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SEEKING JUSTICE FOR CANADIAN INDIGENOUS WOMEN: RESTITUTION THROUGH THE AMENDMENT OF THE INDIAN ACT

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Introduction

"In the White-settler nation states that emerged from the British empire, the legal, cultural and political legacies of the colonial project continue to shape the daily lives of Indigenous peoples."[1]

Native peoples in white-settler colonies share unique and violent histories. Their traumatic pasts, compounded by the often-deplorable conditions of the reserves they reside on, result in a widespread marginalisation, which affects every aspect of their lives. The rights and policies regarding these communities are determined by legislation, which is often insufficient and habitually fails to take into account past acts of violence and human rights violations.

The United States, New Zealand, Australia and Canada are each in the process of providing restitution to their indigenous communities, though at varying rates of speed and levels of effort. This thesis focuses on Canada, the choice of which is justified by the advanced stage of reparations the Federal state finds itself in regarding its native peoples compared to the United States, Australia and New Zealand. The Canadian government additionally provides a substantial amount of source material regarding its decision-making processes, which is integral to the study described in this thesis. The statistics, legislations and government procedures described, examined and analysed will result in a comprehensive understanding of the past, and current, legislative circumstances in Canada with regard to its indigenous peoples, which consists of the First Nations natives, the Métis and the Inuit. The focus will predominantly be on the First Nations, which is the largest native community in

[1] Rutherford, Scott. 'Colonialism and the Indigenous present: an interview with Bonita Lawrence', *Race and Class*; Vol. 52, No. 9 (2010) p. 9.

Canada. Though the Métis will also be mentioned, the Inuit, for research purposes, have not been included in this thesis.

A 2009 statistics report on violence perpetrated against indigenous peoples[2] in Canada, stated that "[a]boriginal people reported sexual assault incidents[3] at a rate of 70 incidents per 1,000 people, compared to 23 per 1,000 non-Aboriginal people."[4] As sexual assault is predominantly committed against women, this remarkable statistic indicates a significantly higher risk for native women than for non-native women. The issue of safety is compounded by the frequent disappearances and murders of aboriginal women and girls, a number, which according to the *Native Women's Association of Canada* (*NWAC*) exceeded 580 women in 2010 alone,[5] a number seven times higher than that of non-native female homicides.[6] The issue has even caused the *Committee on the Elimination of Discrimination against Women* (*CEDAW*) to comment on Canada's investigational conduct. The committee stated that

> it remains concerned that hundreds of cases involving aboriginal women who have gone missing or been murdered in the past two decades have neither been fully investigated nor attracted priority attention, with the perpetrators remaining unpunished.[7]

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[2] According to Amnesty International. *Canada: Stolen Sisters: A Human Rights Response To Discrimination And Violence Against Indigenous Women In Canada* (2004) p. 1 – 2. "The term "Indigenous" refers to all descendants of the original inhabitants of the territories that now make up Canada. This includes the First Nations, the Inuit and the Métis."

[3] In the report, sexual assault is defined as "[f]orced sexual activity, an attempt at forced sexual activity, or unwanted sexual touching, grabbing, kissing, or fondling." p. 6.

[4] Perreault, Samuel. Statistics Canada. *Violent victimization of Aboriginal people in the Canadian provinces*, Catalogue no. 85-002-X (2009) p. 5.

[5] Native Women's Association of Canada. *What Their Stories Tell Us: Research findings from the Sisters In Spirit initiative* (2010) p. 24.

[6] Stone, Laura. Justice for Missing and Murdered Indigenous Women, 'List of Missing, Murdered Aboriginal Women in Canada grow' (2010). <http://www.missingjustice.ca/2010/04/list-of-missing-murdered-aboriginal-women-in-canada-grows/>.

[7] United Nations Committee on the Elimination of Discrimination against Women. *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*. CEDAW/C/CAN/CO/7 (2008) p. 7.

These statistics and concerns describe the symptoms of a particularly complex issue, which can trace its origins to a variety of social, economic and legal phenomena. Matters such as poverty, unemployment, lack of housing, health issues and cultural bias all play a part. However, the matter can also be attributed to the existence and perpetuation of systemic, legal discrimination against indigenous peoples and more specifically, aboriginal women. Without state-enforced legislation guaranteeing gender equality and safety regardless of race or ethnicity, cultural and socio-economic impartiality can surely not be guaranteed. The history of Canadian indigenous rights legislation has been marked by the continued existence and implementation of the *Indian Act*, which consistently discriminates against native women and endorses a paternalistic attitude towards and within the native community. The nature of the act is explained in Chapter two. The aspect of the *Indian Act*, which will be subject to a thorough analysis, is the matter of the allocation of Indian status.[8] The procedures regarding this matter have been amended on several occasions and are now classified as section 6 of the act. However, the amendments section 6 has undergone, the most recent being Bill C-3, have thus far failed to eliminate all forms of discrimination against native women.

The value of gaining official Indian status reaches across several levels. The economic benefits of Indian status will be described in Chapter two. However, from a psychological and cultural perspective, "[d]enial of status and the corresponding lack of acceptance in one's community and degraded sense of identity and self-worth is an independent harm."[9] Consequently, Indian status does not solely entail

[8] The only times at which the word 'Indian' will be used in this thesis, is in direct connection with the allocation of official status. In other cases, the words 'indigenous', 'aboriginal' and 'native' will be employed so as to avoid the use of a word, which has widespread negative connotations among the indigenous population.

[9] Anita Neville, House of Commons Debates, quoting the Women's Legal Education and Action Fund, 27 April, p. 1023.

acknowledgement from the government, but also from the native community itself. Legislative discrimination therefore becomes closely related to cultural and social discrimination, which is reflected in the elevated levels of violence towards native women. By receiving official recognition of Indian status, indigenous Canadians are allowed to reside on reserves and become members of bands[10] and band councils, which subsequently includes them in indigenous cultural events and political processes. The sustained exclusion of native women from their society has the potential for far-reaching consequences. In fact, Jeannette Corbiere Lavell, the president of the *Native Women's Association of Canada*, has even compared the legislation containing gender discrimination, to genocide.[11] This is a remarkable comment, particularly considering the substantial influx of status Indians since 1985. However, Bonita Lawrence, an associate professor of indigenous studies in Toronto and author of numerous articles regarding Canadian indigenous peoples, has also weighed in on this issue. Lawrence indicated that within four to seven generations, there might no longer be any status Indians present in Canada, as the present legislation specifically affects native women and their children, who are vital to the continued survival of Canada's indigenous peoples.[12] Though the comparison with genocide may be a particularly vivid example, it emphasises the significance of assuring gender equality so native women can ensure the continued existence of their peoples, as well as enjoy the same rights to status inheritance, reserve habitation and cultural participation as men.

[10] According to Article 2 of the *Indian Act*, 'bands' are defined as "a body of Indians for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951; for whose use and benefit in common, moneys are held by Her Majesty, or declared by the Governor in Council to be a band for the purposes of this Act;".
[11] Jeannette Corbiere Lavell, Standing Committee Hearing, 13 April 2010, p. 13.
[12] Rutherford, Scott, p. 11.

Having established the importance of gender equality, particularly with regard to status inheritance, the goal of this thesis is to examine the circumstances and decisions surrounding the existence of the current legislation. As the Canadian government has signed and created various documents assuring equal rights, the question arises why the Federal state of Canada chooses to perpetuate the current bias. By analysing several international and domestic documents, the research discussed hopes to describe the process of transitional justice, which is explained in the following paragraph. In addition, there will be significant focus on what decisions and priorities take precedence when creating and passing an amendment, particularly Bill C-3, which continues to violate the gender equality rights guaranteed by the Canadian state.

Academic Relevance

On a socio-economic level, the discussion within this thesis ultimately describes the delicate balance of state interests versus equal rights, and how this can result in the marginalisation and, often physical, victimisation of a community of women. There are complex issues that arise from this balance, such as financial prioritisation, and the matter of collective versus individual rights and whether these two can be given equal priority or whether they inherently undermine one another. The friction between the two will be discussed in later chapters as a likely factor in the Federal state's chosen course of action.

Most importantly, the practical workings of transitional justice in the framework of Canada's relationship with its indigenous peoples will be examined. Transitional justice, as the name implies, seeks to achieve a restorative judicial system

for victims of human rights atrocities during times of transition. A situation of transition occurs, for example, after a conflict or a change from a repressive government to a democratic system. By addressing past injustices on such a scale, an overt gesture is made towards the acceptance and propagation of human rights and moral values, which have become prominent political topics since the late twentieth century and as such, receive substantial international and domestic consideration.[13] Consequently, trust is built within nations between governments and their people, between specific groups, or in the international arena.[14] The process of restitution for victims manifests itself in numerous ways, depending on various social, psychological, economic and legal requirements. The procedures for dealing with mass violations of human rights and the restitution which follows, are specifically detailed in the United Nations' *Serious Violations of International Humanitarian Law* and *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law*. Transitional justice often results in an amalgamation of, for instance, criminal tribunals to prosecute perpetrators of mass violence, truth commissions, financial reparations for the victims or public apologies. Existing and possible future restitution rhetoric will be further examined in Chapter three. Examples of tribunals include the prosecution of Khmer Rouge leaders in Cambodia, and the Truth and Reconciliation Committee of Sierra Leone. Public apologies were made by the Australian government in 2008 to the aboriginal peoples for the 'stolen generations' and by the Canadian government in 2008 for the residential school system imposed upon their indigenous community.

[13] Barkan, Elazar. *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York, 2000) p. XVI - XVII.
[14] Dube, Siphiwe Ignatius. 'Transitional Justice Beyond the Normative: Towards a Literary Theory of Political Transitions', *The International Journal of Transitional Justice*; Vol. 5 (2011) p. 182.

However, the Canadian government's apology in 2008 was only a step in the ongoing restitution process. The consequences of the residential school system, as well as historical acts of violence remain palpable in indigenous societies, "[t]he violence they have faced in the residential school system has been replicated within communities, creating such anger and misery between people."[15] The effects are visible in the rates of alcoholism, violence and unemployment on reserves.[16] The provision of Indian status according to the act is therefore not the sole focus of the government's efforts to provide reparations, as a variety of issues additionally require attention. As such, the development of reparations in Canada is not yet complete, as will become evident in this thesis.

This research will scrutinise how the Canadian state has handled, and continues to deal with the restitution due to the native community in one specific area, namely the systemic gender discrimination imbedded in section 6 of the *Indian Act* and its amendments. As this process is still in development, it bears close examination in order to determine what the Federal government and Federal parliament have contributed thus far, and how far it could and might go in providing restitution.

Kevin Thomas, a Toronto-based researcher and advisor to the Lubicon Lake Indian Nation, has noted that, "the most prominent efforts by non-Native Canadians tend to be crisis-driven, an ad hoc response to current events rather than a persistent, organized effort with an agenda and a strategy."[17] In order to determine the accuracy of this observation and the efficacy of such a strategy, one must achieve a comprehensive analysis by studying the Federal state's past conduct and its

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[15] Rutherford, Scott, p. 18.
[16] Taite, Caroline L. et al. The Aboriginal Healing Foundation. *Fetal Alcohol Syndrome Among Aboriginal People in Canada: Review and Analysis of the Intergenerational Links to Residential Schools* (2003).
[17] Thomas, Kevin. Turning Point, 'Friends of the Lubicon: How a Small Group of People Can Change the World' (6 April 2002). < http://www.turning-point.ca/?q=node/99>.

statements regarding future intentions. In addition, it is crucial to dissect the factors which must be taken into account in order to assure sufficient compensation. Wendy Lambourne has suggested an alternative approach of transformative justice, which focuses on a long-term, collaborative and multidimensional approach, as opposed to Thomas' description of a fragmented and situational response. Lambourne's suggestion will be further expounded on in Chapter three. Ultimately, one must reflect on whether full restitution is even a possibility, or whether the various priorities and necessary considerations are inherently incompatible. The matter of collective versus individual rights arises within this framework.

The subject of completing the process of restitution to the satisfaction of all parties involved is a complex issue, which must take more into account than a straightforward question of whether or not one should afford its citizens equal rights. Throughout the following chapters, though most specifically in the in-depth analysis in Chapter three, the results will shed light on Canada's process of transitional justice and what decisions and concerns contribute to the developing reparatory efforts for the indigenous community. The final outcome could subsequently lead to additional, improved or more focused research into this subject, or possibly a comparative study with the United States, Australia or New Zealand.

Literature & Structure

The research is supported by a substantial amount of literature describing Canada's conduct on an international and domestic level regarding women's and indigenous rights. However, the analysis is somewhat limited by a lack of significant information concerning specific motivations of government officials, particularly with regard to

private attitudes and sentiments. The most predominant obstacle is the recent nature of the events that are analysed, rendering the quantity of literature on several specific subjects to a minimum. This has resulted in the introduction of primary research in Chapter three. Through an extensive and in-depth reading of all statements made by members of parliament concerning C-3, the predominant motivations and priorities have been distilled into a comprehensive examination of how C-3 was passed and why. On an academic level, views of authors such as Elazar Barkan, Wendy Lambourne and Andrew Woolford have been employed to elucidate the matters, and contribute to the discussion of, collective versus individual rights, transitional justice and restitution mechanisms. Several articles are referenced from journals such as *Human Rights Quarterly*, *Canadian Dimension*, the *International Journal of Transitional Justice* and *Race and Class*. Several government, organisation and individual reports are additionally mentioned, such as statements made by Sharon McIvor, the Canadian government's *Department of Indian Affairs and Northern Development*, the *National Women's Association of Canada* and *Amnesty International*. Though these accounts predominantly present subjective, non-scientific evidence, the inclusion of the information they offer is an important addition to the study as they provide personal and direct experiences with the issues discussed. These, and many additional sources, have been utilised in order to present an objective analysis of existing information.

Through the study of literature, and government, organisation and individual statements, the discussion is placed in an historical framework. The first chapter will analyse past government conduct on an international level through a description of its participation in and implementation of the *Convention on the Elimination of all forms of Discrimination against Women* and the *Declaration on the Rights of Indigenous*

Peoples. Chapter two will analyse the Federal state's contribution to indigenous and gender equality on a domestic level, in order to highlight the parallels with the first chapter. These distinctions and similarities will provide a foundation of knowledge regarding the Federal state's attitude towards gender equality in indigenous legislation and concurrently introduces Chapter three. The third, and final, chapter describes the primary research conducted into the House of Commons debates regarding the creation and passing of Bill C-3. The arguments, priorities and decisions provide a unique insight into the process of creating legislation under the umbrella of restitution. The subsequent conclusions are then placed within the debate regarding transitional justice, a possible shift to what Lambourne describes as transformative justice, and the complexity of assuring collective and individual rights, while providing fair and comprehensive restitution to native Canadian women.

1. International Treaties regarding Indigenous and Women's rights

"Canada has a strong record of supporting and advancing Aboriginal and treaty rights domestically and is committed to continuing to work internationally on indigenous issues."[18]

In order to provide an international context for this study, this chapter will discuss two vital United Nations (UN) documents in an effort to determine which factors contributed to the process of Canada's position in an international forum. The first is the *Convention on the Elimination of all forms of Discrimination against Women* (*CEDAW*). This convention was the first legally binding document representing a comprehensive and internationally recognised instrument, created solely to assure equality between men and women. The process of the adoption and ratification was one of quickest the UN has ever seen.[19] Canada was one of the first states to sign and ratify the convention, and considers itself an established advocate of women's rights. The process, general content and Canada's efforts to implement the convention will be explored in paragraph 1.1.

The second document is the *Declaration on the Rights of Indigenous Peoples* (*DRIP*). The recognition of indigenous issues was a decidedly slower process than that of *CEDAW*. Though it was the first official document describing the rights of native peoples, the adoption of the declaration was notably opposed by, among others, Canada. It is important to note Canada's reluctance regarding indigenous rights on an international level, before discussing Canadian legislation on the issue in Chapter two.

[18] Indian and Northern Affairs Canada, 'Canada's Position: United Nations Draft Declaration on the Rights of Indigenous Peoples' (2009). <http://www.ainc-inac.gc.ca/ap/ia/pubs/ddr/ddr-eng.asp>.
[19] Department of Social and Economic Affairs, Division for the Advancement of Women, 'A Short History of CEDAW' (2000 – 2009). <http://www.un.org/womenwatch/daw/cedaw/history.htm>.

The process of creating the Declaration, as well as its general content and Canada's position on its adoption will be discussed in paragraph 1.2. Paragraph 1.3 will provide a short analysis on the nature of the individual and collective rights, an issue which is often juxtaposed in the Human Rights community, before a brief summary will outline the main issues discussed in this chapter.

1.1 The United Nations Convention on the Elimination of all forms of Discrimination against Women

The United Nations has a long history of promoting equal rights for men and women. Its charter establishes equality regardless of gender in its preamble, and this principle is perpetuated in numerous UN declarations and covenants. In the *Universal Declaration of Human Rights*, adopted in 1948, and the two Covenants that followed in 1966[20] that translate the declaration into legal documents, an emphasis is placed on the immutable equality of the two sexes.[21] In addition, in 1946 the UN took an active approach by creating the *Commission on the Status of Women* (*CSW*), a body whose mandate contained the creation of conventions aimed specifically at areas in which women were considered vulnerable. These areas included women's political rights and marriage laws, detailing minimum age of consent and the registration of marriage.[22]

Though the *CSW* succeeded in many areas of its mandate, the UN decided in 1963 that a more inclusive document had to be drawn up, which would provide women with one instrument describing their rights to protection against

[20] i.e. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.
[21] Department of Social and Economic Affairs, Division for the Advancement of Women, 'A Short History of CEDAW' (2000 – 2009). <http://www.un.org/womenwatch/daw/cedaw/history.htm>.
[22] Ibidem.

discrimination.[23] Though not legally binding, the declaration would emphasise the United Nations' commitment to equal rights for men and women. In 1967, the *Declaration on the Elimination of Discrimination against Women* was adopted by the *General Assembly* (*GA*). Five years later, a discussion regarding the possibility of turning the declaration into a legally binding convention arose, and the *CSW* requested the proposal be put before the *GA*. With the approval of the *General Assembly*, UN working groups were established within the commission in 1976 to form the text of the convention.[24] Three years later, the final draft of the *Convention on the Elimination of all forms of Discrimination against Women* was adopted by the *General Assembly* with 130 votes, no negative votes and 10 abstentions, though it did not become legally binding until 1981, once twenty states had ratified the document.

