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Double Discrimination and Equality Rights of Indigenous Women in Quebec

BERNARD DUHAIME & JOSÉE-ANNE RIVERIN*

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I. INTRODUCTION

Since 2005, we have been collaborating with several indigenous women organizations in the Americas,¹ including Quebec Native Women,² supporting efforts that address the different types of discrimination many indigenous women still face today.

In Canada, the indigenous population is estimated at more than one

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1. These groups include the Continental Network of Indigenous Women of the Americas and their counterpart organizations in the Americas, among which are the Coordinadora Nacional de Mujeres Indígenas de México (CNMIM, in Mexico), the Organización Nacional Indígena de Colombia (ONIC, in Colombia), and the Consejo de Organizaciones Aborígenes de Jujuy (COAJ, in Argentina).

2. Founded in 1974, Quebec Native Women (QNW) is a Canadian nonprofit organization whose objective is to promote the rights of native women of Quebec, including the rights of those living in urban areas. QNW supports aboriginal women in their efforts to improve their living conditions by promoting nonviolence, justice, equal rights, and health. QNW also supports women in their commitments to their communities. See generally QUEBEC NATIVE WOMEN INC., <http://www.faq-qnw.org/> (last visited Apr. 7, 2011).

million and subdivided into roughly fifty different nations, while the Province of Quebec has an indigenous population of approximately 100,000, subdivided into roughly eleven nations.³ The great majority of indigenous peoples live in reserves in remote areas of the northern part of the country.

As is the case with the rest of the continent, the problems facing indigenous peoples in Canada and Quebec are considerable, particularly regarding economic, social, and cultural rights. Indigenous women are exposed to great vulnerability in this context, as poverty, violence, and exclusion tend to exacerbate the other rights violations that they face.⁴

This article will discuss our experience addressing the issues of double discrimination and of equality rights of indigenous women in Quebec. We propose to explore the notion of double discrimination through an intersectional approach by analyzing three specific case studies of indigenous women in this province. Hopefully, this discussion will contribute to a better understanding of how institutional violence persists in different aspects of the private lives of women. This article is based on the research that we have been undertaking with several partners, including Quebec Native Women and University of Quebec at Montreal's (UQAM) *Service aux collectivités*,⁵ in a project called Wasayia.⁶ This project was part of a broader initiative⁷ in which the

3. According to the 2006 census, the indigenous population was 1,172,790 in Canada and 108,430 in Quebec. The population of Indians registered under the Indian Act is 623,780 in Canada and 55,955 in Quebec. *Population Reporting an Aboriginal Identity, by Age Group, by Province and Territory (2006 Census)*, STAT. CAN., <http://www40.statcan.ca/101/cst01/demo40b-eng.htm> (last modified Jan. 16, 2008); see also *Aboriginal Peoples in Quebec*, INDIAN & N. AFF. CAN., <http://www.ainc-inac.gc.ca/ai/scr/qc/aqc/index-fra.asp> (last visited May 1, 2011); *Aboriginal Population Profile*, STAT. CAN., www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-594/index.cfm?Lang=E? (last visited May 1, 2011). For descriptions and maps of indigenous nations in Canada and Quebec, see also *Welcome to the First Nation Profiles Interactive Map*, INDIAN & N. AFF. CAN., <http://cipnn-fnpim.ainc-inac.gc.ca/index-fra.asp> (last modified Dec. 8, 2010).

4. See generally 4 ROYAL COMM'N ON ABORIGINAL PEOPLES, WOMEN'S PERSPECTIVES (2006), available at http://www.collectionscanada.gc.ca/webarchives/20060205104105/http://www.ainc-inac.gc.ca/ch/rcap/sg/sj2_e.html.

5. The *Service aux collectivités* has existed since 1979. For the past thirty years, the *Service aux collectivités de l'UQAM* has been providing community groups, women's groups, and labor organizations with simple and direct access to the university's resources in order to develop successful partnerships. The values and concepts that represent the democratization foundations of knowledge as practiced at the *Service aux collectivités de l'UQAM* are social relevance; academic and scientific quality; and sharing, transferring, building, and mobilizing knowledge.

