

VARIOUS SHADES OF RED: DIVERSITY WITHIN CANADA'S INDIGENOUS COMMUNITY

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Abstract

Canada is a land of immigrants. All Canadians, with the exception of Canada's indigenous peoples, entered this nation from other countries. Immigration has produced a culturally and racially diverse population. This diversity was officially recognized with the implementation of the *Multiculturalism Act* in 1988. However, when we speak of "multiculturalism" in Canada we generally refer to those who originated, or whose ancestors originated, outside our national borders. Cultural diversity in Canada extends beyond the immigrant population into its indigenous population. There is often a misconception that Canada's indigenous peoples are a homogeneous group – nothing could be further from the truth. This paper discusses the distinctive identities, vibrant cultures, and varying traditions of Canada's indigenous peoples affiliated with 633 Indian bands and reside on more than 2,000 reserves across Canada.¹ It also offers insight into a variety of legal, social and cultural differences inherent between and with Canada's indigenous groups.

Introduction

Virtually all Canadians, with the exception of the indigenous peoples, entered this country as immigrants. Early Canadian immigration policies favoured settlers from western European countries, especially the British Isles. Statistics Canada states that of those Canadians who declared a single origin in the 1996 Census more than 54% recorded British, French or European origins (1999a:1). However, that trend has changed with current immigrants coming increasingly from what can be referred to as "non-Caucasian" nations such as Hong Kong, China, India, and Africa (Statistics Canada, 1999b:1).

Prior to the inception of multiculturalism policies, all newcomers to Canada were expected, either officially or unofficially, to accept and strive towards a western European, English-speaking cultural model. This meant discarding anything that made them distinctively ethnic. This assimilationist approach did nothing to respect or tolerate differences in Canada's increasingly diverse population.

Multiculturalism became federal policy in Canada with the passage of the *Multiculturalism Act* in 1988. According to political philosopher, Will Kymlicka, Canada's Multiculturalism policy had four goals:

- (1) to support the cultural development of ethno-cultural groups;
- (2) to help members of ethno-cultural groups overcome barriers to full participation in Canadian society;

- (3) to promote creative encounters and interchange among all ethno-cultural groups;
- (4) and to assist new Canadians in acquiring at least one of Canada's official languages (1998:15).

The legislation was the result of a policy introduced to the House of Parliament in 1971 by then Prime Minister, Pierre Trudeau (Kymlicka, 1998:15). The official encouragement of multiculturalism at this time - although not multilingualism - was, at least in part, a political (and perhaps electorally motivated) response to newcomers' increasing reluctance through the 1960s to submerge their ethnic heritage in favour of rapid assimilation into the 'Canadian mainstream'. Further endorsement of multiculturalism came in the 1982 Constitution by declaring that the Charter of Rights "shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada" (Francis, Jones and Smith, 1992:460). Notwithstanding the disparate opinions on the basic conceptualisation of multiculturalism in Canada, the underlying motives and subsequent attempts at policy evaluation, for almost thirty years, governments and public agencies at all levels have developed programmes that have espoused notions of supporting Canada's ethnic diversity.

Multiculturalism, then, is intended to make it possible for people to retain or express their identity with pride, if they so choose, by reducing the legal, institutional, economic or societal obstacles to this expression (Kymlicka, 1997). When we think of multiculturalism in Canada, we think of people of different cultures with different languages, different customs, (and, let us not forget, the food) who come from around the world to make our country their adopted home. The term "multiculturalism" is generally reserved for those who originated, or whose ancestors originated, outside our national borders. However, when we view the Aboriginal population², there is often a misconception that we have a homogeneous culture - nothing could be further from the truth. Given the public encouragement of Canada's ethnic diversity amongst the communities that derive from nineteenth and in particular twentieth century immigration, it seems ironic that the country's Aboriginal populations should still be subject to reductive stereotyping processes that fail to recognize their diversity.