The convention contains 30 articles, the first of which defines the phrase 'discrimination against women' as set forth and applied in the convention,

> any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.[25]

The document further provides statutes assuring protection against discrimination in all areas of society, industry and government. States are assigned the responsibility to reduce or completely eliminate the inequality between men and

[23] Department of Social and Economic Affairs, Division for the Advancement of Women, 'A Short History of CEDAW' (2000 – 2009). <http://www.un.org/womenwatch/daw/cedaw/history.htm>.
[24] Ibidem.
[25] Article 1, United Nations Committee on the Elimination of Discrimination against Women. *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, CEDAW/C/IND/Q/3/Add.1 (2006).

women through, if necessary, the abolishment, revision of and/or addition to existing legislation and by providing adequate education. Rights to schooling and equality within marriage, particularly with regard to consent and guardianship over children,[26] are also included. In addition, article 6 decrees that women are to be protected against trafficking and the "exploitation of prostitution of women".[27] Articles 17 to 22 announce the creation of the *Committee on the Elimination of Discrimination against Women* and outline the mandate and processes of the committee. This process includes the obligation for member states to report on the process of implementation within one year of officially enforcing *CEDAW*, and subsequently continuing to do so every four years.[28] Following the examination of the reports, the committee provides advice and recommendations to the states in order to aid them in the implementation of *CEDAW*.[29]

As of 2010, 186 countries have ratified the convention; the only Western country which continues to refuse is the United States.[30] Canada signed and ratified the document in 1981 and is vocal about its participation in many international efforts to promote equal women's rights.[31] However, Canada's record on implementing the convention on a national level has not been entirely positive. In 1993, the *Canadian Advisory Council on the Status of Women* reported that the Canadian government had, thus far, done very little to apply the statutes of *CEDAW*.[32] In fact, specific policies regarding finance and social assistance appeared to demonstrate that the government's

[26] Article 16, United Nations Committee on the Elimination of Discrimination against Women. *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*.
[27] Article 6, ibidem.
[28] Article 18, Article 6, ibidem.
[29] Article 21, Article 6, ibidem.
[30] As of 2011, seven countries have not yet ratified CEDAW: the United States, Sudan, Somalia, Iran, Nauru, Palau, and Tonga. CEDAW 2010, 'Frequently Asked Questions' (2011). <http://www.cedaw2010.org/index.php/about-cedaw/faq>.
[31] Foreign Affairs and International Trade Canada, 'Canada's commitment to gender equality and the advancement of women's rights internationally' (2011). <http://www.international.gc.ca/rights-droits/women-femmes/equality-egalite.aspx>.
[32] Toronto Women's Call to Action. *Canada and CEDAW* (2008) p. 2.

priorities were not focussed on promoting equal women's rights in legislation. This was particularly the case in 1996, when the Canada Assistance Plan was abolished.[33] The Canada Assistance Plan was enacted in 1966, and ensured the Federal government's increased responsibility to aid in the funding of regional social assistance programmes. As a result, the Federal government covered 50 percent of the costs of welfare services, which allowed for substantial developments in assistance programmes, until the plan was cancelled in 1996.[34] In 2002, the *Feminist Alliance for International Action* (*FAFIA*) presented a report to the *CEDAW* committee, which described the ways in which the Canadian government was failing the convention it had signed 21 years ago. One year later, the committee published its conclusions regarding its review of Canada's *CEDAW* reports. The committee offered many recommendations, though even as recently as 2008, Canada's reports continue to result in responses containing more advice than approval.

In the CEDAW committee's 2008 report regarding Canada's conduct, positive achievements were acknowledged, such as law amendments dealing with human trafficking and an increase in paternal leave in Quebec. However, the committee also provided specific recommendations for improvement. It expressed particular concern for Canada's financial cuts in social assistance programmes for women, and the consequences these cuts would have on vulnerable groups, such as single mothers, indigenous and immigrant women.[35] The committee also mentioned the *Indian Act* and manner in which it discriminates against native women, a matter which will be further explored in Chapter two. In addition, statistics on violence and safety indicate

[33] Toronto Women's Call to Action. *Canada and CEDAW* (2008) p. 2.
[34] Puttee, Alan. 'Reforming the Disability Insurance System: A Collaborative Approach', in *Federalism, Democracy and Disability Policy in Canada* ed. by Alan Puttee (2002) p. 94.
[35] United Nations Committee on the Elimination of Discrimination against Women. *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*. CEDAW/C/CAN/CO/7 (2008). Article 13, p. 2.

that in 2008 in Canada, "[f]emales were over 10 times more likely than males to be victims of a police-reported sexual assault."[36] To further compound the issue, a study in 2004 proved that Canadian aboriginal women are 3.5 times more likely to become a victim of violence than non-indigenous women. In article 32 of the committee's report on Canada, it urged the government to look into "the reasons for the failure to investigate the cases of missing or murdered aboriginal women."[37] This is an issue, which is regularly highlighted by organisations such as *Amnesty International*. One of the final points advised Canada to ratify a number of treaties which it was not yet a party of, but would benefit the application of women's rights on a national level.[38] Overall, the *CEDAW* report contains four positive points remarking on Canada's implementation of *CEDAW*, and forty-three recommendations for a more comprehensive and effective application of the Convention.[39]

1.2 The United Nations Declaration on the Rights of Indigenous Peoples

In 1971, UN Special Rapporteur Jose R. Martinez Cobo instigated a study regarding the matter of discrimination against indigenous tribes. The report, which summarised the results of the study, was largely written by Guatemalan attorney and UN staff member Agusto Willemsen Diaz.[40] However, the report took a long time to complete,

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[36] Vaillancourt, Roxan. Canadian Centre for Justice Statistics. Gender Differences in Police-reported Violent Crime in Canada, Catalogue no. 85F0033M, no. 24 (2008) p. 5.
[37] United Nations Committee on the Elimination of Discrimination against Women. *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, Article 21, p. 7.
[38] Namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of All Persons from Enforced Disappearance.
[39] United Nations Committee on the Elimination of Discrimination against Women. *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, p. 2 – 11.
[40] Sanders, Douglas. 'The UN Working Group on Indigenous Populations', *Human Rights Quarterly*; Vol. 11 (1989) p. 407.

and in 1982, the *UN Economic and Social Council* created a *Working Group for Indigenous Populations* (*WGIP*).[41] The group had the explicit purpose of establishing a mandate regarding matters of significance for native communities,[42] and would deal specifically with current indigenous issues, set standards of conduct, and strive towards the conception of a rights declaration. It was a year later, in 1983, that the study was completed and Diaz's report was submitted. As such, Diaz's final conclusions did not play a significant role in the establishment of the group, as it had already been created.[43]

From the beginning, the working group maintained a notably inclusive process during its annual meetings. Whereas UN bodies commonly have stricter guidelines regarding participation from non-government organisations (NGOs), the *WGIP* allowed organisations, indigenous representatives and native individuals to speak and submit documents regarding significant issues to the group.[44] The comprehensive nature of the group's work ethic reflected the reasons for which it was created in the first place. The *WGIP* was the first noteworthy representation of indigenous peoples at the UN, and strove to unite indigenous peoples on a global level with common causes and ambitions. By recognising native communities as entities in need of additional rights to those set forth in the *UN Declaration of Human Rights*, communication between indigenous and non-native entities was improved and the issues unique to aboriginal peoples were documented and discussed.

The first draft of the *Declaration on Indigenous Rights* was drawn up in 1993, 11 years after the *WGIP* had been established, and was subsequently approved by the *Sub-Commission on Prevention of Discrimination and Protection of Minorities* in

[41] Sanders, Douglas, p. 407.
[42] Ibidem.
[43] Sanders, Douglas, p. 408.
[44] Cooper, Josh. 'The UN Working Group on Indigenous Populations: A Global Space for Solidarity', *Social Alternatives*; Vol. 26, No. 4 (2007) p. 39.

1994.[45] The draft became the subject of a forum for negotiations between states, particularly in light of its statutes with regard to self-determination, before being approved by 30 states throughout the Western world, Africa and Asia. Two countries voted against the draft, namely Russia and Canada.[46] Nonetheless, in 2006 the majority vote resulted in the adoption of the draft by the *Commission on Human Rights*, now known as the *Human Rights Council*. The final step in the process of adopting the declaration was to put it before the *General Assembly*. The process was slowed by Namibia, who voted for 'clarification and further dialogue before adoption.'[47] On 13 September 2007, the *Declaration on the Rights of Indigenous Peoples* was adopted, with 143 votes in favour, 11 countries abstaining and 4 countries voting against, among which was Canada.[48]

The final and adopted declaration contains 46 articles, which will not all be discussed in this chapter. The document emphasises in the first place the equality of indigenous peoples to all others and assures natives a place and voice within the international forum regarding their rights. By acknowledging their status as equal citizens, the identities and traditions unique to native histories and cultures are assured protection from extinction through imposed integration with the rest of society.[49] An important addition is the right to self-determination. As article 3 states, 'they freely determine their political status and freely pursue their economic, social and cultural development.'[50] However, the right to autonomy and political freedom extends solely to internal self-government. External self-determination, such as the right to secede

[45] Errico, Stefania. 'The Draft UN Declaration on the Rights of Indigenous Peoples: An Overview', *Human Rights Law Review*; Vol. 7, No. 4 (2007) p. 742.
[46] Cooper, Josh, p. 43.
[47] Ibidem.
[48] The other three countries casting negative votes were New Zealand, Australia and the United States.
[49] Articles 5 and 8, United Nations General Assembly. *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (2007).
[50] Article 3, United Nations General Assembly. *United Nations Declaration on the Rights of Indigenous Peoples*.

from a state or become independent, is not set forth in the declaration.[51] Article 4 proves this point, "[i]ndigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."[52]

Another significant section of the declaration deals with the right to territories, land and the resources on these lands. Article 32 stipulates that free, prior and informed consent must be sought by states wishing to instigate projects or actions on indigenous land and use the territory's resources. It was this article in particular which has caused some contention, as will be discussed below. The declaration does not provide a description of 'indigenous people'. Interestingly, Jose R. Martinez Cobo, in his study of the 'Problem of Discrimination against Indigenous Populations,' did provide a working definition of the term.

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system. This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors: Occupation of ancestral lands, or at least of part of them. Common ancestry with the original occupants of these lands. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community,

[51] Errico, Stefania, p. 747-748.
[52] Article 4, United Nations General Assembly. *United Nations Declaration on the Rights of Indigenous Peoples*.

> dress, means of livelihood, lifestyle, etc.). Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language). Residence in certain parts of the country, or in certain regions of the world. On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.[53]

This definition, however, was not employed by the declaration, and the lack of clarification has been a cause for some uncertainty, as will be discussed in paragraph 1.3.

Eventually, *WGIP* was disbanded and replaced with the *UN Permanent Forum on Indigenous Issues* (*UNPFII*) and the *Expert Mechanism on the Rights of Indigenous Peoples* (*EMRIP*). Indications are that the *WGIP* and the *UNPFII* existed at the same time for a while, though no exact dates were found.

Canada's motives for rejecting the declaration remain a topic of some discussion, which will be described in the next paragraph. The government, on its website, provides several reasons. The first explanation given is that some of the language used is ambiguous and open to conflicting interpretations, though no examples were submitted to elucidate the argument. In addition, the government argued that the states which accommodate indigenous peoples are not given sufficient representation in the declaration, "it was clear to Canadian representatives that the experts were crafting a Declaration by and for indigenous peoples, and that the

[53] Cobo, Jose R. Martinez. United Nations Economic and Social Council. *Study of the Problem of Discrimination against Indigenous Populations*, E/CN.4/Sub.2/1982/2/Add.6 (1982), Chapter 5, Definition of Indigenous Populations.

concerns of States were not given adequate consideration in this process."[54] Canada's UN Ambassador John McNee also disputed article 19 of the declaration, which details that "free, prior and informed consent"[55] must be acquired by states from indigenous peoples "before adopting and implementing legislative or administrative measures that may affect them."[56] McNee's interpretation of the article would grant native communities the power to veto any legislation affecting their way of life, which the ambassador argued was "incompatible with Canada's parliamentary tradition."[57]

Canada's resistance towards the declaration has additionally been documented by various publications, such as in *Canadian Dimension* and *Human Rights Quarterly*. In addition to the reasons the government has explicitly provided, other motives have been suggested as well. Alex Neve, the Secretary-General of *Amnesty International Canada*, wrote in *Canadian Dimension* that the Canadian government offered other misgivings in 2007; concerns that the declaration is in conflict with the Canadian constitution, though examples to prove this point were not given. Additionally, treaties between government and tribes might have to be renegotiated, or individual human rights would be at risk, if the declaration were to be accepted.[58] These are not substantial arguments however, as article 37 specifically enforces existing treaties, and the declaration includes both individual and collective rights. In addition, Russel Lawrence Barsh, an associate professor in Native American Studies in Alberta, similarly contributed to the description of Canada's conduct in *Human Rights Quarterly*. For example, Barsh stated that one of Canada's concerns included

[54] Indian and Northern Affairs Canada, 'Canada's Position: United Nations Draft Declaration on the Rights of Indigenous Peoples' (2009). <http://www.ainc-inac.gc.ca/ap/ia/pubs/ddr/ddr-eng.asp>.
[55] Article 19, United Nations General Assembly. *United Nations Declaration on the Rights of Indigenous Peoples*.
[56] Ibidem.
[57] Seed, Tony. Shunpiking Magazine, People of the Dawn First Nations Supplement, 'Canada condemns UN Declaration on Rights of Indigenous Peoples' (Vol. 13, No. 49, 2007). <http://www.shunpiking.com/ol0406/0406-IP-TS-canadacondem.htm>.
[58] Neve, Alex. 'Canada's Absurd Opposition to the UN Declaration on the Rights of Indigenous Peoples', *Canadian Dimension*; Vol. 44, No. 2 (2010) p. 37.

granting the native community a right to unified representation on domestic matters as a distinct indigenous community, in addition to their individual right to be heard.[59] This could result in a more prominent participation in matters of policy, which relates to McNee's stated reservations. Distinct significance could therefore be given to McNee's original dispute with article 19, though the argument supporting the objection might not fully portray what may be a plain reluctance to grant indigenous peoples more autonomy and legislative power.

On 12 November 2010, the Canadian government, led by Conservative Prime Minister Stephen Harper, signed and ratified the *Declaration on the Rights of Indigenous Peoples*. "The government decided it was better to endorse the declaration and explain its concerns, rather than reject the whole document."[60] In addition, it was considered a step towards an improved relationship with native Canadians. Indeed, though the declaration it not legally binding, it has been discussed in a positive light by the native community as a guideline for communication and cooperation between the government and indigenous peoples.[61] Canada's signature on the *Declaration on the Right of Indigenous Peoples* was well-received by the *Assembly of First Nations*, whose national chief, Shawn Atleo, stated,

> [e]ndorsing the Declaration is the opportunity to look forward and re-set the relationship between First Nations and the Crown so it is consistent with the Treaties and other agreements with First Nations upon which this country was founded. In endorsing the UN Declaration,

[59] Barsh, Russel Lawrence. 'Indigenous Peoples and the UN Commission on Human Rights: A Case of the Immovable Object and the Irresistible Force', *Human Rights Quarterly*; Vol. 18 (1996) p. 800.
[60] Arctic Council Indigenous People Secretariat, 'Canadian endorsement of declaration on Indigenous Rights' (17 November 2010). <http://www.arcticpeoples.org/index.php?option=com_k2&view=item&id=347:canada-signs-declaration-on-indigenous-rights&Itemid=2>.
[61] The Spec, 'Canada endorses UN declaration on indigenous rights' (12 November 2010). <http://www.thespec.com/print/article/275792>.

> Canada is committing to work with us as a true partner to achieve reconciliation as instructed by the courts in Canada.[62]

1.3 Individual versus collective rights

However, by adopting the declaration, the Federal state of Canada and the indigenous community may face conflicting priorities. The concept of guaranteeing collective rights through human rights documents is often seen as a dichotomy. Human rights are arguably defined as individual rights, assured to each person by virtue of being a human being. The *Declaration on the Right of Indigenous Peoples* was predominantly influenced and created by indigenous representatives. As such, their focus on collective rights is evident and ubiquitous throughout the declaration. However, by advocating the rights of a collective people, individual rights could be neglected in favour of the overall importance of promoting group-rights. This argument has been put forward with regard to *DRIP*. "[T]he notion that indigenous peoples, as collectives, could enjoy human rights that inhere in individuals runs contrary to the conventional human rights system, which recognizes only individuals as beneficiaries of human rights."[63] Intercultural human rights debates regularly highlight the apparent conflict between Western individualism versus minority-driven community-based societies. A concern voiced by government representatives while drafting the *DRIP* was that the term 'indigenous peoples' was not defined. As such, any group would be able to avail themselves on the collective rights provided in the declaration and use it

[62] Dearing, Stephanie. Digital Journal, 'Canada signs on to UN Declaration of Indigenous Rights' (14 November 2010). <http://www.digitaljournal.com/article/300206>.
[63] International Work Group For Indigenous Affairs, Ed. by Charters, Claire and Stavenhagen, Rodolfo. *Making the declaration work: The United Nations Declaration on the Rights of Indigenous Peoples*, (2009) p. 200.

to marginalise individual rights and freedoms.[64] However, indigenous representatives did not agree with this analysis and supported the notion of expanding the characterisation of human rights to the acknowledgement of the "rights of peoples to exist as collectives and to be secure in their collective integrity from intrusions by the state or other threatening forces."[65] Article 1 of the declaration supports this notion, stating

> [i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the *Charter of the United Nations*, the *Universal Declaration of Human Rights* and international human rights law.[66]

By guaranteeing community-based cultures individual as well as collective rights, the declaration allows for a conflict between individual rights and freedoms, and collective rights and responsibilities. Such a conflict can result in culturally and legally complex situations.

Consider, for example, the case for reparations regarding the Black Hills in the United States, which has been and continues to be an unresolved matter. In 1868, the U.S. government allocated the Sioux an area which contained the Black Hills in South Dakota. Six years later, gold was found in the Hills and the land was ultimately expropriated through an untenable agreement with the native peoples. It was not until 1980 that the U.S. Supreme Court decided the government owed the Sioux $122 million in lieu of reparations for the injustices perpetrated against the indigenous tribe. A remarkable sum in itself, the amount has continued to increase as the Sioux

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[64] International Work Group For Indigenous Affairs, Ed. by Charters, Claire and Stavenhagen, Rodolfo. *Making the declaration work: The United Nations Declaration on the Rights of Indigenous Peoples*, (2009), p. 66.
[65] International Work Group For Indigenous Affairs, Ed. by Charters, Claire and Stavenhagen, Rodolfo. *Making the declaration work: The United Nations Declaration on the Rights of Indigenous Peoples*, (2009) p. 66.
[66] Article 19, United Nations General Assembly. *United Nations Declaration on the Rights of Indigenous Peoples.*

maintain their refusal to accept the verdict – demanding instead the reconstitution of the land, which is of crucial cultural and historical value to the native community. The issue has resulted in a bill, which, if accepted, would result in a patchwork of native land as it perpetuates possession by private landowners.[67] This stipulation stems from a conflict between the rights of non-native individuals who have inhabited the land for generations, which collide with the restitution owed to the native communities in the form of the reinstatement of the land in question.[68] In addition, the Sioux could be awarded anywhere between $2.6 and $18 billion – though the practical applicability of the offer is questionable as it would set an unsustainable precedent. The continued rejection of the numerous and varied government proposals also reflects an internal native conflict of individual versus collective interests. The prolonged absence from the Black Hills has reduced the sense of loyalty and responsibility to the land among the younger generations, who consequently indicate a preference for payment instead of land ownership. As the collective rights are represented by the claim to land, which will provide a location for the continued existence of the Sioux and their culture, the younger individual natives speak to an inclination to accept the monetary compensation, thereby foregoing the historical importance of the Hills and the collective importance placed on it.[69] The matter results in the question of whose rights should be given priority, and illustrates the inherent friction between individual and collective rights.