6. The term "Wasayia" is part of a broader expression in the Native Cree language, meaning "the dawn which enlightens the way of women." See generally BERNARD DUHAIME & JOSÉE-ANNE RIVERIN, QUEBEC NATIVE WOMEN INC., WASAYIA: PARCE QUE JE SUIS FEMME ET AUTOCHTONE: POUR UN PLEIN RESPECT DU DROIT À L'ÉGALITÉ DES FEMMES AUTOCHTONES DU QUÉBEC (2006), available at http://www.faq-qnw.org/documents/Manuel_formatrices_Wasaiya.pdf.

7. See generally CONTINENTAL NETWORK OF INDIGENOUS WOMEN ET AL., INDIGENOUS

Continental Network of Indigenous Women, the Canadian organization Rights and Democracy,⁸ UQAM's International Clinic for the Defense of Human Rights,⁹ and the International Development Research Center in Canada all participated.¹⁰

II. INDIGENOUS WOMEN FACE DOUBLE DISCRIMINATION

In Quebec, as in the rest of the Americas, indigenous women experience multiple forms of human rights violations. It is suggested that they are very often victims of double discrimination¹¹ because they are both women and because they are indigenous, which of course contributes to their greater marginalization in society.¹² This discrimination is interconnected with the multiple forms of human rights violations indigenous women face, increasing the effect of these violations on the population.

For example, indigenous women may face limitations in the exercise of their right to health or education because—like the majority of indigenous persons—they live in remote, less accessible areas and because the public services or programs are not adapted as far as gender or culture are concerned (for example, regarding reproductive rights).¹³

WOMEN OF THE AMERICAS: DOUBLE DISCRIMINATION (2006), available at http://www.ichrdd.ca/site/_PDF/publications/indigenous/DOUBLE_DISCRIMINATIONen.pdf.

8. Rights & Democracy (International Centre for Human Rights and Democratic Development) is “a non-partisan organization with an international mandate. It was created by Canada’s Parliament in 1988 to encourage and support the universal values of human rights and the promotion of democratic institutions and practices around the world.” *Who We Are*, RIGHTS & DEMOCRACY, http://www.ichrdd.ca/site/who_we_are/index.php?lang=en (last visited May 1, 2011).

9. The UQAM International Clinic for the Defense of Human Rights is an academic association founded in 2005 and based in Montreal, Canada, comprised of professors and students who work to promote and defend human rights around the world. The clinic helps victims and human rights advocacy groups by working with international organizations and institutions. *See The CIDDHU: An Innovative Way to Strengthen the Protection and Promotion of Human Rights*, UQAM, <http://www.ciddhu.uqam.ca> (last visited May 1, 2011).

10. The International Development Research Centre (IDRC) is a Crown corporation created by the Parliament of Canada in 1970. The organization “help[s] developing countries use science and technology to find practical, long-term solutions to the social, economic, and environmental problems they face.” *About IRDC*, INT’L DEV. RES. CENTRE, http://www.idrc.ca/en/ev-8513-201-1-DO_TOPIC.html (last visited May 1, 2011).

11. It could also be argued that indigenous women face many other (triple or quadruple) forms of discrimination, being women, indigenous, poor, from rural areas, and so forth. *See generally* E. Guillén, *Double Discrimination and Equality Rights of Indigenous Women in Quebec*, in *BLACK AND INDIGENOUS WOMEN SPEAK OUT* 112 (Adriana Gomez & Deborah Meacham eds., 2003). *See also* *Caso Masacre Plan de Sánchez v. Guatemala*, Inter-Am. Ct. H.R. (Ser. C) No. 105, ¶ 38 (Apr. 29, 2004).

12. *See* Permanent Forum on Indigenous Issues: Rep. on the Third Session, May 10–21, 2004, ¶ 3, U.N. Doc. E/C.19/2004/23; GAOR, Supp. No. 23 (2004) [hereinafter Permanent Forum on Indigenous Issues].

13. Concerning double discrimination faced by indigenous women regarding health rights,

The multiple forms of discrimination are not always interrelated and may affect persons in independent or parallel manners. Sometimes, however, one kind of violation exacerbates or aggravates the other.