This paper discusses the diversity among the Aboriginal community by first, briefly, discussing anthropological differences and then offering a more detailed examination of the various legal differences inherent between indigenous groups. The indigenous peoples of Canada have distinctive identities with vibrant cultures and varying traditions that are as different from each other as French society is from British. Although there are many commonalities and beliefs held by indigenous people, there are also many differences. These differences are not only geographical

(some living in the high Arctic while others reside on the plains) and linguistic but also legal, cultural, and social. For example, First Nations people in Canada (called “Indian” in the Constitutional definition) are affiliated with 633 Indian bands and reside on more than 2,000 reserves across Canada.³ This fact alone speaks to the heterogeneity within only one of the four indigenous groups.

Before it is possible to understand who is entitled to the benefit of specific Aboriginal rights (if one is eligible), one needs to have a basic understanding of some legal definitions. In the *Unjust Society*, Harold Cardinal characterized this definitional problem as “legal hocus pocus” (1969:20). While Cardinal’s description has validity, it is nevertheless possible and necessary to sort out the various definitions and classifications and their differing relationships and experiences with government. However, before we discuss the legal definitions we will briefly examine the anthropological definition of Aboriginal.

I. Anthropological Descriptions

Anthropologically, Canadian indigenous people are descendants of the first inhabitants of North America, who live within the boundaries of Canada. They have eleven language families and speak 53 different languages (Elliot, 1992:11). These include the Eskaleut; Athapaskan; Wakashan; Salishan; Penutian; Algonkian; Siouxan; Iroquoian; Muskogean; Hokaltecan; Azteco-Tanoan; and Caddoan (Dickason, 1997:5). Within these linguistic categories are many diverse cultures. All indigenous people are collectively known as “Aboriginal”.

One can view the First Nations as just one group of “Aboriginal peoples” set out in our Constitution and as an example of the multicultural nature of their group. Many Aboriginal cultures could be found in any city, province or territory in Canada as shown elsewhere in this collection of writings. For example, the Province of Alberta has 46 separate Indian bands among the First Nations population.⁴ There are distinct cultural differences between the tribes with Alberta being home to the Blackfoot, Blood, Stony, Cree, Dene, Saulteaux, and Beaver tribes (Dempsey, 1988). Each has its own unique culture and language. For example, the Stony language is different from the Cree language and members of other linguistic group cannot understand each other while each was speaking in their mother tongue. It seems ironic, but -outside Quebec - English is the universal language in the Aboriginal community.

The understanding, or lack thereof, goes far beyond language within the indigenous community. Some Aboriginal groups just did not see “eye to eye”. Historian, Olive Dickason, states in *Canada’s First Nations: A History of the Founding Peoples from Earliest Time* that “...intertribal hostilities were endemic in the Americas” (1997:60). In fact, some First

Nations were traditional enemies such as the two Alberta bands that lived in relatively close proximity to each other. Dickason comments that “the Cree and the Blackfoot considered each other their worst foe” (1997:174).

The various First Nations cultures are geographically scattered throughout Canada and have unique historical experiences that shaped their present day culture (Morrison and Wilson, 1995). Besides the First Nations cultural differences, there are the Métis with at least two distinct cultures, as we shall see below, and the Inuit. The most significant distinctions, however, are the legally imposed definitions.

II. Legal Definitions of Aboriginal Peoples

Three pieces of legislation determine the legal categorization of Aboriginal peoples in Canada: the *Constitution Act, 1867* (the *British North America Act*); the *Indian Act*; and the *Constitution Act, 1982*.

A. The Constitution Act, 1867 (The British North America Act)

At Confederation, The British North America (BNA) Act gave exclusive powers over “Indians and Lands Reserved for Indians” under section 91(24) to the federal government. Indians under the Constitutional definition is broader than the Indian Act definition. The Supreme Court of Canada in *Re: Eskimo* held that Indians under s. 91(24) includes the Eskimo (Inuit). Some have argued that this should also include the Métis (Chartier:1979:57). However, the federal government has decided to interpret their jurisdiction in as narrow a fashion as possible. Under this authority, Parliament enacted a series of laws that became the *Indian Act* and exercised its jurisdiction over those defined as “Indians”.