[67] Barkan, Elazar. *The Guilt of Nations*, p. 182 - 185.
[68] Barkan, Elazar, p. 183. Originally: Brodeur, Paul. 'Restitution: The land claims of the Mashpee, Passamaquoddy, and Penobscot Indians of New England', *Harvard Law Review*, January 1986.
[69] Barkan, Elazar, p. 185 - 187.

1.4 Summary

The first aspect of this chapter studies Canada's conduct with regard to the *Convention on the Elimination of all forms of Discrimination against Women*. The state professes its commitment to enforcing the statutes detailed by the UN, though the committee monitoring implementation, in addition to various domestic human rights organisations, has provided Canada with an expansive report of recommendations. These recommendations serve to aid the state in its goal to improve its effectiveness in guaranteeing women's rights.

Paragraph 1.2 discusses the creation of the *Declaration on the Rights of Indigenous Peoples*, which was not as swiftly formed as *CEDAW*. Canada's support of the document was also markedly absent, and in cooperation with Russia, the United States, New Zealand and Australia fought against the adoption of the declaration. Its motives for disagreeing with the document's intent varied from ambiguous language, to a lack of regard for state concerns, though McNee additionally voiced apprehension at the prospect of granting indigenous peoples the right to veto government projects affecting indigenous peoples. On 12 November 2010, the Canadian government ultimately adopted the declaration, as a stated effort to improve relations with the native community. The move was met with positive responses from indigenous representatives, though the government's domestic conduct remains a matter of some discussion.

In addition, the inherent conflict between individual and collective rights was highlighted in paragraph 1.3, which demonstrated the issues through the example of the Sioux in South Dakota, U.S. The friction results in the question of whose rights should be given priority in the effort to provide restitution to the indigenous

communities, and introduces speculation on whether comprehensive reparations are inherently possible when individual and collective interests must both be taken into account.

Chapter two will look to Canada's domestic policies regarding gender equality and indigenous rights, in order to determine the circumstances of native women's rights. The chapter will examine the role the government plays in assuring those civil liberties guaranteed by virtue of Canada's assurances in the international forum.

2. The History and Development of Gender Equality in Canadian Legislation

"Canada is one of the few countries that keeps its aboriginals, its first nations in an unprecedented state of dependence and discrimination."[70]

After establishing Canada's position on an international level regarding indigenous and women's rights, the focus now turns towards the Canadian state's domestic conduct. Two documents are vital to the analysis of indigenous women's circumstances in Canada, namely the *Charter of Rights and Freedoms*, and Bill C-3. The goal of this chapter is to provide a general outline of the interpretations and the application of these two legal documents within the domestic framework. 'Interpretation' is defined as the legal definition and understanding of the law within domestic policy.[71] 'Application' is understood to be the practical manner in which the laws discussed are applied in Canadian society.[72] The purpose of this analysis is to determine how these two documents, which exist and are applied simultaneously, have affected the indigenous communities and have contributed to the restitution process in Canada.

In order to comprehensively explore the meaning and impacts of these documents, the histories of their creation must be discussed. Bill C-3 in particular has had an extensive process of conception, starting with the *Indian Act* in 1867. The *Indian Act* is still in effect, though its original form has been frequently amended. Two of its amendments, Bill C-31, and later, Bill C-3, are the crucial legal documents

[70] Todd Russell, House of Commons Debates, 27 April, p. 2015.
[71] Your Dictionary, 'Websters New World Law Dictionary' (1996 – 2011). <http://law.yourdictionary.com/>.
[72] Ibidem.

which will be introduced in this chapter for the purpose of a deeper analysis in chapter three.

2.1 History of and Gender Equality in the Charter of Rights and Freedoms

In the nineteenth century, the Parliament of the United Kingdom passed the *British North America Act*, now known as *Canada's Constitution Act, 1867*. This act established the Dominion of Canada as a nation and contained the blueprints for the Canadian Federal state, in which Federal parliament held the highest power.[73] The constitution act did not include a bill of rights, and the possibility of creating a constitutional document which entailed these rights, was not suggested until 1945. Alistair Stewart, a member of the *Co-operative Commonwealth Federation* (*CCF*) presented the proposal before parliament, which would grant the courts the power to strike down laws signed by legislature if they violated the bill of rights. In effect, parliament would no longer hold supreme power. Though most civil liberties associations in Canada supported the move,[74] the opposition was reluctant to alter parliament's position of highest authority. It was not until 1960 that Canada's Conservative government drew up its own *Bill of Rights*, which allowed courts to supersede laws which violated the fundamental rights of Canadian citizens. However, the bill was not consistently applied and had extremely little impact.[75] By 1970, the opposition had elected a new leader, Pierre Elliot Trudeau of the Liberal Party, who supported the creation of a constitutional Bill of Rights.[76] The *Special Committee on the Constitution* similarly concluded that parliamentary supremacy should not

[73] Canada's Human Rights History, 'Charter of Rights and Freedoms' <http://www.historyofrights.com/events/charter.html>.
[74] Ibidem.
[75] Ibidem.
[76] Ibidem.

overrule individual rights and freedoms, after which negotiations between Federal and provincial governments began.[77] Twelve years later, on 17 April, British Parliament passed Canada's *Constitution Act, 1982*.

The 1982 constitution act is comprised of two segments. The first is the Canadian *Charter of Rights and Freedoms*. It contains 34 articles, and is the focus of paragraph 2.2. The second is entitled *Rights of the Aboriginal Peoples of Canada* and contains one article with several sub-sections. The article emphasises the validity of the existing treaty rights and declares that these apply equally to indigenous men and women. No other mention of gender equality is made in the document, and for that reason, this aspect of the *Constitution Act of 1982* holds little significance for the purpose of this study.

2.2 Interpretations and Application of the Charter

In order to analyse the implications of the application of the charter, a brief description of what the charter entails will first be provided. The first article of the 1982 constitution act emphasises the unalterable nature of the rights and freedoms set forth in the document, with the sole limitation that these rights should never interfere with the "free and democratic society"[78] of Canada. This condition allows courts to dismiss claims of human rights violations if they threaten the country's democracy. An example of such an instance is restricting the right to vote to eighteen years of age and above, thereby denying those below the age of eighteen their charter-guaranteed

[77] Canada's Human Rights History, 'Charter of Rights and Freedoms' <http://www.historyofrights.com/events/charter.html>.
[78] Article 1, Canadian Constitution Act, 1982.

right to participate in the election process.[79] This is done to ensure the validity of Canadian Federal state and maintain its democratic system. The charter additionally includes fundamental rights, involving, among others, freedom of speech, conscience, assembly and religion.[80] It also details mobility and legal rights, such as the right of any Canadian citizen to move and reside freely within the country and not to be subjected to arbitrary arrest.[81] Canada's official languages are established as both English and French, and the charter assures all individuals equal opportunity to learn and converse in either of these languages in any setting – public, government or otherwise – throughout the country.[82] Article 25 specifically notes that the charter will not negatively influence the treaties between governments and indigenous peoples, nor effect their rights and freedoms as native peoples.

Articles 15 and 28 are of particular importance to this thesis. Article 28 states unequivocally that all the rights assured by the charter apply equally to men and women. Article 15 emphasises this guarantee by declaring that every individual is equal before and under the law, with identical rights to protection from discrimination "based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."[83] It is important to note, however, that article 15 did not come into effect for another three years after the act was passed in 1982. This was decided in order to give the Canadian government the opportunity to amend their laws to suit the charter article. Consequently, article 15 came into full effect on 17 April 1985.[84] This summary of articles demonstrates the influence numerous international documents had on the creation of the charter, particularly the *Universal Declaration*

[79] Article 3, Canadian Constitution Act, 1982.
[80] Article 2, ibidem.
[81] Articles 6 – 14, ibidem.
[82] Article 16 – 23, ibidem.
[83] Article 15, ibidem.
[84] Canadian Heritage, 'The Canadian Charter of Rights and Freedoms' (2010). <http://www.pch.gc.ca/pgm/pdp-hrp/canada/frdm-eng.cfm>.

of Human Rights, and the *Convention on the Elimination of all forms of Discrimination Against Women*.

As briefly explained in paragraph 2.1, by including a Bill of Rights in the Canadian constitution, the supreme power of parliament was amended to allow courts to supersede law. "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."[85] This is done solely when an individual's rights and freedoms are violated and article 1 does not apply. As part of the constitution, the charter is now one of the highest laws of the country, and prescribes the manner in which government and citizenry interact. If the government interferes unreasonably with its people's rights, the courts have the power to abolish or demand the amendment of legislation.[86] As such, "governments are guided by the Charter in making laws. Courts are guided by the Charter in applying laws."[87] Consequently, any individuals who feel their rights and freedoms have been infringed upon, have the right to present their case in court and "obtain such remedy as the court considers appropriate and just in the circumstances."[88] As a result, there have been many cases brought before the courts arguing a violation of guaranteed rights and freedoms. Two examples illustrate the practical application of the charter.

The case of Andrews v. *Law Society of British Columbia* was the first case dealing with article 15 of the charter. This is the basis for its inclusion in this thesis. In 1989, Mark David Andrews, a British national residing in Canada, was prohibited

[85] Article 52, Canadian Constitution Act, 1982.
[86] Canadian Heritage, 'The Canadian Charter of Rights and Freedoms' (2010). <http://www.pch.gc.ca/pgm/pdp-hrp/canada/frdm-eng.cfm>.
[87] The Charter of Human Rights, 'Impact – Introduction' (2006). <http://www.charterofrights.ca/en/28_00_01>.
[88] Article 24, Canadian Constitution Act, 1982.

from admittance to the British Columbia bar[89] due to Section 42 of the *Barristers and Solicitors Act*, which stipulated the requirement of Canadian citizenship.[90] Andrews argued that the condition of Canadian citizenship violated article 15 of the charter as the measure discriminated against nationality, and should therefore be struck from the act. The Supreme Court evaluated the claim, first by determining whether the charter had been violated based on the validity of the arguments, and secondly whether the Law society's provisions were merited under article 1 of the charter.[91] The Supreme Court judged in favour of the Law society and Justices McIntyre and Lamer JJ. argued for the applicability of article 1. The reasoning was that Canadian nationality was not an unfair condition for "the newcomer who seeks to gain the privileges and status within the land and the right to exercise the great powers that admission to the practice of law will give […]."[92] Andrews appealed the verdict and the Court of Appeal consequently overturned the Supreme Court's decision.

The Andrews case was also notable because a significant interpretation of article 15 was submitted, which set a standard for future cases involving article 15. The Justices stated that "[t]he 'similarly situated should be similarly treated' approach will not necessarily result in equality nor will every distinction or differentiation in treatment necessarily result in inequality."[93] The distinction acknowledged that inequality and discrimination are not indistinguishable and that equal treatment under law does not always result in equality. "Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely

[89] According to Websters New World Law Dictionary, "A group of attorneys admitted to practice law in a particular jurisdiction or before a particular court or who practice in a common field or area of expertise in the law."
[90] Andrews *v.* Law Society of British Columbia, [1989] 1 S.C.R. 143, p. 4.
[91] Ibidem, p. 4.
[92] Ibidem, p. 7.
[93] Ibidem, p. 3.

escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed."[94]

In 1994, a case more closely related to the topic of this paper was brought before the Supreme Court of Canada. The *Native Women's Association of Canada* (*NWAC*) v. Canada involved the participation of the *NWAC* in the Charlottetown Accord negotiations. The Charlottetown Accord dealt with the rights of indigenous peoples to self-government[95] whereby the interests of the indigenous communities were represented by the *Assembly of First Nations*, the *Native Council of Canada*, the *Métis National Council* and the *Inuit Tapirisat of Canada*: four allegedly male-dominated organisations who received government funding.[96] The *NWAC* argued that under articles 2(b), 15 and 28 of the charter, the Canadian government was obliged to provide equal funding to the women's organisation in order to support their participation in the negotiations and guarantee equal gender involvement. Articles 15 and 28 have been described above, while article 2(b) details a Canadian citizens' right to "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."[97] The organisation stated that articles 15 and 28 had been violated due to the gender inequality in financing and allowance of participation in the negotiations. The *NWAC* also proposed that article 2(b) had been infringed upon as the organisation claimed its freedom of expression had been violated by being excluded from the negotiation process.[98] The Federal court issued a verdict in favour of the Federal government, though the Federal Court of Appeal

[94] Andrews *v.* Law Society of British Columbia, [1989] 1 S.C.R. 143, p. 3.
[95] Eberts, Mary, McIvor, Sharon, and Nahanee, Teressa. 'Native Women's Association of Canada v. Canada', *Canadian Journal of Women and the Law*; Vol. 18, No. 67 (2006) p. 77.
[96] Native Women's Assn. of Canada *v.* Canada, [1994] 3 S.C.R. 627, p. 11.
[97] Article 2(b), Canadian Constitution Act, 1982.
[98] Native Women's Assn. of Canada *v.* Canada, [1994] 3 S.C.R. 627, p. 2 – 3.

stated that the *NWAC*'s charter rights had been violated, particularly article 2(b).[99] The government's appeal before the Supreme Court concluded in their favour, the verdict stating

> the Federal government's decision not to provide equal funding and participation in the constitutional discussions to *NWAC* did not violate their rights under ss. 2(*b*) and 28 of the charter, since s. 2(*b*) does not generally guarantee any particular means of expression or place a positive obligation upon the government to fund or consult anyone.[100]

In the end, the Charlottetown Accord did not succeed in obtaining endorsement and was vetoed in an electorate vote.[101]

2.3 History of and Gender Equality in Bill C-3 and its Predecessors

2.3.1 The *Indian Act*: Its Interpretation and Application

In order to comprehensively analyse the function of Bill C-3, its predecessors must be described and their impact explained. The first document, which stipulates the regulations of indigenous society, is the *Indian Act*. This act was passed in 1867 and details the legality and procedures of many native issues. It is widely acknowledged that the *Indian Act*, in its original form, was a discriminatory and oppressive document, as was emphasised by a Canadian parliament member in 2010. "[T]his Parliament believes that the *Indian Act* is a paternalistic, obnoxious instrument of

[99] Eberts, Mary, McIvor, Sharon, and Nahanee, Teressa. 'Native Women's Association of Canada v. Canada', *Canadian Journal of Women and the Law*; Vol. 18, No. 67 (2006) p. 91.
[100] Native Women's Assn. of Canada v. Canada, [1994] 3 S.C.R. 627, p. 5.
[101] McIvor, Sharon Donna. 'Aboriginal Women Unmasked: Using Equality Litigation to Advance Women's Rights', *Canadian Journal of Women and the Law*; Vol. 16, No. 106 (2004) p. 129.

oppression that is unworthy of any western democracy and, in fact, is unworthy of any civilized free society."[102] The continued amendments to the act are part of the restitution the Federal state is working to achieve for the indigenous community. The highly publicised case of residential schools, a system stipulated in the act, where native children were separated from their families and communities and placed in boarding schools in order to assimilate them into the rest of society, resulted in a formal apology from the Canadian government in 2008. The act additionally restricted indigenous cultural traditions and prohibited natives from participating in the Federal state's voting and election process.[103] It further disallowed native women to contribute to indigenous council issues. The patriarchal nature of the act will be further explored below, during the description of Indian status procedures. The act additionally describes the function and functioning of band councils; an elected chief and his councillors governing a body of native Canadians.[104] Councils represent the members of their band and determine, among other matters, who may or may not become a member of their band and whether and where these individuals may reside on the reserve. A reserve is defined as land, which the government has reserved for the use and residence of native Canadian bands and communities.[105]

Most importantly, the *Indian Act* additionally sets forth the procedures of determining status. When a native Canadian qualifies for official Indian status, the individual is granted specific rights and privileges unique to the indigenous community. With status, the individual falls under specific treaty rights and as such is entitled to, among others, financial and residential benefits. For example, a registered

[102] Pat Martin, House of Commons Debates, 26 March 2010. P. 7.
[103] Shepard, Blythe, O'Neill, Linda and Guenette, Francis. 'Counselling with First Nations Women: Considerations of Oppression and Renewal', *International Journal for the Advancement of Counselling*; Vol. 28, No. 3 (2006) p. 230.
[104] Government of Saskatchewan, 'Aboriginal Community, Glossary' (2009). <http://www.fnmr.gov.sk.ca/community/glossary/>.
[105] Ibidem.

native Canadian is allowed to become a member of a band and live on a reserve. Band membership and reserve habitation depend on the band councils, some of which occasionally accept non-status natives. Also, when a registered native Canadian works and lives on a reserve, the individual is not obliged to pay residential or income taxes to the state.[106] In some cases, natives living on reserves also receive regular payments from the Federal government, usually as a result of oil and gas royalties.[107] In addition, the *Community Economic Development Program* (*CEDP*) funds economic development on reserves in order to increase business and employment opportunities.[108] The latter is one example of several programmes established on reserves to aid and encourage economic wellbeing for native Canadians.[109]

In order to qualify for these, and several other benefits, Indian status must be officially determined. Article five of the *Indian Act* explicitly describes the criteria with which an individual must comply in order to gain Indian status. Though the benefits of gaining Indian status on a psychological, social and economical level are clear, it must be noted that the procedure for Indian status application is not without difficulties. In order to be deemed eligible for status, applicants must provide extensive documentation in order to prove their ancestry. This requirement presents a challenge for many natives, as their histories are often recorded orally, and documented proof can be uncommon and sometimes difficult to provide.[110] As a result, applicants are frequently requested to send additional documentation, sometimes extending the process up to ten years, before the application is deemed

[106] Assembly of First Nations, 'FAQ about Native status' <http://64.26.129.156/article.asp?id=1714>.
[107] Ibidem.
[108] Ibidem.
[109] Other examples include the First Nations and Inuit Youth Employment Strategy (YES), the First Nations Schools Co-operative Education Program.
[110] Barth, William Kurt. *On cultural rights: the equality of nations and the minority legal tradition*, (Leiden 2008), p. 143.

complete and an individual is granted official status.[111] Andrew Woolford, an associate professor in Manitoba and author of a variety of literature regarding transitional justice and restitution, argues that these government procedures perpetuate a policy of assimilation.[112] The application procedure is an example of such an integration strategy, as the bureaucratic system and its rhetoric is alien to the indigenous community. Though the provision of Indian status forms part of the reparatory process for indigenous communities, the procedures for gaining such restitution are carried out in a European-based political framework. Consequently, native peoples are obliged to adapt their cultural traditions and customs to the language and processes of the Canadian Federal government, in order to receive the restitution owed to them. Woolford argues that the requirement for the indigenous community to change its language to suit the practices of government emphasises his point that the Federal government's reparatory process serves to assimilate native peoples into Canadian society. Woolford's arguments will be revisited and further discussed in Chapter three.

