Sex, Gender and Generations: A Day at the Spa

by Prairie Women's Health Centre of Excellence

Welcome All to the First Annual Community Spa Day

The First Nation will be sponsoring a full day of fun and care for your enjoyment. We hope to see you all at the Community Spa to take part in the wellness services being provided.

Please call the health care office to sign up. Some of the activities for the day include:

- Hair care
- Reiki treatments
- Massage by a trained professional
- Foot clinic
- Facial and skin care treatments
- Pedicures and manicures
- Traditional wellness teachings

Beverages and healthy treats will be served throughout the day while we take care of ourselves, relax and get pampered.

Introducing the Robertsons

As is typical of many of the families in the First Nation community, there is much discussion over getting signed up for community events. In one family, the Robertson's, the discussion takes place during a family get-together.

The eldest in the family, Vanessa, lives in the community with her non-native husband, Paul. Vanessa would like to attend the whole day of spa-related activities and would like her husband to attend the foot clinic and massage therapy sessions. However, Paul says he "Isn't going to that girly crap." The second sibling, Colleen, resides in the nearby city with her non-native husband. Colleen has serious back muscle problems from a recent car accident and would like to attend the massage therapy session. She also thinks it would be great fun to go to some of the other activities with her sisters. One of the brothers, Joe, lives in the community part-time due to his work. He has both land and a residence on-reserve that he stays at approximately six months of the year. Joe thinks there are a few things being offered at the spa day that might be okay, but feels uncertain about going if he is the only guy there. Albert, another brother, lives on the reserve and wants to come to the foot care clinic as he has recently been diagnosed with diabetes. He has also recently suffered a heart attack and

thinks he could use the stress relief teachings. In addition, he would like to bring his daughter, Katie, who is away at university, but should be home during the week of the spa. The middle brother, Steven, has two daughters, Lily and Mary, who live with their Auntie on-reserve and participate in many cultural activities. The girls are non-status and are not sure if they will be allowed to participate in the spa day. The fourth brother, Michael, does not live on the reserve. He is, however, visiting with the family when the discussion about the spa takes place. Michael says he has no interest in community events of this kind and will not attend any of the spa activities. His three children (Mark, Isabella and Emma) will not be participating either, as they are not eligible. Moira is the youngest sibling in the Robertson family. She and her husband John, an Elder from another First Nation, are very interested in the services, but it would mean taking time off work. Plus, there has been a lot of discussion in the community about John coming to everything when he has his own community to go to.

The Robertson family's dilemma about partaking in the community spa day is not unique. In addition, the uncertainty around who is and is not able to participate in a spa day offered on a reserve would be similar for many other families on First Nation reserves across the country.

This case study examines the complex and gendered aspects of identity and health for Aboriginal peoples in Canada. As this case study shows, even a day at the spa can be a complicated affair.

Bill C-31, a federal law passed in 1985, redefined eligibility for Indian Status.

6(1) and 6(2) are often used as shorthand to refer to the two subsections of Bill C-31 that define where and how a person falls under the category of status Indian under the law.

More than Just a Label

Aboriginal peoples in Canada are defined not by themselves, but by the government of Canada. They are divided into three distinct groups; First Nations, Métis and Inuit. Each group has varying levels of fiduciary responsibility and significant issues of inclusion and exclusion exacted to them by government. This case study looks only at First Nations people residing in Canada. While focusing on one "group" may appear to have simplified or narrowed the field of study, it does in fact open up a whole new set of complexities. The details of this complexity also bring up historical and contemporary issues of gender and sex discrimination.

First Nations people in Canada, as a group, are divided into categories under Canadian law, which create jurisdictional issues for access to health services among many other rights. The *Indian Act* defines "Indians under the *Act*,"[a] assigning "status" according to certain criteria. Within the *Act*, there are two categories, 6(1) and 6(2), that speak to your degree of "Indian-ness" or blood quantum. Essentially, 6(1) refers to first generation and 6(2) means second generation. This eligibility determines the ability to pass on the distinction of "status" to offspring or not.

What throws this eligibility off entirely is the historical factor of non-Indian women marrying Indian men. Upon the marriage of these two persons, the non-Indian woman would in fact have lost her rights under the law as a regular Canadian citizen. The woman would take on the legal distinction or identity of her husband and therefore, be classified and legally defined, as an "Indian

a Note that "Indian" is a legal term. First Nations is a term more commonly used now, but it does not have any legal standing as a term or definition of a people.

under the Act." That meant that until 1985, when this practice was discontinued through the passing of Bill C-31, there were many non-blood women who were, in fact, card-carrying status Indians.