B. The Indian Act

The *Indian Act* has been, and still is, Canada's major instrument for dealing with its Aboriginal population - a population racially and potentially legally different from other residents of the country. However, as we will see, Parliament has exercised its jurisdiction in a very legalistic and narrow manner. While recently the *Act* has become somewhat of an embarrassment to the federal government, it has come to be seen as a source of ethnic salvation and cultural survival by some First Nations people. The *Indian Act* is a product of an historical obligation to protect and, at the same time, “civilise” Aboriginal people (Tobias, 1983:39). It pre-dates Confederation and has its roots in British Imperialism and is consistent with their treatment of indigenous peoples in its colonies (Leslie and McGuire, 1978). The *Indian Act* has its origin in the *British North America Act* where “Indians” were categorised as persons deserving special

attention under a federal mandate. Although one could interpret this mandate as discretionary, Canada interpreted it as impelling and exercised its mandate by narrowly defining who would or could be an "Indian". The evolution of the *Indian Act* has witnessed increasing federal power within the realm of Indian Affairs that has produced the only clientele department now in existence in the federal structure.

Most Aboriginal people have mixed emotions about the *Indian Act* although some have consistently criticised it for its constraints. They resent the authority it exerts over their daily lives, yet see it as an important device for protecting their special rights. These "rights", supposedly enshrined in the *Act*, are variously perceived. Formulations vary according to region, tribe, personal experiences and local folklore. The *Indian Act* contains statements of freedom to maintain land; freedom of trespass from whites; freedom from some types of taxation; the ability to determine band membership; and other powers. Due to its restrictive rules, some demand the abolishment of the *Indian Act*. However, others fear its abolition will mean a loss of *Indian Act* rights and prefer to see its continuance rather than risk having no statutory protection.

The *Indian Act* also caused many First Nations women and their children to lose membership and status rights pursuant to section 12(1)(b). This section illustrates the male bias in the earlier *Indian Act*. It pertained specifically to a woman losing her status by marrying a non-Indian man, while it had no effect on Indian men marrying non-Indian women.

Section 1 of the Canadian *Bill of Rights* guaranteed equality to all under the law regardless of race or sex. Two First Nations women, Lavell and Bedard argued that under the *Indian Act* they were discriminated against on the basis of sex, which contravened the Canadian *Bill of Rights*. The case was heard before the Supreme Court of Canada, which affirmed a lower court's decision upholding the validity of section 12(1)(b), which deprived Lavell and Bedard of their Indian status. The decision stated that the Canadian *Bill of Rights* meant equality only in the administration and enforcement of the law. The actual substance of the law could discriminate between men and women as long as the law was applied by its administrator in an even-handed way (Atcheson, 1984:12).

Section 12(1)(b) was repealed in 1985 by the Bill C-31 amendment to the *Indian Act* after the federal government was embarrassed in the international arena (Voyageur, 1996:103). Sandra Lovelace, a Maliseet woman, who lost her Indian status by marrying a non-Indian man. Lovelace took her case to the United Nations Human Rights Tribunal who found Canada in breach of the International Covenant on Civil and Political Rights. This ruling caused great embarrassment to the Canadian government but it took four years for the legislation to change (Voyageur, 1996:103). Since 1985, the *Indian Act* no longer allows people to lose status or to gain status through marriage.

C. The Constitution Act, 1982

The *Constitution Act, 1982*, which amended our earlier Constitution by adding a *Charter of Rights and Freedoms*, contains a definition of “Aboriginal peoples” that includes most Aboriginal groups in Canada, but does not include non-Status Indians (Sawchuk, 1985:136). The 1982 amendments to the Constitution contained explicit clauses referring to Canada’s Aboriginal peoples. Section 35(1) provided that the “existing Aboriginal and treaty rights are hereby recognized and affirmed”. Section 35(2) defines the Aboriginal peoples of Canada as the “Indian, Inuit and Métis peoples of Canada.” (Government of Canada, 1982: Schedule B). Since this is not an exclusive definition, non-Status Indians could be included, but as yet Parliament has not amended the Constitution to include them.

It was only after intensive lobbying by the various Aboriginal groups in Canada that s.35 was included in the Constitution (Sanders, 1983:301). With the entrenchment of s. 35(1), an Aboriginal group or any person who can prove the existence of traditional practices or ties to specific territories can have their Aboriginal rights constitutionally protected.