Aside from the challenges of applying for status and the proposal that assimilation results from the procedure, the status criteria historically characterise the act as a patently discriminatory piece of legislation. The issue is not who *could* be admitted to the Indian Register, but who could *not*.

In a crucial 1951 amendment, the act made a clear distinction between male and female natives, and determined that Indian women who married non-Indian men would lose their status.[113] Consequently, they would lose all privileges awarded to them courtesy of their status, and would not be allowed to maintain a residence on the

[111] Jean Crowder, House of Commons Debates, 22 November 2010, p. 6260.
[112] Woolford, Andrew. 'Governing through Repair: Historical Injustices and Indigenous Peoples in Canada', p. 21. To be published in 2012.
[113] Native Women's Association of Canada. *Special Rapporteur: Investigation: Violations of Indigenous Human Rights* (2002) p. 13.

reserves. Conversely, these principles were not applied to male Indians. Should the couple divorce, the female would be disqualified from the option of regaining her status as Indian. In addition, regardless of the female's married status, she was unable to pass down Indian status to her children. The inheritance of the right to Indian registration was solely possible through patriarchal lines. Any woman – native or non-native – who married a registered Indian male would automatically gain Indian status and join his band. If the female was a member of a different band, her membership would become invalid, as she would be required to join her husband's band.[114] Finally, another vital stipulation in section 12 determined that any child whose mother and paternal grandmother did not have status before marriage, would lose their Indian status at the age of 21; a provision which is called the 'double-mother rule'.[115]

Consequently, there were a number of cases brought against the *Indian Act* by native women. One example is the case of Lavell v. the Attorney General of Canada in 1973. Mrs. Jeanette Lavell has been mentioned in the Introduction in relation to the *NWAC*, and is a member of the Wikwemikong band who lost her Indian status after she married a non-status male. Lavell argued against the legality of the act's gender discrimination based on Canada's *Bill of Rights* of 1960. However, in 1974, the Supreme Court voted in favour of the act, and Lavell lost her case.[116] The Supreme Court acknowledged the inherent discrimination in the *Indian Act*, but deemed the inclusion was legal, as parliament was not bound by any law prohibiting gender discrimination.[117]

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[114] Native Women's Association of Canada. *Special Rapporteur: Investigation: Violations of Indigenous Human Rights* (2002) p. 13.
[115] McIvor, Sharon, D. 'The Indian Act as Patriarchal Control of Women', *Aboriginal Women's Law Journal, NWAC*; Vol. 1, No. 1 (1994) p. 76.
[116] Beaudoin, Gérald-A. The Canadian Encyclopaedia, 'The Lavell Case' (2011). <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0004563>.
[117] Native Women's Association of Canada. *Discussion Paper: Native Women and the Charter* (2000) p. 3.

In 1981, Sandra Lovelace, a native from Tobique, New Brunswick similarly lost her status when she married a non-Indian male. In Lovelace v. Canada, Lovelace lost her dispute domestically and subsequently brought her case before the *United Nations Human Rights Committee*. The committee deemed that Canada had violated the *International Covenant on Civil and Political Rights*, though it did not have the power to enforce its verdict.[118] However, the case played a significant role in the act's amendment, which followed in the years after the committee's findings. In 1984, a bill to amend the pervasive gender discrimination in the *Indian Act* was introduced into parliament, though it was vetoed in the Senate.[119] This was likely in part due to opposition from the First Nation's male leadership.[120] However, in June 1985, parliament succeeded in passing Bill C-31: An Act to Amend the *Indian Act*, its timing in accordance with the implementation of the charter's article 15.[121]

2.3.2 Bill C-31: It's Interpretation and Application

Bill C-31 was mainly concerned with the elimination of gender discrimination when granting Indian status, as set forth in the *Indian Act*. Articles 11 and 12 of the original act of 1951 detailed the criteria of determining Indian status, and explicitly excluded women in the manners described in the previous paragraph.[122] Consequently, the main goal of the amendment was to eliminate all forms of discrimination and to restore

[118] Gray, Marcie J. 'Native Women And The Charlottetown Accord Proposal to Protect Individual Gender Rights in Aboriginal Self- Governments', *NWAC, Aboriginal Women's Law Journal;* Vol. 1, No. 1 (1994) p. 45.
[119] Native Women's Association of Canada. *Implementing Bill C-31: A Summary of the Issues* (1988) p. 1.
[120] Petitpas-Taylor, Ginette. Fish, Food and Allied Workers. *Reality Check: Equality For Aboriginal Women: How Sharon Mcivor Is Taking On The Indian Act* (23 April 2008) p. 1.
[121] Native Women's Association of Canada. *Implementing Bill C-31: A Summary of the Issues* (1988) p. 1.
[122] Clatworthy, Stewart. Four Directions Project Consultants. *Re-assessing the Population Impacts of Bill C-31* (2001) p. 4.

official status to those who had lost it.[123] The bill also introduced section 6(1) and section 6(2), which declared that individuals complied with status criteria if one of both their parents were, or were entitled to be, status Indians. These inclusions guaranteed equal status-rights to men and women, regardless of marital status, and assured the children of male and female Indians the right to inherit official status.[124]

In the years that followed the implementation of Bill C-31, the indigenous community saw a considerable increase of its population. In the five years following the application of Bill C-31, the number of status Indians rose by 19 percent.[125] By 1996, the consensus counted 799.010 natives with official Indian status, a number which rose to 976.305 in 2001, and further increased to 1.172.790 in 2006.[126] The majority of the individuals who had been awarded Indian status after the enactment of Bill C-31, were female; a group which subsequently faced challenges on the reserves. The substantial rise in indigenous numbers resulted in dramatic increases in band membership applications and requests to live on reserves. In Alberta, band councils allowed only two percent of the newly reinstated status Indians back on indigenous lands.[127] Senator Walter Twinn and three of Alberta's most prosperous bands – Sawridge, Erminskin and Sarcee – collaborated and took their complaints regarding the sudden increase to court. They argued that allowing outsiders to reside on the reserves was unconstitutional and threatened the continued existence of their culture and traditions.[128] Another dispute the band councils might have had with Bill C-31 could have been the distribution of wealth on the reserve, and the risk that it would be

[123] Native Women's Association of Canada. *Implementing Bill C-31: A Summary of the Issues* (1988) p. 1.
[124] Clatworthy, Stewart, p. 4.
[125] Furi, Megan and Wherrett, Jill. Parliamentary Research Branch: Political and Social Affairs Division. *Indian Status and Band Membership Issues* (2003) p. 7.
[126] Statistics Canada, 'Aboriginal population surpasses the one-million mark' (21 June 2010). <http://www.statcan.gc.ca/pub/89-645-x/2010001/count-pop-denombrement-eng.htm>.
[127] Fuller, Patty. 'Racism on the reserves', *Alberta Report/Newsmagazine*; Vol. 20, No. 47 (1993) p. 26.
[128] Ibidem.

divided among a larger community. The Sawridge band was particularly notable as its band only consisted of thirty members, and its assets, royalties and investments were estimated to be worth approximately 100 million dollars.[129] Though the Federal court dismissed the Twinn case, bands continued to exclude women who had regained Indian Status after 1985 from their communities and reserves.[130]

However, Bill C-31 did not only face objections regarding its application. The amendment, though a step in the right direction, continued to exclude a sector of female indigenous individuals. In order to comprehensively analyse the discrepancy, a closer look at section 6(1) and section 6(2) are necessary. They state that an individual is eligible for Indian status:

> ***Section 6(1)***, where both of the individual's parents are (or are entitled to be) registered; and "***Section 6(2)***, where one of the individual's parents is (or is entitled to be) registered under Section 6(1) and the other parent is not registered.[131]

To fully explain the matter, consider the following. Prior to 1985, a male status Indian automatically gave status to his non-native wife (first generation), which means their children (second generation) automatically receive section 6(1) status as they have a registered father and mother. After 1985, the automatic sharing of status with a non-native spouse was abolished. Consequently, if the second-generation children marry a non-native, their children (third generation) will fall under section 6(2). If the third generation children marry a registered native however, their children (fourth generation) remain under section 6(1).

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[129] Fuller, Patty. 'Racism on the reserves', *Alberta Report/Newsmagazine*; Vol. 20, No. 47 (1993) p. 26.
[130] Verburg, Peter. 'The bitter dispute over C-31 Indians', *Alberta Report/Newsmagazine*; Vol. 22, No. 33 (1995) p. 19 – 20.
[131] Section 6(1) en 6(2) of Bill C-31.

Conversely, a female status Indian was never able to give status to her spouse (first generation). In fact, if the female married a non-native, she herself would also lose status, foregoing the possibility of passing it on to her children (second generation). When the female registered after 1985, her children automatically received section 6(2) status, as they have a registered mother and an unregistered father. If her children (second generation) consequently marry a non-native person, their children (third generation) will not inherit Indian status. Only if the second-generation children marry a status Indian, will they be able to pass on status to their children (third generation). As such, section 6(2) is a less desirable allocation, as it limits the ability to pass on Indian status one generation later than that of a male status Indian.[132] Consequently, 6(2) is often referred to as a lesser status, "the qualifier "6(2)" is considered derogatory and synonymous with lower status."[133] This restriction on status inheritance is called the 'second-generation cut-off rule'.[134]

In addition, it should be noted that those affected by the double mother rule regained the registration they had lost at the age of 21, and received section 6(1) status, resulting a superior status by having the ability to pass on status to subsequent children for another generation.[135]

The incongruity described above was quickly experienced and legally pursued by a Merritt, British Columbia native and law student, Sharon McIvor. McIvor lost her status when she married a non-Indian male before 1985, and learned after applying for status in 1985, that she would regain her status. However, as McIvor's female grandparents had been status Indians and her male grandparents had not,

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[132] Clatworthy, Stewart, p. 9.
[133] Renée Dupuis, Standing Committee Hearing, 15 April, p. 10.
[134] Canadian Bar Association, National Aboriginal Law Section. *Bill C-3 – Gender Equity in Indian Registration Act* (2010) p. 2.
[135] Hurley, Mary, C. and Simeone, Tonina. Parliamentary Information and Research Service, Social Affairs Division. *Bill C-3: Gender Equity in Indian Registration Act* (2010) p. 7.

McIvor's children would not be afforded the same privilege.[136] Conversely, had McIvor's male grandparents been status Indians, this would not have been the case. In 1989, after filing several letters requesting a review of the matter, McIvor and her son brought their dispute before the Supreme Court of British Columbia (BC). Here, McIvor and son argued that Bill C-31 perpetuated gender discrimination and therefore violated article 15 of the Canadian charter.[137] Seventeen years later, in 2006, the Court heard the case of McIvor v. Canada (Registrar, Indian and Northern Affairs). In June 2007, the BC Supreme Court issued a verdict in favour of McIvor and ruled Bill C-31 "of no force or effect".[138] British Columbia Supreme Court Justice Carol Ross supplemented the judgment, stating that Bill C-31 suggested that "one's female ancestors are deficient or less Indian than their male contemporaries. The implication is that one's lineage is inferior."[139] The Canadian government appealed the decision at the British Columbia Court of Appeal and simultaneously cancelled the Court Challenges Program, a social assistance initiative, which funded cases brought before court regarding equality rights. McIvor subsequently lost the government-awarded financial aid needed to continue her case, and proceeded to raise funds and gain support from organisations in order to maintain her challenge in the Court of Appeal.[140] In April 2009, the BC Court of Appeal decided to maintain the original verdict and judge Bill C-31 unconstitutional. However, the Appeal Court significantly limited the principle of discrimination it found and narrowed the section which it deemed required amending. Despite the fact that the Court of Appeal ruled in

[136] Canadian Union of Public Employees, 'Sharon McIvor's fight against the Indian Act's gender discrimination isn't over yet' (23 April 2009). <http://cupe.ca/aboriginal/Sharon-McIvors-indian-act-gender-discrimination>.
[137] Ibidem.
[138] Article 52, Canadian Constitution Act, 1982.
[139] McIvor v. The Registrar, Indian and Northern Affairs Canada, 2007 BCSC 827. Reasons for Judgment, p. 52, point 286.
[140] Public Service Alliance of Canada, 'Sharon McIvor Court Case - Background' (2009). <http://www.psac.com/news/2009/issues>.

McIvor's favour, the scope had become so restricted, she filed for an appeal before the Supreme Court of Canada, which was subsequently denied.[141]. The original verdict stood and the BC Court granted the government one year to amend Bill C-31 in such a way as to the forms of gender discrimination it had stipulated. Unlike McIvor, the Canadian government did not appeal the decision.[142] Instead, it created a new bill detailing Indian registration procedures and criteria named Bill C-3.

2.4 Interpretations and Application of Bill C-3

On 31 January 2011, the Canadian government enacted Bill C-3: Gender Equity in Indian Registration Act. In an effort to negate the discrimination embedded in Bill C-31, the C-3 introduces section 6(1)(c.1), which amends the 1985 criteria for section 6(1) status. With the enactment of C-3, individuals who comply with four specific criteria can now receive 6(1) status. The criteria are:

> [1] whose mother lost Indian status upon marrying a non-Indian man, [2] whose father is a non-Indian, [3] who was born after the mother lost Indian status but before April 17, 1985, unless the individual's parents married each other prior to that date, and [4] who had a child with a non-Indian on or after September 4, 1951.[143]

These amendments mean that Sharon McIvor's son now received section 6(1) status, as opposed to the 6(2) status he held previously. As a result, Sharon McIvor's family can now pass status on to one generation more than before, equal to the

[141] Todd Russell, House of Commons Debates, 26 March, p. 985.
[142] Indian and Northern Affairs Canada, 'Background – McIvor: An Overview' (2009). <http://www.ainc-inac.gc.ca/ai/mr/nr/m-a2009/bk000000338-eng.asp>.
[143] Canadian Bar Association, National Aboriginal Law Section. *Bill C-3 – Gender Equity in Indian Registration Act* (2010) p. 5.

situation of her hypothetical brother.

However, there are provisions, which raise questions and indicate the complete elimination of gender discrimination was not achieved with C-3. As a result of the new conditions, grandchildren born **before or after** 1985 of a female native grandparent, receive 6(2) status. Should the grandchild marry a non-native person, their children would therefore not receive Indian status. Similarly, a grandchild of a male native grandparent born **after** 1985 receives 6(2) status as well. The discrimination is found in the provision that a grandchild of a male native grandparent born **before** 1985 receives 6(1) status. This individual is therefore able to pass on status for one generation longer than the other grandchildren.[144] In order to provide a clear visual of the continued discrimination, the appendix will include a structural overview created by the Canadian Bar Association, which details the inheritance of 6(1) and 6(2) status for men and women.[145]

Another remarkable feature is the fourth criterion, which requires an individual to have a child in order to become eligible for 6(1) status. The condition means that a individual's right to status is not only dependant on his or her lineage, but additionally on whether the person has a child or not, which appears incongruous as it withholds 6(1) status – which is widely considered superior – from those who, for example, are unable to have children.

Under section 6(2), applicants will now qualify for status if:

> [1] whose grandmother lost Indian status as a result of marrying a non- Indian, [2] who has one parent currently registered, or entitled to be registered, under sub-section 6(2) of the *Indian Act*,

[144] Canadian Bar Association, National Aboriginal Law Section. *Bill C-3 – Gender Equity in Indian Registration Act* (2010) p. 8.
[145] See appendix.

[3] and who was born on or after September 4, 1951.[146]

The bill unquestionably includes a wider range of applicants in the register. However, due to the recent nature of the Bill's applicability, no accurate statistics on its effects on registration numbers are known thus far. Nonetheless, the Canadian government suggests that Bill C-3 grants approximately 45.000 aboriginal women, who were previously disqualified, official Indian status.[147] Though the bill effectively amends aspects of Bill C-31, which the BC Court of Appeal ruled on, Bill C-3 continues to discriminate against specific female aboriginal groups.

To conclude, though an improvement over Bill C-31, C-3 continues to discriminate against select groups of native women seeking Indian status. Though there can be no argument that the amendment allows a larger number of native women to apply for official status, there are communities of indigenous women who continue to be excluded from the registration process. The significance of this fact is emphasised by the unequal application of the procedure, allowing male native counterparts to gain official status whereas females cannot. The Canadian government's reasons for the exclusions in Bill C-3 will be explored in Chapter three.

2.5 Summary

This chapter discussed several domestic policies in Canada, which relate to the issue of gender equality through legislation and how these affect female native individuals. First, the study began by discussing the *Charter of Rights and Freedoms*, which forms

[146] Canadian Bar Association, National Aboriginal Law Section. *Bill C-3 – Gender Equity in Indian Registration Act* (2010) p. 6.
[147] Rabble, 'Indian Act remedy Bill C-3 is flawed' (21 May 2010). <http://www.rabble.ca/print/news/2010/05/indian-act-remedy-bill-c-3-flawed>.

a part of the Canadian *Constitution Act of 1982*. Consequently, the charter is one of the supreme laws of Canada, and unequivocally guarantees equal rights for men and women, regardless of race or ethnicity. As such, courts apply the charter to legal matters in order to determine whether it has been violated. If this is the case, the courts have the power to overturn law, and instruct government to amend or abolish said legislation. Several examples of court cases involving the charter provide an impression of the process of the application of charter law.

The description of the interpretation and application of the charter introduce the *Indian Act*, which has existed since 1867 and has since been condemned as a misogynistic law, strongly reminiscent of the colonial era. Specific aspects of the *Indian Act* are discussed in paragraph 2.3 and its subsections, and illustrate the patriarchal tone of the act through a description of its procedure regarding the determination of Indian status. This section has since been amended, through Bill C-31 which, after a protracted court trial was deemed discriminatory against native women. The result of its amendment is Bill C-3, which was passed on January 2011, and has been proved to contain enduring discrimination against specific female indigenous groups. Considering the assurance in the charter regarding equality for men and women, the incongruity between the constitutional law and the passage of the new amendment becomes clear.