For example, this is the case of indigenous women who face involuntary displacement in situations of armed conflicts.¹⁴ In this context, women of course face situations of considerable vulnerability, whereby extreme poverty, persistent conditions of isolation, culturally inadequate services, and other factors expose them in greater proportions to sexual violence and impunity.¹⁵

In Canada, indigenous women who face other forms of involuntary displacement are exposed to great levels of vulnerability. For example, there are many reports of displaced Inuit women who have left their isolated northern Quebec communities because they were facing situations of family violence. When they arrive to major urban areas like Montreal, most have little or no resources, and many are totally unable to integrate themselves into urban society, incapable of speaking French or English, lacking the cultural references or tools to understand a city of the south, and so forth. Many end up in the street, exposed to alcoholism, drug abuse, abusive relationships, or prostitution, among other problems which keep them in situations of marginalization. Public services are already insufficient and not equipped to deal with such complex cultural situations. In this context, many Inuit women have faced additional sexual violence, have disappeared, or have died in unex-

see generally Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *Human Rights and Indigenous Issues: Rep. of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, ¶¶ 46–49, U.N. Doc. E/CN.4/2004/80/Add.2 (Dec. 23, 2003) (by Rodolfo Stavenhagen). See also Permanent Forum on Indigenous Issues, *supra* note 12, ¶¶ 88–89 (denouncing, among other things, inadequate and limited access to health services and violations of the reproductive rights of indigenous women). Concerning double discrimination faced by indigenous women in the exercise of the right to education, see Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *Human Rights and Indigenous Issues: Rep. of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, ¶¶ 4–6, 36–37, U.N. Doc. E/CN.4/2005/88/ADD.2 (Jan. 6, 2005) (by Rodolfo Stavenhagen).

14. Concerning the situation of indigenous women displaced because of armed conflicts, see, for example, U.N. Secretary-General, *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, ¶¶ 13, 62, U.N. Doc. A/60/358 (Sept. 16, 2005) [hereinafter Sept. 16, 2005, Secretary-General Note]; U.N. Secretary-General, *The Situation of Human Rights and Fundamental Freedoms of Indigenous People*, ¶¶ 52, 69, U.N. Doc. A/59/258 (Aug. 12, 2004) [hereinafter Aug. 12, 2004, Secretary-General Note]; Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *Human Rights and Indigenous Issues: Rep. of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, ¶¶ 35, 39, 42, 70–71, 92, U.N. Doc. E/CN.4/2005/88/Add.2 (Nov. 10, 2004) (by Rodolfo Stavenhagen).

15. For further details, see generally CONTINENTAL NETWORK OF INDIGENOUS WOMEN ET AL., *supra* note 7.

plained circumstances.¹⁶ This phenomenon of double discrimination facing indigenous women has been generally denounced by indigenous women organizations in Quebec,¹⁷ Canada,¹⁸ in the