Generally the term “Aboriginal” includes all indigenous people in Canada: Indian (First Nations), Métis, Inuit, non-Status Indians, and a more recently created group – Bill C-31s (those who were entitled to reinstatement of Indian status after 1985). Many have found that the myriad of names applied to Native people have caused enormous confusion and misunderstanding. Clarification of this matter is required. There is however, the more specific legal definition of Aboriginal people in the Constitution mentioned above.

III. Legally Imposed Categories of Aboriginal People in Canada⁵

A. Indian (First Nations)

The term “Indian” was more widely used in the past than it is today. This is a result, in part, to its pejorative connotation. This is especially true of those who point to its association with Columbus's case of mistaken identity. However, it does have a rather specific definition in Canadian law, that is the one given in the *Indian Act* s.2(1) which states: “‘Indian’ means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian” (Hawley and Amai, 1995:4). In this context, the term has a legal connotation since it specifies a type of

Aboriginal people with special legal rights.⁶ One can therefore interchange the terms “registered”, “legal”, and “status” when referring to those with special ties to the federal government pursuant to the *Indian Act*. The legal status “Indian” confers special rights in Canadian law. As a result, those with this special status under the *Indian Act* are unwilling to dispense with it regardless of its negative connotation in some circles. This is especially true for people affiliated with the national organization representing “status” Indian chiefs - the Assembly of First Nations (formerly called the National Indian Brotherhood) - and its provincial affiliates.

The historical development of the *Indian Act* illustrates its racial and patriarchal nature. The new Dominion government’s *Indian Act* of 1868 set out a definition of “Indian” as:

All persons of Indian Blood, reputed to belong to the particular tribe and their descendents;

All persons residing among such Indians, whose parents were or are, ... descended on either side from Indians

All women lawfully married to any [such Indians] and the children issue of such marriages, and their descendents (Government of Canada, 1868: 42).

However, in 1869, the federal government began to state who would not be entitled to Indian status. This legislation was particularly harmful to Indian women, most specifically, Indian women marrying anyone other than Indian men, since they would cease to be Indian as did any children from that marriage (Voyageur, 1996:93).⁷ The imposed definition of Indian was very much a patriarchal idea with the elements of the definition focusing on a male person of Indian blood (Calliou, 2000:1).

a. Treaty vs. non-Treaty Indians

To further muddy the waters, there is a bifurcation of the term “Indian”. This is the distinction between “Treaty” and “non-Treaty Indians”. Treaty Indians are those who (or whose ancestors) entered into treaties with the Crown. The non-Treaty Indian designation refers to those who did not sign a treaty for some reason or another.⁸ However, non-Treaty Indians still have Indian status. For example, all of British Columbia (with the exception of the north west region and parts of Vancouver Island) is not covered by treaty agreements, yet the majority of British Columbia Indians have Indian status because the federal government recognises them under the *Indian Act*.

As a result of the imposition of the legal category of “Indian” the Canadian state had difficulty drawing clear lines on who was or was not an “Indian”. This uncertainty resulted in the exclusion of some Aboriginal groups and the creation of a non-Status class of Indians. A person could become a non-Status Indian in a number of ways. Perhaps the most common way for a person to lose or give up their Indian status was through the enfranchisement process. The following is a brief explanation.

b. Enfranchisement

The “Indian Problem” as viewed by government officials, could be managed partly by eliminating the “Indianness” of First Nations people. The elimination of the culture of the First Nations was to occur through the removal of children from the cultures and subjecting them to education and religious training in European customs and values (Titley, 1986:75). Separate legal Indian status was conceived as a stopgap measure by white legislators, who expected that Indians would gradually abandon their Native identity in order to enjoy the privilege of full Canadian citizenship - a state to which all would and should aspire (Francis, 1993: 201).

When Indians met the minimal requirements for citizenship – literacy, education, and “acceptable” moral character - they were allowed the rights of full citizenship through voluntary enfranchisement pursuant to sections of the *Indian Act*. They would be allowed to vote, purchase alcohol, and obtain land under the homestead system, and would no longer have to live under the aegis of the repressive *Indian Act* or have to tiptoe around the government’s resident reserve babysitter – the Indian Agent. Enfranchisement was viewed as a reward if the First Nations person obtained a university degree, joined the military, or became a minister. But it could also be seen as punishment when one considers the psychological and social effects of whole groups of First Nations persons being forcibly separated from their communities and cultures. They had brown skin in a society that valued whiteness. Discrimination was rampant. Enfranchisement could also be used as a tool for punishment if the First Nations person were caught in possession of alcohol or raised the ire of the Indian agent who had the discretion to strike anybody, for any reason, from the band list. As discussed above, the majority of forcibly enfranchised “Indians” were First Nations women who married non-Indian men and their children.