As a result, Chapter three will provide an in-depth study of the parliamentary debates regarding Bill C-3, prior to its passage into law. The analysis will result in a determination of what the most significant factors were in the decision to pass C-3, despite its residual gender discrimination. Through the examination of the debates, and the testimonies of several indigenous witnesses, the third chapter will seek to answer the question of why Federal parliament and the Federal government chose to

enact a law which continues to violate the Canadian *Charter of Rights and Freedoms* and hinder the process of restitution for native Canadian women.

3. Creating and Passing Bill C-3

"We as parliamentarians are at an historic crossroads where we have an opportunity, once and for all, to rid the very archaic and parochial Indian Act of all sex discrimination."[148]

The analysis and its findings in Chapter two logically result in the questions why the Canadian Federal parliament and Federal government passed another bill, which continues to violate the charter by excluding specific groups of native women, and how this development affects the process of restitution. This chapter will endeavour to answer these queries by first focussing on Federal parliament. A more thorough understanding of the main political parties and their most prominent representatives will lay a foundation for a study of the parliamentary debates regarding Bill C-3. The analysis of the debates will illustrate the political decision-making process, which ultimately resulted in the acceptance of the Federal government's proposed Bill C-3. Paragraph 3.4 will additionally discuss the involvement of the native community in the creation and passage of Bill C-3 by examining witness statements during the hearings of the *Standing Committee on Aboriginal Affairs and Northern Development*. The committee was presided over by several parliamentary members of all major four political parties, and heard testimonies from a number of native representatives regarding Bill C-3. Paragraph 3.5 will expound on the exploratory process, its obstacles and the developments so far. Finally, paragraph 3.6 will summarise the findings in this chapter.

[148] Tod Russell. House of Commons Debates, 27 April, p. 2010.

3.1 Canadian Parliament

In order to fully comprehend the structure of the debates and the positions of the party representatives, a brief explanation of the Canadian Federal state, and the country's major political parties is required.

The Federal parliament of Canada is made up out of the House of Commons and the Senate.[149] The House of Commons consists of parliamentary members (MPs), who are chosen by the 308 constituencies of Canada through Federal elections every four years.[150] The House of Commons concerns itself primarily with the creation and debating of laws.[151]

The Senate is the second body a bill passes through after being accepted by the House of Commons. It has 105 members, and can change, refuse and allow bills to pass.[152]

The Federal government is made up out of the Queen and the Prime Minister (PM), who at the time of the discussion and passage of Bill C-3 was and remains Stephen Harper. In addition to the Queen and the PM, "the Cabinet and the departments of government"[153] make up the Federal government.[154]

The dominant party since 2006, and to the present day, is the Conservative Party of Canada (CPC), led by Stephen Harper who has concurrently been the Prime Minister of Canada. This right-wing party was a minority government, which changed after the 2011 elections, when the party became the majority government. As such,

[149] Parliament of Canada, 'The Canadian Parliament: The House of Commons' (October 2005). <http://www.parl.gc.ca/About/Parliament/GuideToHoC/can_parl-e.asp>.
[150] Ibidem.
[151] Ibidem.
[152] Parliament of Canada, 'The Canadian Parliament: The Senate' (October 2005). <http://www.parl.gc.ca/About/Parliament/GuideToHoC/can_parl-e.asp>.
[153] Parliament of Canada, 'The Canadian Parliament: The House of Commons' (October 2005). <http://www.parl.gc.ca/About/Parliament/GuideToHoC/can_parl-e.asp>.
[154] Ibidem.

Harper has played a significant part in Canada's conduct regarding indigenous issues on an international and domestic level, subsequently involving him in the analyses of every chapter in this thesis. During the debates, which are discussed below, the predominant parliamentary representatives of the CPC were John Duncan, the Parliamentary Secretary to the Minister of *Indian Affairs and Northern Development*; LaVar Payne, a conservative representative of the constituent Medicine Hat in Alberta, and Bruce Stanton, the representative for Simcoe North in Ontario.

The second largest party is the Liberal Party (LP). This centre-left party was founded in 1867 and is the oldest party in Canada and at the time of the debates was the official opposition of the ruling government.[155] Its leader at the moment is Michael Ignatieff, though the party's representatives during the debates were Todd Russell, the representative for Labrador in Newfoundland and Labrador; Larry Bagnell, the representative for Yukon, and Anita Neville, the representative for Winnipeg South Centre in Manitoba.

The third party involved in the discussion was the New Democratic Party (NDP) previously led by Jack Layton, who passed away on 22 August 2011. Layton's successor has not yet been announced.[156] Also a centre-left party, its main representatives during the C-3 debates were Jean Crowder, the representative of Nanaimo-Cowichan in British Columbia and among others, Megan Leslie, the representative of Halifax, Nova Scotia.

Finally, Bloc Québécois is a centre-left party, which fights for autonomy in Québec.[157] Its members who partook in the discussion regarding C-3 were Marc Lemay, the representative for Abitibi-Témiscamingue in Québec and Yvon Lévesque,

[155] Political Party. 'Canadian Federally Registered Political Parties' <http://politicalparty.ca/>.
[156] Ibidem.
[157] Ibidem.

the representative for Abitibi-Baie-James-Nunavik-Eeyou, Québec. The purpose of referencing these names is that these individuals will sporadically be mentioned throughout the paragraphs below.

3.2 Parliamentary Debates regarding Bill C-3

On 11 March 2010, Bill C-3: An Act to Promote Gender Equity in Indian Registration, was introduced for the first time to the House of Commons by Chuck Strahl, Minister of *Indian Affairs and Northern Development*.[158] Considering the Supreme Court had set the deadline for an amendment for 6 April 2010, a number of parliament members criticised the lateness of the bill's presentation. Nonetheless, the introduction signalled the commencement of Bill C-3 discussions, which would stretch across twelve sessions in nine months. The prolonged debates were supported by the Supreme Court, which granted the Canadian Federal government an extension on the deadline, and reset it for 5 July 2010. As July approached however, the Federal government requested another delay, and the courts agreed to set the deadline for 31 January 2011, a target which was successfully met.[159] Throughout the nine months, various political representatives in Federal parliament voiced numerous arguments for and against the bill. These arguments have been distilled from close readings of the debate transcripts, and will be summarised and analysed in chronological order, so as to illustrate the progression of the debates and the development of the arguments. The analysis will provide a comprehensive description of the decisions and priorities

[158] Chuck Strahl, House of Commons Debates, 11 March 2010, p. 303.
[159] Parliament of Canada, 'Proceedings of the Standing Senate Committee on Human Rights' (6 December 2010). <http://www.parl.gc.ca/Content/SEN/Committee/403/huma/08ev-e.htm?comm_id=77&Language=E&Parl=40&Ses=3>.

discussed in Federal parliament in order to evaluate which factors took precedence and caused Bill C-3 to be enacted on 31 January.

In addition to the discussions regarding the passage and enactment of the C-3, several motions were put before Federal parliament suggesting amendments to the original bill. On 27 April the Liberal Party brought forth a motion to expand the scope of C-3, as unanimously voted for in the House of Commons' *Standing Committee on Aboriginal Affairs and Northern Development*.[160] The following two paragraphs include a brief description of some of the arguments for and against the motion, though it was eventually ruled that "[t]he amendment exceeds the scope of the bill as set by the House at second reading and is therefore inadmissible"[161] and was consequently denied.

On 25 May, the Conservative Party submitted two motions to Federal parliament. The first entailed an obligation for the Federal government to report on the progress of its implementation of Bill C-3.

The second motion involved the inclusion of clause 9, and was a matter of significantly more contention. The addition of clause 9 meant that "[f]or greater certainty, no person or body has a right to claim or receive any compensation, damages or indemnity"[162] from any body of the government or native band council with regard to Bill C-3. As a result, no individual or group will be able to legally pursue a request for reparations for any consequences of the enactment of Bill C-3. The following two paragraphs similarly explain in brief detail the arguments for and against, as the two motions brought by the CPC were granted and included in the Bill.

[160] Jean Crowder. House of Commons Debates, 27 April 2010, p. 2003.
[161] Mr. Speaker the Hon. Peter Milliken, House of Commons Debates, 11 May 2010, p. 2650 – 2651.
[162] Bev Oda, House of Commons Debates, 25 May 2010, p. 2877.

3.2.1 Arguments for Bill C-3

The process of drawing up Bill C-3 began with an engagement process in collaboration with the native community. The Federal government issued a paper introducing the issue at hand, describing earlier endeavours to change the *Indian Act* and providing a description of the anticipated resolution. The discussion was instigated and fuelled by the feedback given by indigenous communities, both in written form and through engagement sessions. There were a total of twelve sessions, which were held from September to November 2009. Approximately 900 individuals contributed to the discussion, and 150 submissions were presented by representatives of interested parties.[163] In addition, the Federal government hosted "technical briefings"[164] with five major Aboriginal organisations[165], though what these briefings entailed or what their outcomes were have not been described. The government has described the result of the engagement process as an outpouring of general concern for broader topics such as Indian citizenship, registration and membership.[166] Consequently, the Federal government decided to create a precise response to the Court's decision regarding Bill C-31, before focusing on a more thorough and time-consuming exploratory process after C-3 had been passed to deal with the remaining issues in the *Indian Act*. More details regarding the intended enactment of the exploratory process will be provided in the paragraph 3.5.

In Federal parliament, CPC's arguments for passing Bill C-3 in its original form were introduced with the direct acknowledgement that the amendment does not

[163] LeVar Payne, House of Commons Debates. 27 April 2010, p. 2007 – 2008.
[164] Ibidem.
[165] The Assembly of First Nations, the Congress of Aboriginal Peoples, the Native Women's Association of Canada, the National Association of Friendship Centres and the Métis National Council.
[166] LeVar Payne, House of Commons Debates, 27 April 2010, p. 2007 – 2008.

remove all forms of gender discrimination from the *Indian Act*.[167] Instead, John Duncan of the Conservative Party stated that C-3 is an exact reaction to the Court's ruling, and focuses strictly on removing the aspects of Bill C-31, which were deemed discriminatory.[168] Duncan stated that this strategy was adopted as a deliberate step towards a discrimination-free act, and that C-3 was by no means meant as a comprehensive, final amendment to eliminate all causes for gender discrimination.[169] The argument was submitted in Federal parliament, that the demands made by the Court had been met in a precise and accurate manner, and that a broader perception of the issue required further dialogue with indigenous societies.[170]

The reasons for such a narrow reading of the Court's ruling lay partly in the outcome of the engagement process as described above. Another reason for C-3's limited scope was due to the time restraint the Court gave the Federal government when it ruled on the McIvor case.[171] With a mere year to amend the existing legislation, the government deemed it had too little time to thoroughly analyse the act to remove all forms of discrimination. Such a feat would need significantly more time than a year, as it would involve broad-spectrum collaboration and discussions with the native community in order to achieve a consensus on the required solutions.[172] This deduction resulted in the creation of the exploratory process, as will be discussed in a later paragraph.

As explained in Federal parliament by Duncan, there was a lack of consensus among the indigenous communities regarding aspects of the act. In order to achieve an agreement for all parties involved, further discussions with native representatives

[167] Bruce Stanton, House of Commons Debates, 27 April 2010, p. 2013.
[168] John Duncan, House of Commons Debates, 26 March 2010, p. 983.
[169] Ibidem, p. 981.
[170] John Duncan, House of Commons Debates, 27 April 2010, p. 2006.
[171] Bruce Stanton, House of Commons Debates, 27 April 2010, p. 2020.
[172] John Duncan, House of Commons Debates, 27 April 2010, p. 2016.

and organisations were necessary before the Federal government could justify proposals to change existing policies.[173] As the Parliamentary Secretary to the Minister of *Indian Affairs and Northern Development*, Duncan recollected unwillingness from the indigenous witnesses he spoke to, to discuss a broader response to eliminating gender discrimination. He stated the reason the witnesses gave for their hesitancy was a concern for consequences they could not foresee if the Federal government expanded its ambitions and the scope of Bill C-3.[174]

The pressure of producing an amendment that complied with the Court was compounded by the knowledge that a failure to meet the deadline would result in the abolishment of Bill C-31 in British Columbia. If that had happened, it would have resulted in a legislative vacuum where no policy on Indian registration existed in its place.[175] The demand of creating and passing an amendment on time to avoid the elimination of the Indian registration law was "in many ways, […] the crux of our approach to Bill C-3".[176]

Furthermore, Duncan declared that Bill C-3 had support from indigenous groups, and that heeding their wishes to pass C-3 would further improve the relationship between the Federal government and indigenous nations.[177] A reason, Conservative Party representative claimed, the native communities supported Bill C-3 was that 45.000 individuals would become eligible for Indian status under the new bill.[178]

Duncan additionally made a single, rather vague, comment regarding public opinion, which raises the question of whether the opinion and understanding of non-

[173] John Duncan, House of Commons Debates, 27 April 2010, p. 2010.
[174] Ibidem.
[175] Bruce Stanton, House of Commons Debates, 27 April 2010, p. 2019.
[176] Ibidem, p. 2020.
[177] John Duncan, House of Commons Debates, 27 April 2010, p. 2006.
[178] LeVar Payne, House of Commons Debates, 27 April 2010, p. 2010.

native Canadians played a role in the limited scale of Bill C-3. "The public may not understand why there is so much discussion about what basically amounts to an official designation".[179] Kevin Thomas supports the notion with his assertion that the issues of indigenous peoples live on the periphery of non-native Canadians' environments and awareness.[180] Consequently, there is little vested interest or involvement, which could undermine the support needed by Aboriginals. What therefore may have been left unsaid by the conservative representatives in Federal parliament, but merits some speculation, is whether the non-indigenous public would have reacted somewhat unfavourably to a sudden, and substantial, influx in native Canadians, as opposed to the more moderate number of 45.000 individuals, all of whom would theoretically be eligible for social assistance and could be excused from having to pay taxes.

Regarding the Liberal Party's motion on 27 April to expand the reach of the Bill, the CPC provided several arguments against the proposal. The first point the Conservative party made was foremost a question regarding the legality of the motion. By 27 April, Bill C-3 had passed the second reading in Federal parliament and was therefore not legally eligible for an amendment to expand. Member of Parliament Tom Lukiwski of the Conservative Party provided numerous legal precedents to support their case against the motion.[181]

The second argument has previously been briefly touched upon, namely an unwillingness to risk consequences which were not anticipated or planned. In order to emphasise the argument, the CPC's Bruce Stanton drew on the verdict of the Court of Appeal, which provided reasons for limiting the range of the amendment. The verdict

[179] John Duncan, House of Commons Debates, 27 April 2010, p. 1025.
[180] Thomas, Kevin. Turning Point, 'Friends of the Lubicon: How a Small Group of People Can Change the World' (6 April 2002). < http://www.turning-point.ca/?q=node/99>.
[181] Tom Lukiwski, House of Commons Debates, 29 April 2010, p. 2162 – 2162.

stated that for more than twenty years, native families and individuals had based numerous decisions and choices on the existence of Bill C-31. To radically amend the bill might afford others their rights as registered Indians, but simultaneously risk violating the rights of those who are already registered.[182]

> The length of time that the law has remained in force may, unfortunately, make the consequences of amendment more serious than they would have been in the few years after the legislation took effect. Contextual factors, including the reliance that people have placed on the existing state of the law, may affect the options currently available to the Federal government in remedying the Charter violation.[183]

The suggestion indicates a consciousness of the balance necessary to assure collective rights without violating individual rights. The statement illustrates that civil guarantees made to individual natives should be considered when amending Bill C-31, in order to prevent a violation of their rights assured under the 1985 bill. The rights of those affected by Bill C-3 should therefore not supersede the rights of those who lived under C-31 for 25 years.

One of the unintended consequences Stanton could have had in mind during the debates, could additionally be the substantial increase in financial support necessary to implement a more inclusive bill and how the allocation of funds could affect uninvolved parties.

In addition, Chuck Strahl, the Minister of *Indian Affairs and Northern Development,* suggested before Federal parliament that a more expansive bill could increase the number of registered Indians by 200 percent, raising questions with regard to band capacity, what effects this would have on the voting process on the

[182] Bruce Stanton, House of Commons Debates, 27 April 2010, p. 2021.
[183] Ibidem, p. 2022.

reserves and whether the Federal government would be able to deal with the considerable increase in Indian registration applications.[184] Furthermore, the financial consequences of such an influx of registered Indians are unknown and likely to be drastically higher than is presently the case.

On 25 May, the Conservative Party brought two motions before parliament. The first had little impact on the discussion as all parties agreed on the necessity of regular reports. As Marc Lemay of BQ stated, "Motion No. 1 does not present a problem. It is straightforward, and no one can disagree with it."[185]

The second motion, which aimed to introduce clause 9 as described above, faced more fervent opposition. The CPC argued for the inclusion in order to protect bodies of government and band councils against legal action as a result of Bill C-3.

> [W]e also recognized that it was a principle in law that when decisions are made in good faith by governments or, indeed, by first nations, and that legislation is found to be invalid at a later point in time, that particular event would not in and of itself attract liability.[186]

As the Conservative MPs stated, without the inclusion of the clause, the principle would still apply. However, the argument to pass the motion came from a wish to add clarification, and protect native chiefs and band councils from capricious court cases.[187] Chuck Strahl stressed the point by stating his lack of concern for the Federal government in this instance, but rather his desire to protect the native community. "The Federal government could be sued but it has hundreds of lawyers and, arguably,

[184] Chuck Strahl, House of Common Debates, 25 May 2010, p. 2894.
[185] Marc Lemay, House of Commons Debates, 25 May 2010, p. 2881.
[186] Bruce Stanton, House of Commons Debates, 25 May 2010, p. 2880.
[187] Rob Clarke, House of Commons Debates, 25 May 2010, p. 2889.

infinite resources and it will defend itself or do whatever it has to do regardless of who is in charge of the government."[188]

3.2.2 Arguments against Bill C-3

Initially arguing against Bill C-3 were the Liberal Party, the New Democratic Party and Bloc Québécois. Several members of the LP addressed the Federal government's conduct regarding the engagement process, which had shaped C-3. Todd Russell criticised the nature of the engagement process, stating that mere engagement was not sufficient. "It is not a consultation process because the government felt it had no legal requirement to consult, but only to engage the opinions of people to listen."[189] As a result, Russell argued that the process had been incomplete and restricted in statements from interested parties.[190] Larry Bagnell in turn conceded that the Federal government probably did want to eliminate all forms of discrimination, though reiterated Russell's statement by arguing that witnesses at the Standing Committee had stated that the consultation process during the engagement period had been insufficient.[191] Had the consultation been more comprehensive, the bill might have reflected the inclusive nature of the creation and done more to remove all forms of gender discrimination in the *Indian Act*. Russell and Bagnell's arguments were supported by a comment from a member of the NDP, who suggested that the deadline to amend C-31 had influenced the Federal government's attitude. Due to the limited

[188] Chuck Strahl, House of Commons Debates, 25 May 2010, p. 2887.
[189] Todd Russell, House of Commons Debates, 26 March 2010, p. 985.
[190] Ibidem.
[191] Larry Bagnell, House of Commons Debates, 25 May 2010, p. 2882.

time, consultation had not been performed properly and as a result, specific parts and the consequences of C-3 were not effectively evaluated.[192]

These initial comments against the engagement process foretold some of the criticism the opposing MPs would level against C-3. The first and foremost argument was the limited nature of the bill. Members of the LP, NDP and BQ accused the Federal government of interpreting the Court ruling too narrowly, more so than necessary. The parties' parliamentary representatives argued that this amendment was an ideal opportunity to eliminate all gender discrimination in the *Indian Act*.[193] Not doing so would only lead to court cases similar to Sharon McIvor's in the following twenty years.[194] Choosing to leave residual discrimination in the act would inevitably lead to legal action against the government and its proposed amendment in the years that follow its enactment.