16. See Laura-Julie Perreault, *L'enfer Montréalais des Femmes Inuites*, LA PRESSE, Mar. 26, 2001, at E1.

17. See, e.g., QUEBEC NATIVE WOMEN INC., AMENDMENTS TO THE REGISTRATION PROVISIONS OF THE INDIAN ACT AS PER THE COURT OF APPEAL OF BRITISH COLUMBIA'S DECISION IN THE SHARON McIVOR LITIGATION 8–13 (2009) [hereinafter AMENDMENTS TO THE REGISTRATION PROVISIONS OF THE INDIAN ACT], available at <http://www.faq-qnw.org/documents/QNW-Positionpaper-McIvorCasefinal.pdf>; QUEBEC NATIVE WOMEN INC., BILL C-3: AN ACT TO PROMOTE GENDER EQUITY IN INDIAN REGISTRATION BY RESPONDING TO THE COURT OF APPEAL FOR BRITISH COLUMBIA DECISION IN *McIvor v. Canada* 3–4, 9–13 (2010) [hereinafter BILL C-3: AN ACT TO PROMOTE GENDER EQUITY], available at <http://www.faq-qnw.org/documents/QNW-FAQ-Postionpaper-BillC-3McIvorfinal.eng.pdf>; QUEBEC NATIVE WOMEN INC., BRIEF ON EQUALITY: ABORIGINAL WOMEN'S PERSPECTIVES 4–10 (2004), available at http://www.faq-qnw.org/brief-equality/Brief_equality.pdf; QUEBEC NATIVE WOMEN INC., BRIEF: ON-RESERVE MATRIMONIAL REAL PROPERTY 2–11 (2003) [hereinafter ON-RESERVE MATRIMONIAL REAL PROPERTY], available at http://www.faq-qnw.org/human_rights/brief_human_rights.pdf; QUEBEC NATIVE WOMEN INC., COMPLEMENTARY RESEARCH ON TRADITIONAL AND CUSTOMARY CHILD CARE PRACTICES/ADOPTION WITHIN ABORIGINAL COMMUNITIES IN QUEBEC (2010), available at <http://www.faq-qnw.org/documents/QNWCustomAdoptionReportFinalVersion.pdf>; QUEBEC NATIVE WOMEN INC., INDIGENOUS WOMEN AND VIOLENCE 3–8 (2008), available at <http://www.faq-qnw.org/documents/reportviolence2008.pdf>; QUEBEC NATIVE WOMEN INC., TRADITIONAL AND CUSTOM ADOPTION IN THE FIRST NATIONS (2007) [hereinafter TRADITIONAL AND CUSTOM ADOPTION], available at http://www.faq-qnw.org/documents/Adoptrad07_eng.pdf; QUEBEC NATIVE WOMEN INC., TURNING EQUALITY IN LAW INTO DE FACTO EQUALITY—TOWARDS A SECOND GOVERNMENT ACTION PLAN FOR GENDER EQUALITY (2011), available at <http://www.faq-qnw.org/documents/QNWGenderEqualitybrief2011final.pdf>; QUEBEC NATIVE WOMEN INC. & REGROUPEMENT DES CENTRES D'AMITIÉ AUTOCHTONES DU QUÉBEC INC., COMPLEMENTARY INFORMATION: REVISION OF THE YOUTH PROTECTION ACT (2006) [hereinafter REVISION OF THE YOUTH PROTECTION], available at <http://www.faq-qnw.org/documents/compmemoirelpj.pdf>.

18. See, e.g., SHARON D. McIVOR & ELLISA C. JOHNSON, NATIVE WOMEN'S ASS'N OF CAN., DETAILED POSITION OF THE NATIVE WOMEN'S ASSOCIATION OF CANADA ON THE COMPLAINT REGARDING THE DISCRIMINATORY TREATMENT OF FEDERALLY SENTENCED WOMEN BY THE GOVERNMENT OF CANADA (2003), available at http://www.nwac.ca/sites/default/files/reports/NWACPositionofTreatmentofFederallySentencedWomen_2003.pdf; TERESSA NAHANE, NATIVE WOMEN'S ASS'N OF CAN., "DANCING WITH A GORILLA": ABORIGINAL WOMEN, JUSTICE AND THE CHARTER (1992), available at <http://www.nwac.ca/sites/default/files/reports/DancingwithaGorilla.pdf>; NATIVE WOMEN'S ASS'N OF CAN., ABORIGINAL WOMEN AND GENDER BIAS IN THE LEGAL PROFESSION (1992), available at <http://www.nwac.ca/sites/default/files/reports/AboriginalWomenandGenderBiasinLegalProfession.pdf>; NATIVE WOMEN'S ASS'N OF CAN., ABORIGINAL WOMEN AND THE IMPLEMENTATION OF BILL C-31, at 4–7 (1991) [hereinafter ABORIGINAL WOMEN AND THE IMPLEMENTATION OF BILL C-31], available at <http://www.nwac.ca/sites/default/files/reports/AboriginalWomen&ImplementationofBillC31.pdf>; NATIVE WOMEN'S ASS'N OF CAN., ABORIGINAL WOMEN: POLICE CHARGING POLICIES AND DOMESTIC VIOLENCE (1994), available at <http://www.nwac.ca/sites/default/files/reports/AboriginalWomenPoliceChargingPoliciesandDomesticViolence.pdf>; NATIVE WOMEN'S ASS'N OF CAN., ABORIGINAL WOMEN'S RIGHTS ARE HUMAN RIGHTS (1999), available at <http://www.nwac.ca/sites/default/files/reports/AboriginalWomensRightsAreHumanRights.pdf>; NATIVE WOMEN'S ASS'N OF CAN., BILL C-31 AMENDMENT (2001) [hereinafter BILL C-31 AMENDMENT], available at <http://www.nwac.ca/sites/default/files/reports/BillC31Amendment.pdf>; NATIVE WOMEN'S ASS'N OF CAN., EQUALITY FOR ALL IN THE 21ST CENTURY (1999) [hereinafter EQUALITY FOR ALL IN THE 21ST CENTURY], available at <http://www.nwac.ca/sites/default/files/reports/Equalityinthe21stCentury.pdf>; NATIVE WOMEN'S ASS'N OF