B. Non-Status Indian as a Legal Entity

There is no general consensus on the exact scope of the term “non-Status Indian”. In the past, the term usually described Indians who no longer had *Indian Act* status (Wilson, 1985:62). It also described those

people who once had status under the *Indian Act* and who subsequently lost it.⁹ Thus, by virtue of the imposition of the *Indian Act* which defines who qualifies as an Indian but also disqualifies others who fall outside the narrow scope of its definition. Under the 1985 changes to the *Indian Act* (*Bill C31*), almost every person who had status, and lost it before 1985, was entitled to reinstatement. Also, there is no longer any legal provision for losing status under the *Indian Act*. Consequently, the number of people who are non-Status Indians in this narrow sense is now considerably smaller.

In the past, the term “non-Status” was used in a broader sense to include Métis people and others of mixed Aboriginal and non-Aboriginal descent. However, this term is now less frequently used when referring to Métis. Generally, it is advisable to indicate more precisely which meaning is intended when the term “non-Status” is being used.

Delia Opekokew, a First Nations lawyer, takes a critical view of how the federal government, through the imposition of the *Indian Act* created inequalities between Aboriginal people. She argues “inequities and differences of economic and political rights among the Aboriginal peoples have their source in the absolute power vested in Parliament” (1987:7). She adds “this extraordinary power, the Crown (in right of Canada) has chosen to recognize only those peoples identified as Indians to be entitled to the use and benefit of Crown ‘lands reserved for Indians’, and consequently, eligible for its protection” (1987:7). She further states, “because of the patri-lineal system (descent through the male line) and the provisions excluding certain categories of people, many persons of varying degrees of Indian blood and culture were outside the statutory definition. These people became known as ‘non-Status Indians’ and were not eligible for the same federal services and programmes as Status Indians” (1987:9). Despite the arbitrary legal definition imposed by the *Indian Act*, “non-Status Indians”, share similar lifestyles with their “Status Indian” brothers and sisters. Many continued, like status Indians, to carry on their traditional livelihoods of hunting, fishing and trapping.

C. The Métis

Like the non-Status Indians, the Métis were excluded from being “Indians” under the *Indian Act* definition of Indian. The Métis are descendants of mixed marriages mainly in the Prairie Provinces and in northwestern Ontario, although the term is often used more broadly to include almost all people of mixed Indian/non-Indian ancestry. Although the Métis have their own distinctive history and culture, non-Status Indians have often been described as Métis and vice versa.

Academics have found that there were different groups of people who called themselves “Métis”. Indeed, the historian John Foster argues

that confusion has arisen with the term Métis and that an historical understanding is necessary to understand the two separate fur-trading systems from which the Métis emerged (1978). The Great Lakes trading system with its “broker-trader” role led to the creation of the “Métis”. However, the Hudson’s Bay system with its “Home Guard Cree” fur trade post provisioner role, created mixed bloods who did not emerge with the “Métis” identity (Foster, 1978:79). Others have found that different Métis groups from particular areas had particular historical experiences and that the Métis were more diverse, their self-identification more nebulous, and their class-based societal structures more complex than were formerly recognised (St. Onge, 1992:24).

The Métis have developed a unique cultural identity separate from their “Indian” and European roots and generally have a strong sense of their Aboriginal identity. The Métis themselves make the distinction between two types of Métis, namely, the descendants of Red River who had basically adapted to the new settlement society and alternatively, the “nomadic” Métis who essentially lived a traditional hunting and trapping lifestyle (Hatt, 1985). Thus, while there seems to be a clear Métis identity among Métis, they also recognise the cultural differences within their group.