Consider now Indian women as defined by blood quantum and under the *Indian Act*, who married outside of their race, meaning non-Indian men. This population of women was stripped of their identity as Indians and denied any rights provided for under the *Indian Act*. Indian women who married non-Indian men were denied their right to reside on a reserve, to have their children be eligible for Indian status under the Act, and even the right to be buried on "lands set aside for the express use and purpose of Indians," namely, the reserve. So women were then stripped of any officially recognized role in their own community – including the social roles that would have been part of their gender identity. For many, the forced movement of women from their communities upon marriage is believed to have initiated the mass exodus of Indian people from reserves, to living in villages, town and cities and creating the term "off-reserve."

Bill C-31 was passed as a law to end the sex discrimination of the *Indian Act* and allow women and their children the chance to legally reclaim their Indian identity. Bill C-31 did not reverse the status non-Indian women had acquired by marrying an Indian man, but did allow women whose status had been removed to apply for registration. Women who have already registered or who are currently registering under Bill C-31 do not necessarily have rights on a particular reserve. Given that some First Nations reserves control their Band Membership (according to federal law), some women and their children still do not qualify for services and support from a Band or on–reserve following registration under Bill C-31. This perpetuates the sex and gender discrimination some women face.

Return to the Robertson Family

So, by now you might be asking yourself, what does this all have to do with access to services and taking a much-needed break for a day at the spa?

Well, you have to have an idea of who funds the spa, which people the activities are designed for, who wants to participate and who is actually eligible to enjoy the treatments.

For the purpose of answering the "who," we will go back to the gathering of the Robertson family. We will see how the notion of "identity" that is ascribed (by government) and assumed (by individuals) is based on the particulars of status, non-status, on- and off-reserve. As well, the case study illustrates how family history and jurisdiction affect the family members' access to spending a day at the community spa. So, here begins the saga:

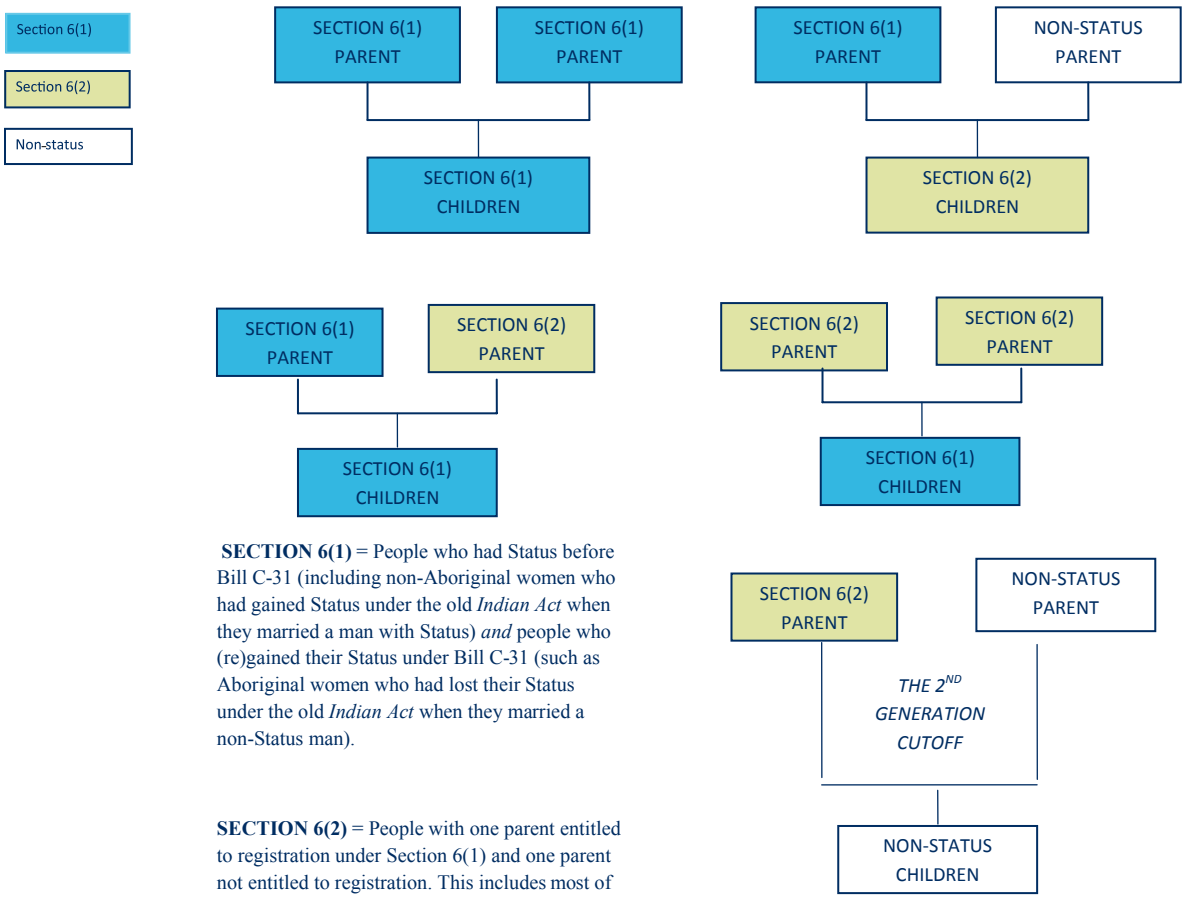
In 1921, on an Indian reserve in Ontario, a little boy was born to Ida and James Robertson, two Ojibwe Indians. They named him Charles. When Charles grew up and became a man he met a wonderful young non-Indian woman named Nora, from the nearby city. They married just after World War II and so began the changes in their lives. As Charles' wife and as a woman, Nora was no longer considered to be a Canadian citizen, she was now, through her marriage, deemed to be an Indian.