The argument the Conservative Party members provided with regard to the deadline for the amendment was countered by the fact that the Court reset the deadline twice. Opposing party members additionally stated that when the Federal government requested an extension, the Court suggested it would have granted a longer delay for a more complete response to eradicate the discrimination left in the act. Incidentally, the CPC denied the assertion of the opposition that the Court implied it would have given additional time, and stated that retrospection was futile. Nonetheless, the Conservative MPs could not deny that the Court had granted an extension twice, indicating a certain attitude of flexibility towards the timeline it had set. It is not unlikely that the Court did make an implication as the opposition suggested.

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[192] Jean Crowder, House of Commons Debates, 29 March 2010, p. 1065.
[193] Jean Crowder, House of Commons Debates, 27 April 2010, p. 2004.
[194] Megan Leslie, House of Commons Debates, 27 April 2010, p. 2018.

The opposition also contradicted John Duncan's statement, that C-3 had the support of the native community. In fact, all three parties repeatedly claimed that virtually every witness at the Standing Committee had opposed C-3 and had stated that the amendment continues to perpetuate gender discrimination.[195] In addition, members of BQ regularly updated Federal parliament on the Amun March, a 500-kilometre protest walk against Bill C-3 by native women.[196] The Conservative MPs never responded to these updates or the content therein. The three opposing party members regularly criticised the CPC's claims of cooperation with indigenous peoples, as several members recalled the statements made by witnesses during the Standing Committee.[197] There was no concession from any party to the Conservative's regarding a lack of consensus. In fact, the overwhelming opinion implies that there was a clear consensus among the witnesses *against* C-3.[198] Whether the committee's witnesses were all in agreement will be examined in paragraph 3.4. If the parliament members' statements are accurate, John Duncan's claims of cooperation with the native community lose considerable impact.

These arguments similarly opposed the notion that passing C-3 would improve the relationship between the Federal government and the indigenous community. Indeed, the Liberal Party argued that the expectation of 45.000 new registrants is mere speculation and that no one can predict how many individuals will in fact become eligible. This point is further emphasised by Marc Lemay of Bloc Québécois, who stated,

[195] Larry Bagnell, House of Commons Debates, 25 May 2010, p. 2891.
[196] Marc Lemay, House of Commons Debates, 5 May 2010, p. 2388 – 2389.
[197] Larry Bagnell, House of Commons Debates, 27 April 2010, p. 2006.
[198] Jean Crowder, House of Commons Debates, 27 April 2010, p. 2003.

> [n]ot only does [Bill C-3] fail to end discrimination but it will maintain systemic discrimination —systemic, meaning part of the system—and ensure that 100,000 aboriginal people, for the most part women, will not be entitled to Indian status.[199]

These statements were additionally submitted as rationales against the Federal government's reluctance to risk unplanned and unforeseen consequences. By consciously allowing gender discrimination to remain in the bill, the Federal government was admitting to the purposeful consequence of sustained discrimination.

The Liberal Party also introduced the reasoning that with continued gender discrimination, the indigenous community would be preoccupied with its fight to be recognised, thereby being forced to neglect other issues such as drug abuse and the matter of adequate housing.[200] Bill C-3 might well continue to force native people into a potentially unnecessary dispute, which could distract attention and funds away from various native issues, which may require similar action.

The points described above, all served as arguments for the Liberal Party's motion, which was submitted before Federal parliament on 27 April. The motion entailed a request to expand the range of the bill, in order to eradicate all forms of gender discrimination in section 6 of the *Indian Act*. The proposal was debated before being ultimately ruled out of order by the speaker of the house, Peter Milliken, whose ruling, by his own account, was based solely on precedent and the present legality of the motion.[201]

The opposition also levelled a number of accusations against the Federal government's motives in passing C-3. The first was submitted by Todd Russell of the LP, who suggested the Federal government's true reasoning behind the limited bill

[199] Marc Lemay, House of Commons Debates, 25 May 2010, p. 2899.
[200] Todd Russell, House of Commons Debates, 27 April 2010, p. 2016.
[201] Peter Milliken, House of Commons Debates, 11 May 2010, p. 2650 – 2651.

was a sustained aspiration to assimilate natives into society.[202] The claim that the Federal government continues to work from an agenda of assimilation was clearly aimed at Canada's colonial history and the allegation that the government has retained discriminatory sentiments. Whether there is any truth to the charge is impossible to ascertain, though if the desire to assimilate were accurate, the ambition might be predominantly financial rather than based on a sense of superiority. However, according to Brian Howe in *Canadian Dimension*, there is some cause to speculate, as he describes the beliefs of Tom Flanagan, reportedly a valued mentor of Stephen Harper and outspoken advocate of assimilatory sentiments.

> For Flanagan, the best long-term solution for Canada's Aboriginal peoples is for the Federal government to cut or restrict funding for reserves and to assist Natives who choose to live off reserve. In other words, the best policy is to facilitate the assimilation of Aboriginals into mainstream Canadian society.[203]

As discussed in Chapter two, Woolford similarly argues that the Canadian Federal government employs measures, which will foster assimilation into non-native society. Under the guise of restitution, Woolford states that the Federal state continues its endeavour to integrate indigenous peoples into society through the European-based political procedures, which are inherently alien to the native community. Through the requirement of native peoples to adapt to European-style governance, the form and conditions for restitution are customised to suit government, rather than indigenous society.[204]

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[202] Todd Russell, House of Commons Debates, 27 April 2010, p. 2015.
[203] Howe, Brian R. 'What's behind Stephen Harper's Anti-Aboriginal agenda?', *Canadian Dimension*; Vol. 40, No. 5 (2006) p. 16.
[204] Woolford, Andrew. 'Governing through Repair: Historical Injustices and Indigenous Peoples in Canada', p. 14 & 21. To be published in 2012.

Bonita Lawrence, the Alberta-based associate professor mentioned in the Introduction, also indicated her belief in the Federal government's inherent discriminatory disposition, explaining in a 2010 interview why Toronto represents Canada on an international level,

> Canada would not be able to present itself as a liberal, democratic nation free of the stain of colonialism – as Steven Harper most recently claimed – in a city like Winnipeg, where outright segregation of Native people is visible and settler society is still struggling with its so-called 'Indian problem'.[205]

Therefore, accusations regarding the Federal government's possible discriminatory attitude are certainly made with regularity, adding another layer to the discussion regarding its attitude and conduct.

Russell also suggested that the government was reluctant to incur the costs of registering and supporting a substantial increase in native numbers.[206] This suggestion may be more expected than the first, considering the increase in funds that would be necessary to process potentially 100.000 applications for status, in addition to providing adequate housing on reserves and social assistance without collecting taxes. The existence of a financial budget for such an operation will be discussed in paragraph 3.3. Finally, Yvon Levesque of Bloc Québécois implied that the government had kept the target group of the bill relatively small, so as to increase its chances of passing the amendment. "The fewer people the government needs to include, the more likely it will be to succeed."[207]

[205] Rutherford, Scott, p. 13.
[206] Todd Russell, House of Commons Debates, 27 April 2010, p. 2015.
[207] Yvon Lévesque, House of Commons Debates, 26 October 2010, p. 5336.

With regard to the opposition's arguments against clause 9, the three parties appeared predominantly concerned with the removal of options for the native public in arguing for their rights. MPs from the Liberal Party and Bloc Québécois mentioned the Court Challenges Program, which was described in Chapter two, and provided the example as an argument that through clause 9, the Federal government intended to remove all recourse for native individuals seeking equality through legal action.[208] The concern the Conservative Party expressed regarding the native chiefs and band councils was somewhat negated by the assertions from the opposition that numerous native representatives at the Standing Committee opposed the inclusion of clause 9.[209] Ultimately, the CPC's two motions were admitted and became part of Bill C-3 as it was passed on 31 January 2011.

During the final parliamentary debate on 22 November 2010, the three opposing parties elucidated their stance regarding Bill C-3. As they were expected to vote on the bill during that particular session, representatives of each party announced that they would vote in favour of Bill C-3. However, this change in stance did not indicate a change of heart. Liberal Party's Anita Neville commented on the efforts it had made to amend the bill, but finally admitted, "[t]his regrettable choice has forced all stakeholders and opposition parties to make an extremely difficult choice regarding Bill C-3. How can we say no to equality for some when saying no means equality for none?"[210] Representatives of the New Democratic Party and Bloc Québécois each explained that the native communities they spoke for had requested political support for the bill, so that a number of people would become eligible for

[208] Todd Russell, House of Commons Debates, 25 May 2010, p. 2880. Marc Lemay, ibidem, 6 May 2010, p. 2430.
[209] Todd Russell, House of Commons Debates, 25 May 2010, p. 2879 – 2880.
[210] Anita Neville, House of Commons Debates, 22 November 2010, p. 6265.

status. Consequently, with positive votes from each party, Bill C-3 was passed, and enacted on 31 January 2011.

3.3 Concerns regarding the implementation of Bill C-3

Regardless of the opposing parties' eventual support, the MPs voiced several concerns regarding the implementation of Bill C-3. The Liberal Party representatives queried the Conservative Party on a number of issues. Todd Russell requested that the CPC assure the Federal government's readiness to deal with the increased number of applicants for registration, many of whom have waited numerous years to acquire status. Russell additionally questioned whether the Federal government had an accelerated program in place in order to grant status without unnecessary delays.[211] The Liberal Party representative also stated that the outcome of the application of Bill C-3 had been given inadequate consideration.[212]

The New Democratic Party emphasised the concerns of the LP and pointed out the lack of resources to deal with the influx of new registrants.[213] Jean Crowder stated that funding for native issues did not reflect the increase in status Indians. "[S]ince 1995 there has been a 2% funding cap on Indian and northern affairs funding and a 3% funding cap on first nations non-insured health benefits. The status population growth in bands has far outstripped that funding."[214] Indeed, the reserves seem to lack the resources to deal with an influx of natives due to the current financial budget allocated to the native community. On 26 March 2010, John Duncan pointed out the success the Federal government had recently had in providing safe drinking

[211] Todd Russell, House of Commons Debates, 22 November 2010, p. 6256.
[212] Ibidem.
[213] Jean Crowder, House of Commons Debates, 25 May 2010, p. 2884.
[214] Ibidem.

water to reserves. "A multifaceted and collaborative action plan continues to increase the number of first nation communities with access to safe and reliable supplies of drinking water."[215] This statement from the Parliamentary Secretary seems to confirm assertions made by opposing parties regarding Third World conditions on reserves.[216] Under such circumstances, it is unlikely that bands will be capable of housing and providing for the number of new status Indians the government is expecting. An increase in the financial budget is necessary to adequately support the implementation of Bill C-3.

The concerns of Bloc Québécois were comparable to the LP and NDP. Marc Lemay specifically questioned the number of natives who would become eligible for status under C-3. Lemay pointed out the uncertainty of the numbers by referring to Bill C-31 and the unexpected number of individuals who gained status under the amendment.

> [W]hen the government passed Bill C-31, the Minister of Indian affairs responded to a question in the House of Commons by saying specifically that there were about 56,800 additional aboriginals. That was in 1985, not 100 years ago. On December 31, 2000—10 years ago […] —more than 114,000 aboriginals were granted Indian status. Imagine what will happen with Bill C-3.[217]

Lemay argued that the uncertainty would have to be reflected in the budget, and that the funding needs to be raised accordingly.

However, the opposition's concerns regarding the financial state of aid for the indigenous community predominantly serves to support the Conservative Party's

[215] John Duncan, House of Commons Debates, 26 March 2010, p. 983.
[216] Jean Crowder, House of Commons Debates, 25 May 2010, p. 2884.
[217] Marc Lemay, House of Commons Debates, 22 November 2010, p. 6262.

arguments, rather than refute them. The lack of funding available and the question of how much the cap can and should be raised, illustrates the conflict in allocating finances to a matter, such as status registration, when, for example, clean water for the reserves is also a concern. Therefore, the increase in financial support, if substantially raised, could affect individual rights of other native Canadians.

Shelly Glover of the CPC responded to these concerns in a remarkably concise manner, "I want to assure the member that a great deal of preparatory work has already been done. There is a dedicated registration unit that is already in place making preparations for anyone who intends to apply for registration."[218]

3.4 The House of Commons Standing Committee on Aboriginal Affairs and Northern Development

In addition to the debates, which took place in the House of Commons and later, the Senate, the issues regarding Bill C-3 were brought before House of Commons *Standing Committee on Aboriginal Affairs and Northern Development*. The Standing Committee heard testimonies from witnesses and specialists from various levels and fields of expertise with regard to the interpretation, impact and potential implementation of C-3.[219] There were a total of six sessions over the course of April 2010. By analysing various statements from interested parties, this paragraph will examine the approximate consensus and ultimate impact of said consensus on the House's decision to pass C-3. The arguments and statements from the Conservative Party's representatives will not be expounded on, as these were sufficiently discussed

[218] Shelly Glover, House of Commons Debates, 22 November 2010, p. 6260.
[219] Parliament of Canada, House of Commons, FAQ. 'What Happens in Committee?' (2007). <http://www.parl.gc.ca/committeebusiness/SiteFaq.aspx?Language=E&Mode=1&Parl=38&Ses=1#about_01>.

in the previous paragraphs. The sole purpose of this analysis is to determine the opinions of indigenous organisations and specific native individuals in order to evaluate the tone of the discussions, and the motives for support or opposition regarding C-3.

3.4.1 Native Participation and Contributions

The individual whose testimony should and will be described first is that of Sharon McIvor, the instigator of the creation of the amendment through her decades-long trial against the government of Canada and the *Indian Act*. McIvor began by describing to the committee the full support she has received from her band, indicating that she spoke not only for herself, but for her Chief and the band she belongs to, in her pursuit to eliminate gender discrimination from the *Indian Act*.[220] McIvor then continued by pointing out the discrimination Bill C-3 perpetuates, which has been analysed in Chapter two. McIvor highlighted the injustice of the proposed amendment by stating that the limits to applying for registration solely apply to native women and not men.[221] When suggesting the remedies necessary to achieve the goal of eliminating all forms of discrimination, McIvor urged the Federal government to look beyond the ruling of the British Columbia Court of Appeal. Without looking further than the verdict, the narrow scope of the bill would remain.[222] Consequently, she argued that "[w]e need to have all people born before April 17, 1985, to be in the section 6(1) category, and no one in the section 6(2) category before 1985."[223] As a result, potential applicants born before 1985 would fall under section 6(1) of the act

[220] Sharon McIvor, Standing Committee Hearing, 13 April 2010, p. 1.
[221] Ibidem, p. 4.
[222] Ibidem.
[223] Sharon McIvor, Standing Committee Hearing, 13 April 2010, p. 3.

and gain full Indian status. The comments made by McIvor clearly indicate her opposition to the amendment. John Duncan's reference to the exploratory process the Federal government intends to instigate after the passage of C-3 provoked condemnation from the witness. MvIvor argued against the proposed purpose of the process, which Duncan mentioned during the hearing, and stated that the issues of membership and status are separate matters.[224] Sharon McIvor argued passionately for the removal of all gender discrimination and pointed out the incongruity of seeking permission from various native parties to legally determine equality for indigenous men and women.[225] As such, an exploratory process to reach a consensus on whether gender inequality should or should not be eliminated is "offensive, to say the least, to say my rights are subject to somebody else's agreement."[226]

The second witness represented the *Native Women's Association of Canada*. Jeannette Corbiere Lavell, the same individual who was mentioned in the Introduction, and was briefly discussed in paragraph 2.3.1 of Chapter two, testified as the president of the organisation and was joined by the executive director, Karen Green. The organisation's language regarding C-3 was less strongly phrased than McIvor's. Though she supported all the points of McIvor's statement, Green voiced a less unequivocal position, plainly stating the *NWAC*'s attitude towards C-3,

> [w]e're certainly not against having the response to the court decision, which is what that legislation is. Do we think it goes far enough? No. Are we opposed to the Government of Canada complying with the court decision? We're for it. But does it go far enough? In our opinion, no.[227]

[224] Sharon McIvor, Standing Committee Hearing, 13 April 2010, p. 7.
[225] Ibidem, p. 5.
[226] Ibidem.
[227] Karen Green, Standing Committee Hearing, 13 April 2010, p. 10.

Lavell and Green appeared to embrace the amendment as a step in the right direction. They acknowledged the planned exploratory process and focused less on the determination of status within the process, but more on the merits of a collaborative debate on membership issues.[228] Lavell did warn against any hesitancy in engaging the native community in the discussion, to the point of mentioning the possible genocide of the indigenous population.

