to 1985, is now aimed at the children and grandchildren of all First Nations citizens regardless of gender. It has become a collective issue which will affect all First Nations. Bill C-31 did not meet the expectations of First Nation people. The re-categorization of Indian status affects everyone regardless of residence, or gender.

Bill C-31 has brought with it two new kinds of discrimination, one based on generation and the other based on labeling. The introduction of membership codes have succeeded in placing women and their families as victims of a bureaucratic structure both by band councils and the federal government. Without a doubt Section 6(2) of the Indian Act poses the greatest concern for First Nations as a whole. In some cases it has been said that Bill C-31 has created “legislated genocide”.

From it's inception, the Indian Act defined who may and who may not be a status Indian and until 1985 controlled band membership. Indian women who fought for changes and

their final recognition as status Indians wanted their roles as mothers and cultural transmitters acknowledged. They view the role of women as the force behind the transmission of a cultural identity to the children. Presently Indian women and their children are still engaged in battles for their cultural identity.

Participants at the conference talked about the divisions which occurred in their families as First Nations attempt to come to grips with the new registration categories of Section 6(1) and 6(2). Brothers, sisters and cousins all continue to be registered under differing categories depending on parentage and in some cases some will have band membership while others will not. This in turn has created a hierarchy of Indian status and band membership with the class of Section (1) with band membership being the most desirable.

It is time to take control of our lives. There is a need to gather support across the country and seek out all avenues of redress. Working cooperatively with the First Nations must be the first step. What was once a women's issue is now an issue of survival as aboriginal people. First Nation mechanisms of identification of the people must be created and these mechanisms can only work if everyone cooperates. As First Nations define and implement self-government, Native women must be involved in the process. The Royal Commission on Aboriginal Peoples has recommended in Volume 4, Women ' s Perspectives that:

> **The Government of Canada provide funding to Aboriginal women's organizations, including urban based groups to:**
>
> **(i Improve their research capacity and facilitate their participation in all stages of discussion leading to the design and development of self-government process and;**
>
> **(ii Enable them to participate fully in all aspects of nation building, including developing criteria for citizenship and a related appeal process**
>
> **(RCAP Report, Volume 4, Page 237)**

Self-government cannot be built without citizens and as the mothers of those citizens, the NWAC will devote itself to ensuring that their families are protected and that Aboriginal people in Canada survive as a Nation of Peoples. There will be a concerted lobby effort and the NWAC will strive to ensure that the goal of the conference “Unity for our Grandchildren” is realized.

We invite all readers of this report to join us in this struggle...

…a struggle for our survival as First Nations People.