McGill Law Journal accessible summary:

The Indian act through a gendered lens

By Éloïse Décoste

Published in Volume 71, Issue 4, at pages 1001–1035

Topic and importance

This article traces the development and consequences of sex-based discrimination in the regulation of Indigenous status from the pre-Confederation period to the repeal of the Indian Act's discriminatory provisions in 1985. Central to the analysis is the federal government's unilateral authority to define who is recognized as an "Indian" under Canadian law. For much of the Indian Act's history, First Nations women who married non-status men lost their status, were unable to transmit it to their children, and were excluded from their communities. By contrast, First Nations men retained status and could transmit it to their spouses and descendants.

The author situates this regime within broader settler colonial policies aimed at assimilation and territorial control, showing how the regulation of status reshaped Indigenous family structures and gender relations. She further argues that this history provides important context for understanding the gender-based violence and structural marginalization Indigenous women continue to face today. Although the Indian Act's

discriminatory provisions were repealed in 1985, debates surrounding status transmission and membership persist, particularly in light of Canada's efforts to align its laws with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Main arguments

The article first traces the legal regime that progressively excluded Indigenous women through marriage. Beginning with the 1857 Gradual Civilization Act, colonial authorities introduced enfranchisement as a voluntary process allowing Indigenous men to obtain citizenship in exchange for relinquishing band membership, with their wives and children automatically enfranchised. After Confederation granted Parliament exclusive jurisdiction over "Indians and lands reserved for Indians," the 1869 Gradual Enfranchisement Act formalized the "marry-out" rule, stripping women who married non-status men of their status and that of their children. This rule was consolidated in the 1876 Indian Act and tightened in 1951, when centralized registration was introduced.

Beyond the formal rules of status exclusion, the Indian Act profoundly reshaped Indigenous social structures through the imposition of a Victorian model of gender relations. The "marry-out" policy forced women to leave their communities, stripped them of property and inheritance rights, excluded them from band governance, and denied them access to social and cultural services. Divorced, separated, or widowed women could not regain status and were even barred from burial on reserve. By making women's legal identity dependent on their husbands, the Indian Act disrupted matrilineal systems and weakened traditional female leadership roles. At the same time, colonial stereotypes depicting Indigenous women as immoral or unfit mothers legitimized their disenfranchisement and facilitated state control over

Indigenous families, including through the removal of children to residential schools and by child protection services as well as through forced and coerced sterilization.

Although Bill C-31 (1985) formally repealed the “marry-out” rule and restored status to many women, it introduced section 6 and the “second-generation cut-off,” which limited the ability of reinstated women to transmit status to their descendants. Subsequent litigation, including McIvor and Descheneaux, revealed that differential treatment persisted, prompting further legislative amendments such as Bills C-3 and S-3. Despite these reforms, critics argue that the registration regime remains complex and continues to produce gendered effects, particularly in relation to status transmission and community belonging. Ongoing activism and repeated interventions by United Nations bodies underscore that the legacy of sex-based discrimination has not been fully resolved.

Conclusion and additional considerations

The article concludes that despite the formal abrogation of the Indian Act’s explicit sex-based discriminatory provisions, its legacy continues to shape the transmission of status and community belonging. By tracing the historical evolution of registration rules, the author demonstrates that legislative reforms have often addressed specific inequities without dismantling the broader framework that produced them. As a result, the effects of earlier discrimination remain embedded in the law’s operation. More broadly, the article invites reflection on the future of the Indian Act in light of Canada’s commitment to implement UNDRIP, emphasizing the need to adopt a gendered lens.