> [W]e can look at making Bill C-3 the first step, but broaden it. Take it to the next step so that our people will not have to worry about becoming extinct—for lack of a better word, that's genocide—so that we will still be able to maintain our people. Right now, it's not their decision. Just in the way the legislation is, it eliminates their recognition. We didn't have any say in that legislation.[229]

The third testimony was given by Betty Ann Lavallée, the National Chief of the *Congress of Aboriginal Peoples* (*CAP*). *CAP* is an organisation, which represents both status and non-status Indians throughout Canada.[230] Lavallée stated that she is one of the women affected by C-3, as she is unable to pass status on to her son.[231] Nonetheless, her position was decidedly pragmatic. The Chief indicated that the relationship between the government and native community began to improve in 2008, when the state apologised for the residential school system, and spoke positively regarding actions and legislation, which have been created since.[232] The exploratory process is named as one of those positive actions for restitution, "[w]e believe that through the exploratory process that's being proposed there will be a fresh

[228] Jeannette Corbiere Lavell, Standing Committee Hearing, 13 April 2010, p. 13.
[229] Ibidem, p. 13.
[230] Betty Ann Lavallée, Standing Committee Hearing, 13 April 2010, p. 15.
[231] Ibidem, p. 19.
[232] Ibidem, p. 16.

breath into the lives of aboriginal peoples in the "time for honest reconciliation."[233] Despite acknowledging that C-3 would not eliminate discrimination,[234] Lavallée clearly stated that CAP would support the passage of Bill C-3.[235] The Chief implied that her motives for support were predominantly based on the hope that the exploratory process would achieve the eventual elimination of the *Indian Act* altogether.[236]

At the hearing of 15 April, the *Assembly of First Nations* (*AFN*) was represented on by Jody Wilson-Raybould, the Regional Chief of British Columbia. Wilson-Raybould argued for the complete elimination of discrimination within the amendment,[237] though she expressed concern regarding the financial consequences of implementing C-3 and articulated a need for supplementary funding.[238] Wilson-Raybould's position regarding C-3 appeared quite positive, though her testimony focussed predominantly on the exploratory process. The Chief commended the intended course of action, but commented on the need for a more comprehensive approach, "we need to go beyond exploration and information- gathering to the point where we are actually empowering our first nations communities on the ground to determine for themselves how best they want to move forward."[239]

Finally, Kathy Hodgson-Smith testified as a representative of the *Métis National Council*, which stands for approximately 400.000 Métis individuals.[240] The testimony of Hodsgon-Smith was unique, as the matter of Métis citizenship is different from that of the First Nation population. As Smith-Hodgson explained,

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[233] Betty Ann Lavallée, Standing Committee Hearing, 13 April 2010, p. 17.
[234] Ibidem, p. 18.
[235] Ibidem, p. 22.
[236] Ibidem.
[237] Jody Wilson-Raybould, Standing Committee Hearing, 15 April 2010, p. 2.
[238] Ibidem.
[239] Ibidem, p. 4.
[240] Kathy Hodgson-Smith, Standing Committee Hearing, 15 April 2010, p. 12.

persons who identify as Métis can register with the nation according to different criteria than natives who seek to be recognised as status Indians.[241] Consequently, those who gain Indian status can no longer apply for Métis nation citizenship.[242] Hodgson-Smith pointedly remarked on the lack of options within the act for those who were not informed regarding the consequences of gaining Indian status, and stated that, "[m]any of these people, now understanding the reality of that decision from experience, want to withdraw from the Indian registry, and currently no mechanism exists for this withdrawal."[243] Regarding C-3, the witness advised the government to remove the date restriction of 1951, citing the limitation as age discrimination.[244] Overall, Hodgson-Smith criticised the principle of the Federal government determining native status, "legislation that regulates cultural identity interrupts self-governance processes at the community level."[245] This statement appeared in synchronicity with Lavallée of *CAP* in implying a desire for complete government withdrawal from deciding Indian status through the elimination of the entire *Indian Act*.

3.5 The Exploratory Process

Whether the *Indian Act* will ever be completely abolished remains to be seen. However, the proposed exploratory process indicates at least a willingness on the part of the Federal government to support an initiative to resolve some of the issues surrounding native citizenship and membership procedures. As mentioned in the introductory chapter of this thesis, the Canadian government has a practice of reacting

[241] Kathy Hodgson-Smith, Standing Committee Hearing, 15 April 2010, p. 13.
[242] Ibidem.
[243] Ibidem.
[244] Ibidem.
[245] Ibidem, p. 14.

to situational reparatory needs, as opposed to maintaining a long-term strategic plan for comprehensive restitution. The exploratory process the Federal government has planned could signal a change in this approach and an accompanying rhetoric surrounding transitional justice. Ultimately, a shift could indicate the Federal state means to "rethink our focus on 'transition' as an interim process that links the past and the future, and to think instead in terms of 'transformation,' which implies long-term, sustainable processes embedded in society and adoption of psychosocial, political and economic, as well as legal, perspectives on justice."[246] Wendy Lambourne suggests that the current understanding and application of transitional justice is insufficient for the purpose of providing reparations. Akin to Woolford's argument, Lambourne points out the pervasive influence of Western practices on the indigenous peoples of former colonies. The author indicates that the language of Western governance, including its procedures for justice, have been adopted by native societies.[247] Woolford argues that this is an example of contemporary assimilation policy. In order to achieve a more comprehensive, cross-cultural and long-term justice-model, Lambourne recommends the adoption of her 'transformative justice' proposal. Transformative justice propagates a transdisciplinary approach, which considers the legal, political, economical, social and psychological needs of the local citizenry.[248] Prioritising the needs of the community and encouraging widespread participation should result in a comprehensive model for reparations, customised to suit the requirements of native society. The emphasis on the empowerment of the indigenous community will result in an equitable mechanism, which combines the

[246] Lambourne, Wendy. 'Transitional Justice and Peacebuilding after Mass Violence', *The International Journal of Transitional Justice*; Vol. 3 (2009) p. 30.
[247] Ibidem, p. 32.
[248] Ibidem, p. 28.

unavoidable Western customs with indigenous traditions and requirements.[249] As a result, Lambourne states that transformative justice will connect past events with a sustainable plan for the future.[250] The Federal government's statement regarding the exploratory process and the indication that this is a native-led enterprise certainly appears to reflect the comprehensive indigenous involvement necessary in order to create a framework for transformative justice.

Nonetheless, during the 2010 parliamentary debates, the opposing party's pointed out several glaring inconsistencies regarding the Federal government's intentions. The most prominent objection to the process was the lack of any substantial argument that an exploratory process is necessary to determine a consensus regarding gender equality, which is already a legal guarantee under the Charter. One could speculate whether, in that regard, the process makes a useful vehicle for the fact that Federal government might need more time to appropriate sufficient funds to make the guarantee a reality. Other matters which were mentioned, such as band membership and Indian registration procedures may very well be legitimate discussion points. The indigenous community has expressed their approval regarding the process and an eagerness to debate and resolve several issues with the Canadian government.[251]

However, during the 2010 House of Commons debates, the purpose and formation of the process were decidedly vague. There were numerous questions from the NDP regarding the duration of the process, whether there was an assurance from the Federal government to implement the final resolutions of the process and whether there were even any funds allocated to the creation and running of the sessions it was

[249] Lambourne, Wendy, p. 35 & 30.
[250] Ibidem, p. 47.
[251] Chief Jody Wilson-Raybould, Standing Committee Hearing, 15 April 2010, p. 4.

planning.[252] BQ supported NDP's objections and supplied their own, stating that the Federal government had not made its intentions or objectives clear. By the end of the parliamentary debates regarding C-3 and the planned process, it was clear that the CPC could not specifically elaborate on the Federal government's "specific mandate, clear objectives or identified funding for widespread participation."[253]

As of August 2011, the information regarding the exploratory process has become somewhat clearer. In April 2011, the government's *Department of Indian Affairs and Northern Development* provided some information on its website, where the department states that the process will take approximately one year, and end in December 2011. Though the Federal government will provide funding for the planning and execution of the process, the stipulation is made that this is a native-led project, and includes the participation of many larger aboriginal organisations, such as the *Assembly of First Nations*, the *NWAC* and the *Métis National Council*.[254] There is little known about the current development of the process and how the native community is experiencing the planned sessions, as the establishment of procedures and implementation standards are only at the begin stages. The indigenous organisations are encouraging local discourse meetings, bilateral and community conferences and the use of internet and social media to fuel discussions. Subjects for debate have been suggested, such as questions regarding indigenous identity and citizenship, the discrimination remaining in the *Indian Act*, the process of applying and registering as native under the *Indian Act*, and the topic of government control over numerous native issues.[255]

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[252] Jean Crowder, House of Commons Debates, 27 April 2010, p. 2006.
[253] Megan Leslie, House of Commons Debates, 27 April 2010, p. 2019.
[254] Indian and Northern Affairs Canada, 'The Exploratory Process on Indian Registration, Band Membership and Citizenship' (2011). <http://www.ainc-inac.gc.ca/br/is/bll/epir/index-eng.asp>.
[255] Native Women's Association of Canada. *Exploratory Process On Indian Registration, Band Membership And Citizenship: An Overview* (2011) p. 2.

It will be fascinating to witness the resolutions the organisations propose by the end of the process, and whether their suggestions will include the argument for the abolishment of the *Indian Act* and the implementation of an Indian-status determination procedure created and led by the aboriginal community, as opposed to the government. It will be even more interesting to observe the Federal state's response to the native communities demands and how interpretation and implementation will proceed.

3.6 Sharon McIvor and the United Nations

Regardless of the exploratory process, the Federal government's intentions or the possible outcome of the enterprise, Sharon McIvor has proceeded to appeal the British Columbia Court of Appeal verdict, and the creation of Bill C-3, at the *United Nations Human Rights Committee*. On 10 November 2010, the petition was presented to the committee in an effort to gain international legal support for a complete amendment of the *Indian Act*.[256] Should the committee rule in favour of McIvor, the Canadian government will certainly experience added pressure to amend the act and C-3 in order to eliminate all forms of gender discrimination. Thus far, no pronouncement has been issued.

[256] McIvor, Sharon, Grismer, Jacob. Represented By Gwen Brodsky. 'Communication Submitted For Consideration Under The First Optional Protocol To The International Covenant On Civil And Political Rights.' Presented before the UN Human Rights Committee in Geneva, Switzerland.

3.7 Summary

Through a thorough and in-depth analysis of the House of Commons debates and Standing Committee testimonies, this chapter recounts the arguments provided by all major parties in parliament regarding the passage of C-3. The Conservative Party defended the bill as a precise and appropriate interpretation of the court's verdict. John Duncan additionally stated that there was a lack of consensus within the native community regarding numerous issues. The matter of the elimination of gender discrimination was, by the CPC's account in Federal parliament, also an unresolved issue among indigenous peoples. As a result, the Conservative Party announced that the Federal government would instigate a long-term exploratory process after C-3 was passed. The narrow scope of the amendment was harshly criticised by the opposition, who argued for a more comprehensive approach to permanently eliminate all forms of discrimination. The Federal government was accused of discriminatory sentiments, stemming from a colonialist attitude towards indigenous peoples, and the desire to assimilate them into Canadian society. This allegation is supported by Woolford, whose arguments regarding the Federal state's procedural conduct indicate an ever-present predisposition to integrate natives into society. However, another verifiable accusation pointed towards a lack of financial preparation necessary to process all the Indian status applicants and allow them access to reserve housing and social assistance programmes. This argument was further illustrated through comments made regarding a freeze in the budget for aboriginal needs and a rather pointed condemnation of the Third World conditions on reserves.

The debate clearly demonstrates the financial limitations of broadening the scope of the bill and allowing a larger number of individuals to apply for status. The

accompanying issues regarding clean drinking water, sufficient housing and rampant unemployment, which are caused by issues on multiple dimensions, indicate a rather urgent necessity for increased financial, social and psychological aid in addition to improved accommodation and employment possibilities. These are all matters, which fall under the larger umbrella of restitution, and require concentrated effort from the Canadian Federal parliament and the Federal government. Though gender equality in Indian status application is legally guaranteed and of vital importance to the improvement of circumstances for native women, the issue of comprehensive restitution is extremely complex, and cannot be immediate or short-term. An inclusive, structured and well-financed exploratory process is crucial to the achievement of transformative justice, though is likely by no means the final step in assuring Canadian native women full restitution.

Conclusion

"We need to develop a transdisciplinary mindset that incorporates insights and lessons from many disciplinary perspectives and experiences in order to create new ways of thinking about peacebuilding and transitional justice theory and practice."[257]

The purpose of this thesis has been to discover why the Canadian Federal parliament and Federal government consciously chose to pass a bill, which continues to discriminate against native women. Determining Federal parliament's reasoning contributes to the discussion regarding transitional justice, and what motives may lay behind the chosen course of action in providing restitution for the native community. By perpetuating gender discrimination in legislation, Bill C-3 also violates the *Charter of Rights and Freedoms*, a part of the Canadian *Constitution Act, 1982* and one of the country's highest laws. In order to comprehensively examine the motives of the Federal state to pass C-3, it was vital to study Canada's conduct and attitude towards women's and aboriginal rights in the international forum, as well as on a domestic level. These analyses laid the foundation for the final chapter, which provided an in-depth examination into the parliamentary debates surrounding Bill C-3. Through this study, the Federal state's priorities concerning reparations to the native community and fulfilling the guarantee of equal rights for all Canadians become apparent.

The first chapter described two United Nations documents, which respectively deal with women's and aboriginal rights. The focus of the analysis was Canada's conduct regarding the creation and adoption of the *Convention on the Elimination of*

[257] Lambourne, Wendy, p. 35.

all Forms of Discrimination Against Women and the *Declaration on the Rights of Indigenous Peoples*, in order to help determine what the Canadian government's position is regarding these issues in the international arena. What was discovered in Chapter one, was that the Canadian government fully supported the *Convention on the Elimination of all Forms of Discrimination against Women*, and in fact considers itself one of the leaders of the international promotion of women's rights. While various reports indicate a vested interest on the side of the Federal government to apply *CEDAW* and guarantee equality, their conduct in several areas, including the equality of aboriginal women, appears to be lacking in purpose.

Canada's behaviour regarding the *Declaration on the Rights of Indigenous Peoples* was decidedly more ambiguous. The Federal state opposed the drafting and passing of the declaration, and continued to withhold its approval until November 2010. It was supported in its arguments by New Zealand, Australia and the United States and later explained its change of heart as a desire to improve the relationship with the indigenous community. The first chapter additionally introduces the inherent conflict between individual and collective rights. The issue recurs throughout the thesis in order to demonstrate the delicate balance the Canadian government must maintain in order to achieve fair and sustainable restitution.

Chapter two examines the subject matter in a domestic framework, studying the Canadian Constitution of 1982, which includes the *Charter of Rights and Freedoms* and assures Canadian citizens their fundamental rights such as freedom of expression and mobility, as well as equality regardless of gender or race.

The introduction of the *Constitution Act of 1982* laid the foundation for the analysis of the *Indian Act*, which determines the processes and procedures within native communities. In addition, the act dictates the relationship between indigenous

peoples and the government. The most significant aspect of the act, as it relates to this thesis, is section 6. Section 6 establishes the conditions for receiving Indian status and has a history of paternalism and misogyny. After several amendments to the *Indian Act* throughout a number of decades, the Canadian state enacted Bill C-3 on 31 January 2011. However, Bill C-3 continues to marginalise certain groups of native women by, for example, preventing their ability to pass on status to their children at a point where native men in an equivalent situation are still able to.

The question immediately arises why Federal parliament and the Federal government chose to pass a law, which perpetuates gender discrimination within the native community, thereby leaving the state vulnerable to continued legal action and prolonging the matter of reparations regarding this particular issue.

Chapter three closely examines the arguments for and against Bill C-3, which were expressed during the House of Commons Debates throughout 2010.

The oppositional parties unanimously argued for a comprehensive approach, which would see the elimination of all forms of gender discrimination from the act. However, the Conservative Party fought for the passage of a specific and timely response to the verdict of the Supreme Court of Appeal of British Columbia, which, by its own admission, would continue to fail a select group of native women. The Conservative Party stated that a lack of consensus among the indigenous communities indicated a necessity for a process, which would seek to find a long-term resolution in cooperation with the native peoples of Canada. This point was disputed by several female, native witnesses at the Standing Committee, who expressed puzzlement at the seeming necessity for a consensus on the assurance of gender equality. Another interpretation of the necessity for consensus could be the required achievement of an agreement of financial allocation. A process would provide the Federal government

with the time needed to reach an accord with the native community, regarding the funding of the application process and the subsequent housing necessary on reserves to accommodate new members.

An additional argument was put forth in defence of the prevention of unintended consequences, which was possibly a somewhat veiled implication regarding the financial consequences of a more inclusive policy and the delicate balance of providing collective rights while simultaneously protecting individual rights. As pointed out by the three opposing parties, the Canadian government has neglected to increase funding in direct relation to the population growth for the native communities on reserves. Representatives of the Liberal Party, New Democratic Party and Bloc Québécois also voiced concerns regarding financial support for the application process once C-3 was passed, and the lack of funding for the planned exploratory process.

Various indigenous representatives have suggested that underlying motivations for the lack of funding and decisive action against legislative gender discrimination might stem from personal prejudices and a colonial attitude of superiority and discrimination. However, individual feelings are subject to mere speculation as no academic proof can be offered regarding the private beliefs of legislators. Nonetheless, the question remains why it is native women who are consistently victimised by legislation, and not men. With regard to the colonial attitude the Federal government has been accused of perpetuating, Woolford presents compelling arguments, which support the notion that reparatory procedures have an assimilatory nature. Lambourne similarly indicates a prevalence of Western-dominated practices, to which the indigenous community has had to adapt in order to receive restitution.

In addition, a probable and substantial supposition is the availability of funds regarding status application when there are numerous indigenous matters, which require equal attention and support. A possible concern of the Canadian government could be that an unintended consequence would diminish the ability to guarantee individual rights to native peoples not directly affected by C-3. By focussing finances on one area of society, other sections might be neglected or disadvantaged. Therefore, by attributing resources to the status application process and living accessibility on reserves for a significant influx of Indians, finances necessary to assure individuals rights might suffer. Unbalanced finance prioritisation could, additionally, face the judgement of non-native public opinion.

The balance of providing collective rights while concurrently protecting individual rights has been an overarching theme throughout this thesis and falls under the concept of transitional justice, and the reparations owed to the Canadian indigenous community. It is for this reason that the Federal government has instigated the exploratory process, though concerns raised by the opposition indicate a, thus far, half-hearted attempt without any clear mandate or indeed, funding. The process has the potential to herald the next step in the developing process of restitution, provided it is approached with a sound and comprehensive mandate, sufficient financial support, a broad-spectrum engagement with all levels – and genders – of the native community and clear, feasible and sustainable goals. These recommendations might serve as a contribution to future cooperative endeavours between the Federal government and the indigenous community. Without specific agreements, which lead to a meticulously negotiated consensus, neither party will reach the desired result. The prevalent rhetoric and conduct during the exploration will also send a clear signal as to the Federal government's level of involvement and willingness to work towards

long-term and complete reparations. If approached consistently and with an inclination for practical implementation, the frequent ad-hoc strategies employed by the Canadian government may in turn be replaced by an organised and enduring venture. This development would mean a comprehensive approach to achieve Lambourne's transformative justice, which will benefit both parties in the long-term, and render the necessity for future situational responses to a minimum. It is worth speculating on the potential landscape of the completed process of transitional justice, and whether it might include the abolishment of state-determined Indian status and the introduction of an indigenous system for deciding status allocation. This also relates to Woolford's statements regarding the government-centred practices for restitution and might indicate a shift in procedural mechanisms and rhetoric. Depending on the Federal state's readiness to complete the process, it will be fascinating to discover what obstacles full restitution and balanced rights for all individuals and communities must overcome, and what the eventual proposal will look like. This could be a subject for future research. It would certainly be an educational challenge, which would benefit academia as well as the social-economic forum, to invest time and effort to further research how Canada's exploratory process and its consequences will affect native and non-native communities and individuals. The process may also indicate whether complete restitution is even an achievable goal, or whether anticipated reparations will perpetually hang in the balance of the collective/individual rights scales.