D. Inuit

The Inuit are an Aboriginal people in northern Canada, who live predominantly above the tree line in the Northwest Territories, and in Northern Quebec and Labrador (Burch, 1995:115). The word means “people” in the Inuit language - Inuktitut. The singular of Inuit is Inuk. They are listed in the *Constitution Act, 1982* as one of the peoples in the definition of Aboriginal peoples. Pursuant to the 1939 Supreme Court of Canada case *Re: Eskimo*, Inuit effectively fall under federal jurisdiction as s. 91(24) Indians (Supreme Court of Canada, 1939). However, Parliament has expressly defined “Indians” in the *Indian Act* as not including Eskimos (Inuit). They are distinct from “Indians” both legally and culturally. They are not administered under the *Indian Act*.

Despite these legal definitions that give some clarification to who is or is not an “Indian”, there is still uncertainty.

IV. Diversity of Issues

Current issues facing Canada’s Aboriginal peoples vary as much as their cultures. However, some of the most important which most face them include pressing for the protection of their Aboriginal or treaty rights, self-government and economic development (Calliou and Voyageur, 1998).

Through the past decade, federal and provincial governments as well as business and industry leaders have increasingly entered into a new relationship with Canada's Aboriginal peoples. Generally, Aboriginal groups are now consulted on a regular basis and seen more as partners in resource sharing. Land claims or treaty rights issues will be more unique to each Aboriginal group. Métis (with the exception of those living in Alberta) and non-Status Indians do not have a land base while Treaty Indians do. Non-Treaty Indians and Métis argue for Aboriginal rights while Treaty Indians argue for fulfillment and protection of their treaty rights.

Difference between legal definitions is only one aspect of diversity with the Aboriginal community. Aboriginal people are economically diverse. Some have the benefit of natural resources and the royalties derived from those resources while others have none. Geographic diversity also makes Aboriginal lifestyles different. Some Indian reserves are located on the borders of large cities (Enoch First Nation on the outskirts of Edmonton, Alberta and Tsuu T'ina Nation on the outskirts of Calgary, Alberta) while other communities are isolated and accessible only by air or water. Also, there is significant internal stratification within each community.

V. Conclusion

In 1971, Canada embarked upon a policy of multiculturalism that recognises the diversity of cultures within our society as worthy of respect. Almost thirty years later, although integration of newcomers into mainstream Canada is still the primary goal, it is now done with an eye to respecting peoples' differences. In contrast, the proliferation of official labels imposed upon the country's Aboriginal inhabitants construct administrative and bureaucratic categorisations that do little to bring greater understanding of the heterogeneity of the indigenous peoples of Canada.

The overview provided above speaks only briefly to the complexity of Canada's indigenous population. The Aboriginal communities in Canada are themselves multicultural and diverse communities where difference must be recognised. Too often, Aboriginal peoples are referred to as a homogeneous group - yet they differ substantially in their languages and cultures. Besides cultural differences, Aboriginal groups have had legal definitions imposed upon them by the federal government for purposes of administering their trust-like responsibilities for the benefit of "Indians" as defined in the *Indian Act*. This legal definition has resulted in the exclusion of other Aboriginal groups. Therefore, the relationships between the Aboriginal groups and the State can differ substantially, leading to a variety of issues that need to be addressed individually.

Authors' Notes

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Endnotes

¹ (http://esd.inac.gc.ca/fnprofiles/FNProfiles_Search.asp).

² Aboriginal people include First Nations, Non-status Indians, the Métis, and the Inuit.

³ (http://esd.inac.gc.ca/fnprofiles/FNProfiles_Search.asp).

⁴ (http://esd.inac.gc.ca/fnprofiles/FNProfiles_Search.asp).

⁵ Here the authors use the term “Aboriginal” to refer to all of Canada’s indigenous people.

⁶ This definition is opposed to “non-Status” Indians, who although they are Indigenous peoples, lack the special rights conferred under the *Indian Act*.

⁶ The enfranchisement (loss of Indian status) of Indian women who married non-Indian men remained in the *Indian Act* until 1985 when Bill C-31 amended the Act to eliminate this discrimination against Indian women.

⁸ Some Indians were not in the region when Treaties were being signed with local First Nations.

⁹ Indian status could be lost in a number of ways including: an Indian woman marrying a non-Indian man; obtaining a university degree; joining the military; joining the clergy; having the Indian agent strike your name from the band list; or voluntarily enfranchising.