So, Charles and Nora lived on the reserve and proceeded to have the first three of seven children. These first three children were full status under the *Indian Act*, as they were born to two "Indians." Life took a turn when Charles and Nora decided to move into the city. The Indian agent told them that in order to do this they must enfranchise sell their identity as status Indians and essentially "join" Canadian society, which they did. So, the Robertson's sold their home and gave possession of their land to Ida (Granny) Robertson and moved off the reserve. Like many families in the day, Charles and Nora expanded their family and had their remaining four children while living off-reserve. The four younger children are "different" than the first three. The first three were born to two "Indians" and since Charles and Nora's enfranchisement the following four children were born to two "white" people. Gets complicated, doesn't it?

Life continued in this mixed family until 1985 when the government of Canada passed new legislation through Bill C-31 which allows for Indian women to maintain their legal identity as "Indian under the Act" regardless of whom they marry; and for those people who were "enfranchised by the head of the household" to be eligible for Indian status and thus to regain their identity. So, the Robertson children applied for and regained their entitlement, the right to be identified as status indians. The first three children born to Charles and Nora when they were both "Indians under the Act," were given 6(1) status and the four remaining children who were born to two "white" people, were given 6(2) status.

The first three siblings can pass on their entitlement to Indian status to their children, regardless of whether or not they have their own children with a status Indian or non-Indian. The final three children *must* have children with another status Indian in order to pass their entitlement on to their off-spring. Should the children born to 6(2) parents choose to have their own children (the grandchildren of two 6(2) grandparents) with a person outside of their legal identification, legal identification as status Indians ends, along with rights to land, housing and services. Figure 1 offers an illustration for this complicated story:

Figure 1. Entitlement to Indian Status Under Section 6 of the Bill C-31 Amendments to the *Indian Act*, for Children Born of Various Parenting Combinations



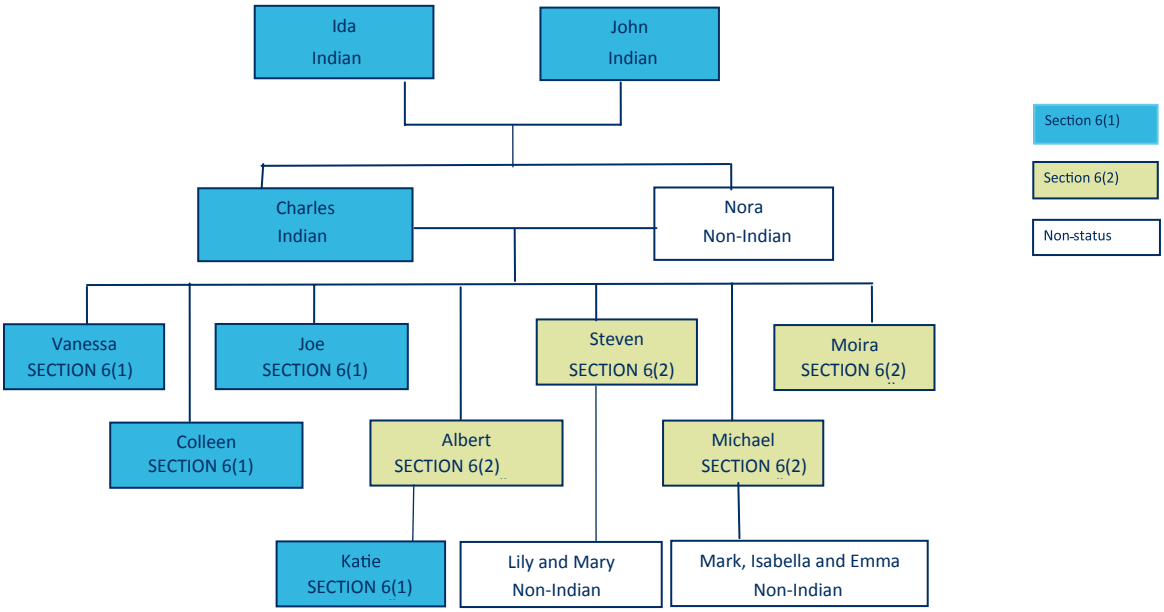
SECTION 6(1) = People who had Status before Bill C-31 (including non-Aboriginal women who had gained Status under the old *Indian Act* when they married a man with Status) *and* people who (re)gained their Status under Bill C-31 (such as Aboriginal women who had lost their Status under the old *Indian Act* when they married a non-Status man).