The intricate issue of providing fair legal and living conditions for all citizens regardless of race, ethnicity or gender, illustrates the complexity of practical transitional justice and what matters the Canadian state must take into consideration in order to make it an equitable process. On the basis of the analyses expounded

throughout this thesis, the complexity of the practical implementation of transitional justice, and how the process is developing with the Canadian indigenous community, has served to contribute to the discussion of how restitution is achieved, and what decisions and factors play a part in guaranteeing gender and indigenous equality in Canada. The results of this research may in turn provide a foundation for a comparative study of reparatory developments in the United States, Australia and New Zealand.

Glossary

AFN – Assembly of First Nations
BC – British Columbia
BQ – Bloc Québécois
CAP – Congress on Aboriginal Peoples
CCF – Co-operative Commonwealth Federation
CEDAW – Convention on the Elimination of all Forms of Discrimination against Women
CEDP – Community Economic Development Program
CPC – Conservative Party Canada
CSW – Commission on the Status of Women
DRIP – Declaration on the Rights of Indigenous Peoples
EMRIP – Expert Mechanism on the Rights of Indigenous Peoples
FAFIA – Feminist Alliance for International Action
GA – General Assembly
LP – Liberal Party
MP – Member of Parliament
NDP – New Democratic Party
NGO – Non-government organisation
NWAC – Native Women's Association of Canada
PM – Prime Minister
U.S. – United States
UN – United Nations
UNPFII – United Nations Permanent Forum on Indigenous Issues
WGIP – Working Group for Indigenous Populations

Appendix

Indian status inherited from a Female Grandparent (Sharon McIvor)		**Indian status inherited from a Male Grandparent (Hypothetical Brother)**	
Before 1985			
Sharon McIvor married non-Indian man	lost status	**Hypothetical Brother** married non-Indian woman	status
Jacob Grismer (son) married non-Indian woman	no status	Son married non-Indian woman	status
Grandchild	no status	Grandchild double mother rule	old s.12(1)(a)(iv) status until 21 yrs
After 1985 (Bill C-31)			
Sharon McIvor married non-Indian man	6(1)(c) reinstated	**Hypothetical Brother** married non-Indian woman	6(1)(a) maintains status
Jacob Grismer (son) married non-Indian woman	6(2) second-gen. cut-off	Son married non-Indian woman	6(1)(a) maintains status
Grandchild born ***after*** 1985	no status	Grandchild born ***after*** 1985	6(2) second-gen. cut-off[9]
Grandchild born ***before*** 1985	no status	Grandchild born ***before*** 1985	**6(1)(c) double mother reinstatee**
Parliament's proposed amendments (Bill C-3)			
Sharon McIvor married non-Indian man	6(1)(c) status	**Hypothetical Brother** married non-Indian woman	6(1)(a) status
Jacob Grismer married non-Indian woman	6(1)(c.1) status	Son married non-Indian woman	6(1)(a) status
Grandchild born ***after*** 1985	6(2) status	Grandchild born ***after*** 1985	6(2) status
Grandchild born ***before*** 1985	6(2) no status continuing discrimination	Grandchild born ***before*** 1985	6(1)(c) status

9 This was the situation in *McIvor*.

Source: The National Aboriginal Law Section. The Canadian Bar Association. Bill C-3 – Gender Equity in Indian Registration Act. April 2010, p. 9.

Bibliography

Books

Barkan, Elazar. *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York, 2000).

Barth, William Kurt. *On cultural rights: the equality of nations and the minority legal tradition*, (Leiden, 2008).

Puttee, Alan. 'Reforming the Disability Insurance System: A Collaborative Approach', in *Federalism, Democracy and Disability Policy in Canada* ed. by Alan Puttee (2002).

Articles

Barsh, Russel Lawrence. 'Indigenous Peoples and the UN Commission on Human Rights: A Case of the Immovable Object and the Irresistible Force', *Human Rights Quarterly*; Vol. 18 (1996) p. 782 - 813.

Brodeur, Paul. 'Restitution: The land claims of the Mashpee, Passamaquoddy, and Penobscot Indians of New England', *Harvard Law Review*, January 1986.

Cooper, Josh. 'The UN Working Group on Indigenous Populations: A Global Space for Solidarity', *Social Alternatives*; Vol. 26, No. 4 (2007) p. 39 – 44.

Cosentino, Gina. 'Canada Brings Its Fight Against Indigenous Rights to the UN', *Canadian Dimension*; Vol. 41, No. 2 (2007) p. 19 – 21.

Dube, Siphiwe Ignatius. 'Transitional Justice Beyond the Normative: Towards a Literary Theory of Political Transitions', *The International Journal of Transitional Justice*; Vol. 5 (2011) p. 1 – 21.

Eberts, Mary, McIvor, Sharon, and Nahanee, Teressa. 'Native Women's Association of Canada v. Canada', *Canadian Journal of Women and the Law*; Vol. 18, No. 67 (2006) p. 67 – 119.

Errico, Stefania. 'The Draft UN Declaration on the Rights of Indigenous Peoples: An Overview', *Human Rights Law Review*; Vol. 7, No. 4 (2007) p. 741 – 755.

Fuller, Patty. 'Racism on the reserves', *Alberta Report/Newsmagazine*; Vol. 20, No. 47 (1993) p. 26 – 27.

Gray, Marcie J. 'Native Women And The Charlottetown Accord Proposal to Protect Individual Gender Rights in Aboriginal Self- Governments', *NWAC, Aboriginal Women's Law Journal;* Vol. 1, No. 1 (1994) p. 44 – 53.

Howe, Brian R. 'What's behind Stephen Harper's Anti-Aboriginal agenda?',

Canadian Dimension; Vol. 40, No. 5 (2006) p. 16.

Lambourne, Wendy. 'Transitional Justice and Peacebuilding after Mass Violence', *The International Journal of Transitional Justice*; Vol. 3 (2009) p. 28 – 48.

McIvor, Sharon Donna. 'Aboriginal Women Unmasked: Using Equality Litigation to Advance Women's Rights', *Canadian Journal of Women and the Law*; Vol. 16, No. 106 (2004) p. 106 – 136.

McIvor, Sharon, D. 'The Indian Act as Patriarchal Control of Women', *Aboriginal Women's Law Journal, NWAC*; Vol. 1, No. 1 (1994) p. 70 – 89.

Neve, Alex. 'Canada's Absurd Opposition to the UN Declaration on the Rights of Indigenous Peoples', *Canadian Dimension*; Vol. 44, No. 2 (2010) p. 36 – 38.

Rutherford, Scott. 'Colonialism and the Indigenous present: an interview with Bonita Lawrence', *Race and Class*; Vol. 52, No. 9 (2010) p. 9 – 18.

Sanders, Douglas. 'The UN Working Group on Indigenous Populations', *Human Rights Quarterly*; Vol. 11 (1989) p. 406 – 433.

Shepard, Blythe, O'Neill, Linda and Guenette, Francis. 'Counselling with First Nations Women: Considerations of Oppression and Renewal', *International Journal for the Advancement of Counselling*; Vol. 28, No. 3 (2006) p. 227 – 240.

Verburg, Peter. 'The bitter dispute over C-31 Indians', *Alberta Report/Newsmagazine*; Vol. 22, No. 33 (1995) p. 19 – 20.

Woolford, Andrew. 'Governing through Repair: Historical Injustices and Indigenous Peoples in Canada', p. 1 – 21. To be published in 2012.

Canadian House of Commons Debates

House of Commons Debates. Vol. 145, No. 018, 3rd Session, 40th Parliament. 26 March 2010. P. 981 – 988.

House of Commons Debates. Vol. 145, No. 019, 3rd Session, 40th Parliament. 29 March 2010. P. 1063 – 1070.

House of Commons Debates. Vol. 145, No. 034, 3rd Session, 40th Parliament. 27 April 2010. P. 2003 – 2026.

House of Commons Debates. Vol. 145, No. 036, 3rd Session, 40th Parliament. 29 April 2010. P. 2160 – 2162.

House of Commons Debates. Vol. 145, No. 040, 3rd Session, 40th Parliament. 5 May 2010. P. 2388 – 2389.

House of Commons Debates. Vol. 145, No. 041, 3rd Session, 40th Parliament. 6 May 2010. P. 2428 – 2430.

House of Commons Debates. Vol. 145, No. 044, 3rd Session, 40th Parliament. 11 May 2010. P. 2650 – 2651.

House of Commons Debates. Vol. 145, No. 048, 3rd Session, 40th Parliament. 25 May 2010. P. 2877 – 2900.

House of Commons Debates. Vol. 145, No. 087, 3rd Session, 40th Parliament. 26 October 2010. P. 5335 – 5337.

House of Commons Debates. Vol. 145, No. 101, 3rd Session, 40th Parliament. 22 November 2010. P. 6252 – 6268.

House of Commons Standing Committee on Aboriginal Affairs and Northern Development Hearings

Standing Committee on Aboriginal Affairs and Northern Development. AANO. No. 008. 3rd Session, 40th Parliament. 13 April 2010. P. 1 – 22.

Standing Committee on Aboriginal Affairs and Northern Development. AANO. No. 009. 3rd Session, 40th Parliament. 15 April 2010. P. 1 – 16.

United Nations Documents and Reports

Cobo, Jose R. Martinez. United Nations Economic and Social Council. *Study of the Problem of Discrimination against Indigenous Populations*, E/CN.4/Sub.2/1982/2/Add.6 (1982).

International Work Group For Indigenous Affairs, Ed. by Charters, Claire and Stavenhagen, Rodolfo. *Making the declaration work: The United Nations Declaration on the Rights of Indigenous Peoples*, (2009).

McIvor, Sharon, Grismer, Jacob. Represented By Gwen Brodsky. 'Communication Submitted For Consideration Under The First Optional Protocol To The International Covenant On Civil And Political Rights', Presented before the UN Human Rights Committee in Geneva, Switzerland.

United Nations Committee on the Elimination of Discrimination against Women. *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*. CEDAW/C/CAN/CO/7 (2008).

United Nations Committee on the Elimination of Discrimination against Women. *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, CEDAW/C/IND/Q/3/Add.1 (2006).

United Nations General Assembly. *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (2007).

Canadian Law

Bill C-31 (1985).

Bill C-3 (2010).

Canadian Constitution Act, 1982.

Indian Act (2011).

Canadian Case law and Court statements

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143.

McIvor v. The Registrar, Indian and Northern Affairs Canada, 2007 BCSC 827. Reasons for Judgment.

Native Women's Assn. of Canada v. Canada, [1994] 3 S.C.R. 627.

Reports and Discussion Papers

Amnesty International. *Canada: Stolen Sisters: A Human Rights Response To Discrimination And Violence Against Indigenous Women In Canada* (2004).

Canadian Bar Association, National Aboriginal Law Section. *Bill C-3 – Gender Equity in Indian Registration Act* (2010).

Clatworthy, Stewart. Four Directions Project Consultants. *Re-assessing the Population Impacts of Bill C-31* (2001).

Furi, Megan and Wherrett, Jill. Parliamentary Research Branch: Political and Social Affairs Division. *Indian Status and Band Membership Issues* (2003).

Hurley, Mary, C. and Simeone, Tonina. Parliamentary Information and Research Service, Social Affairs Division. *Bill C-3: Gender Equity in Indian Registration Act* (2010).

Native Women's Association of Canada. *Discussion Paper: Native Women and the Charter* (2000).

Native Women's Association of Canada. *Exploratory Process On Indian Registration, Band Membership And Citizenship: An Overview* (2011).

Native Women's Association of Canada. *Implementing Bill C-31: A Summary of the Issues* (1988).

Native Women's Association of Canada. *Special Rapporteur: Investigation: Violations of Indigenous Human Rights* (2002).

Native Women's Association of Canada. *Voices of Our Sisters In Spirit: A Report to Families and Communities* (2009).

Native Women's Association of Canada. *What Their Stories Tell Us: Research findings from the Sisters In Spirit initiative* (2010).

Perreault, Samuel. Statistics Canada. *Violent victimization of Aboriginal people in the Canadian provinces*, Catalogue no. 85-002-X (2009).

Petitpas-Taylor, Ginette. Fish, Food and Allied Workers. *Reality Check: Equality For Aboriginal Women: How Sharon Mcivor Is Taking On The Indian Act* (23 April 2008).

Taite, Caroline L. et al. The Aboriginal Healing Foundation. *Fetal Alcohol Syndrome Among Aboriginal People in Canada: Review and Analysis of the Intergenerational Links to Residential Schools* (2003).

Toronto Women's Call to Action. *Canada and CEDAW* (2008).

Vaillancourt, Roxan. Canadian Centre for Justice Statistics. *Gender Differences in Police-reported Violent Crime in Canada*, Catalogue no. 85F0033M, no. 24 (2008).

Websites and Online Articles

Arctic Council Indigenous People Secretariat, 'Canadian endorsement of declaration on Indigenous Rights' (17 November 2010). <http://www.arcticpeoples.org/index.php?option=com_k2&view=item&id=347:canada-signs-declaration-on-indigenous-rights&Itemid=2>.

Assembly of First Nations, 'FAQ about Native status' <http://64.26.129.156/article.asp?id=1714>.

Canada's Human Rights History, 'Charter of Rights and Freedoms' <http://www.historyofrights.com/events/charter.html>.

Canadian Heritage, 'The Canadian Charter of Rights and Freedoms' (2010). <http://www.pch.gc.ca/pgm/pdp-hrp/canada/frdm-eng.cfm>.

Canadian Union of Public Employees, ‘Sharon McIvor's fight against the Indian Act's gender discrimination isn't over yet’ (23 April 2009). <http://cupe.ca/aboriginal/Sharon-McIvors-indian-act-gender-discrimination>.

CEDAW 2010, ‘Frequently Asked Questions’ (2011). <http://www.cedaw2010.org/index.php/about-cedaw/faq>.

Dearing, Stephanie. Digital Journal, ‘Canada signs on to UN Declaration of Indigenous Rights’ (14 November 2010). <http://www.digitaljournal.com/article/300206>.

Department of Social and Economic Affairs, Division for the Advancement of Women, ‘A Short History of CEDAW’ (2000 – 2009). <http://www.un.org/womenwatch/daw/cedaw/history.htm>.

Foreign Affairs and International Trade Canada, ‘Canada's commitment to gender equality and the advancement of women's rights internationally’ (2011). <http://www.international.gc.ca/rights-droits/women-femmes/equality-egalite.aspx>.

Indian and Northern Affairs Canada, ‘Background – McIvor: An Overview’ (2009). <http://www.ainc-inac.gc.ca/ai/mr/nr/m-a2009/bk000000338-eng.asp>.

Indian and Northern Affairs Canada, ‘Canada's Position: United Nations Draft Declaration on the Rights of Indigenous Peoples’ (2009). <http://www.ainc-inac.gc.ca/ap/ia/pubs/ddr/ddr-eng.asp>.

Indian and Northern Affairs Canada, ‘The Exploratory Process on Indian Registration, Band Membership and Citizenship’ (2011). <http://www.ainc-inac.gc.ca/br/is/bll/epir/index-eng.asp>.

Parliament of Canada, ‘Proceedings of the Standing Senate Committee on Human Rights’ (6 December 2010). <http://www.parl.gc.ca/Content/SEN/Committee/403/huma/08ev-e.htm?comm_id=77&Language=E&Parl=40&Ses=3>.

Parliament of Canada, ‘The Canadian Parliament: The House of Commons’ (October 2005). <http://www.parl.gc.ca/About/Parliament/GuideToHoC/can_parl-e.asp>.

Parliament of Canada, ‘The Canadian Parliament: The Senate’ (October 2005). <http://www.parl.gc.ca/About/Parliament/GuideToHoC/can_parl-e.asp>.

Parliament of Canada, House of Commons, FAQ. ‘What Happens in Committee?’ (2007). <http://www.parl.gc.ca/committeebusiness/SiteFaq.aspx?Language=E&Mode=1&Parl=38&Ses=1#about_01>.

Political Party. ‘Canadian Federally Registered Political Parties’ <http://politicalparty.ca/>.

Public Service Alliance of Canada, ‘Sharon McIvor Court Case - Background’ (2009). <http://www.psac.com/news/2009/issues>.

Rabble, ‘Indian Act remedy Bill C-3 is flawed’ (21 May 2010). <http://www.rabble.ca/print/news/2010/05/indian-act-remedy-bill-c-3-flawed>.

Seed, Tony. Shunpiking Magazine, People of the Dawn First Nations Supplement, ‘Canada condemns UN Declaration on Rights of Indigenous Peoples’ (Vol. 13, No. 49, 2007). <http://www.shunpiking.com/ol0406/0406-IP-TS-canadacondem.htm>.

Statistics Canada, ‘Aboriginal population surpasses the one-million mark’ (21 June 2010). <http://www.statcan.gc.ca/pub/89-645-x/2010001/count-pop-denombrement-eng.htm>.

Stone, Laura. Justice for Missing and Murdered Indigenous Women, ‘List of Missing, Murdered Aboriginal Women in Canada grow’ (2010). <http://www.missingjustice.ca/2010/04/list-of-missing-murdered-aboriginal-women-in-canada-grows/>.

The Charter of Human Rights, ‘Impact – Introduction’ (2006). <http://www.charterofrights.ca/en/28_00_01>.

The Spec, ‘Canada endorses UN declaration on indigenous rights’ (12 November 2010). <http://www.thespec.com/print/article/275792>.

Thomas, Kevin. Turning Point, ‘Friends of the Lubicon: How a Small Group of People Can Change the World’ (6 April 2002). < http://www.turning-point.ca/?q=node/99>.

Dictionaries and Encyclopaedias

Beaudoin, Gérald-A. The Canadian Encyclopaedia, ‘The Lavell Case’ (2011). <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0004563>.

Government of Saskatchewan, ‘Aboriginal Community, Glossary’ (2009). <http://www.fnmr.gov.sk.ca/community/glossary/>.

Your Dictionary, ‘Websters New World Law Dictionary’ (1996 – 2011). <http://law.yourdictionary.com/>.