SECTION 6(2) = People with one parent entitled to registration under Section 6(1) and one parent not entitled to registration. This includes most of the children of women who had lost their Status for marrying out under the old *Indian Act* (notably, it does not include the children of women who gained Status by marrying in under the old *Indian Act*).

Only the children of Section 6(2) parents can be denied Status, on the basis of the 2nd generation cutoff.

Used with permission from MORN 2005[1]

Figure 2. Registered Status in the Robertson Family



So, speeding this family drama up to the present, the Robertson children did as their parents did for the most part; they left home, married (or not) and had children (or not). Thus, the family is comprised of a variety of "Indians" and "non-Indians" in the mix and like many of the Aboriginal peoples in Canada, their individual history and choices affect whether or not they are entitled to attend a day at the spa:

Vanessa, the eldest, is now called a 6(1). She has full rights to attend the spa day event and full entitlement to federal assistance for health care costs. Paul, her non-Indian husband, may or may not be entitled to the day at the spa, depending on if it is offered to all reserve residents (including Paul), or only to people with status.

Colleen is also a 6(1), but lives off-reserve with her non-Indian husband. She is entitled to receive the spa services that are allowed to status Indians who do not live on the reserve.

Eldest brother Joe is also 6(1). Because he lives on the reserve part time, he is fully entitled to all the activities and special attention the spa day has to offer – if he wants to participate.

Albert, the next brother, was the first to be born after his parents moved from the reserve. With his mother now recognized, at the time of the move, as non-Indian, he is registered as 6(2). He can still receive the foot care he would like to get at the spa day. His daughter Katie (a 6(1)) also qualifies, because Albert married a woman with status (6(2)).

Steven is registered as 6(2) under the *Indian Act*, but his two daughters, Lily and Mary, do not have status and even though they live on the reserve with their Auntie and take part in many cultural and community activities, they may not qualify for the spa day.

Michael is registered as 6(2), but has never identified himself as "Indian." Instead he identifies with his mother Nora's side of the family and refers to himself as Irish. He does come to family events, but otherwise he does not involve himself with the community. His three children (Mark, Isabella and Emma) are non-status and do not identify as "Indian" either.

Moira, the youngest, is 6(2) and is entitled to the spa day. Her husband, John, is also eligible as he is registered as 6(1). The complication for John is that he is not from this community and reserve, and thus may not be able to join in the activities at all.

Entitlement and Gender

This story is important to a sex- and gender-based analysis of health for a number of reasons:

1. "Indians" are the only people of Canada whose legal identity as a people is defined under federal law. This fact affects both eligibility and delivery of health services for individuals. It is essential to understand the definitions and entitlements under the law for any gender-based analysis of a related health issue.

2. Historically, women were stripped of their rights as Indians if they married a non-Indian *or* stripped of their rights as "Canadians" if they were non-Indian and married an Indian man. This means that the Canadian responsibilities and women's entitlements to health services and other features were taken from Indian women, but not from Indian men, if they married outside of their own. Women continue to face additional discrimination on- and off-reserve on the basis of their sex.

3. Bill C-31, which was introduced to correct this sexist inequity, and to allow women to reclaim their Indian status, continues to perpetuate divisions. Depending on the matrilineal line, families lose their status within two generations unless they marry other status Indians.

4. The federal government maintains fiduciary responsibility, including over health, for those persons defined as Indians under federal law. Health care, however, is a provincial jurisdiction. While the federal government provides some additional health benefits to status Indians, over and above provincial health services, the system is complicated and explicitly tied to the *Indian Act*. To add to the complications, some federally-funded services are only available to the residents of First Nations reserves – that is, they must live on a reserve to qualify. For First Nations people, status and non-status, there can be extremely complicated wrangling about who pays for ambulance service, provincially-financed medications, dental care and other health services. Many people get caught up in the red tape and are often not clear what their own rights are, or those of their children.

A simple invitation to come and enjoy a day of rest and relaxation at the spa, we can see, is not really so simple. Even within families, issues of identity, sex and gender, are truly complicated. As such, it is important that any sex- and gender-based analysis of health care or health systems take into account the complicated intersections of sex, gender, legal and personal identity.

References

1. Bill C-31 Research Project. In: Mother of Red Nations Women's Council of Manitoba, editor. Twenty years and ticking: Aboriginal women, human rights and Bill C-31. Winnipeg: Mother of Red Nations Women's Council of Manitoba, 2006; p. 50.