Americas,¹⁹ and in the rest of the world,²⁰ including during the Beijing 1995 conference with the adoption of the Beijing Declaration of Indigenous Women.²¹ Many international human rights bodies and experts have recognized the alarming nature of this problem, including the U.N. Secretary General,²² the U.N. Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples,²³ the U.N. Permanent Forum on Indigenous Issues,²⁴ and UNIFEM.²⁵ In its General Rec-

CAN., GUIDE TO BILL C-31: AN EXPLANATION OF THE 1985 AMENDMENTS TO THE INDIAN ACT (1986) [hereinafter GUIDE TO BILL C-31], available at <http://www.nwac.ca/sites/default/files/reports/GuidetoBillC31.pdf>; NATIVE WOMEN'S ASS'N OF CAN., THE IMPLEMENTATION OF BILL C-31, at 3 (1988) [hereinafter THE IMPLEMENTATION OF BILL C-31], available at <http://www.nwac.ca/sites/default/files/reports/ImplementationofBillC-31.pdf>; NATIVE WOMEN ASS'N OF CAN., IMPLEMENTING BILL C-31: A SUMMARY OF THE ISSUES 3-5 (1988) [hereinafter IMPLEMENTING BILL C-31], available at http://www.nwac.ca/sites/default/files/reports/ImplementingBill-31_ASummaryofIssues.pdf; NATIVE WOMEN'S ASS'N OF CAN., INSTITUTIONAL ABUSE AND PUBLIC RESPONSE (1992), available at <http://www.nwac.ca/sites/default/files/reports/InstitutionalAbusePublicResponse.pdf>; NATIVE WOMEN'S ASS'N OF CAN., POLICING AND ABORIGINAL WOMEN (1996), available at <http://www.nwac.ca/sites/default/files/reports/PolicingAboriginalWomen.pdf>; NATIVE WOMEN'S ASS'N OF CAN., PRELIMINARY IMPACTS AND CONCERNS FLOWING FROM THE IMPLEMENTATION OF BILL C-31, at 7-9, 13-14 (1988) [hereinafter PRELIMINARY IMPACTS AND CONCERNS], available at <http://www.nwac.ca/sites/default/files/reports/PreliminaryImpactsfromImplementationofBillC-31.pdf>; NATIVE WOMEN'S ASS'N OF CAN., RECLAIMING OUR WAY OF BEING: MATRIMONIAL REAL PROPERTY SOLUTIONS POSITION PAPER (2007) [hereinafter RECLAIMING OUR WAY OF BEING], available at <http://www.nwac.ca/sites/default/files/reports/NWACMRP.pdf>; NATIVE WOMEN'S ASS'N OF CAN., VIOLATIONS OF INDIGENOUS HUMAN RIGHTS (2002), available at <http://www.nwac.ca/sites/default/files/reports/ViolationsofIndigenousHumanRights.pdf>; NATIVE WOMEN'S ASS'N OF CAN., VOICES OF OUR SISTERS IN SPIRIT: A REPORT TO FAMILIES AND COMMUNITIES (2d ed. 2009), available at http://www.nwac.ca/sites/default/files/reports/NWAC_Voices%20of%20Our%20Sisters%20In%20Spirit_2nd%20Edition_March%202009.pdf; NATIVE WOMEN'S ASS'N OF CAN., WHAT THEIR STORIES TELL US: RESEARCH FINDINGS FROM THE SISTERS IN SPIRIT INITIATIVES 2-16 (2010), available at http://www.nwac.ca/sites/default/files/reports/2010_NWAC_SIS_Report_EN.pdf.

19. See, e.g., CONTINENTAL NETWORK OF INDIGENOUS WOMEN ET AL., *supra* note 7.

20. See, e.g., RIGHTS & DEMOCRACY, INDIGENOUS WOMEN OF THE AMERICAS (2d ed. 2006), available at <http://www.dd-rd.ca/site/publications/index.php?subsection=catalogue&lang=en&id=1374>.

21. Fourth World Conference on Women Huairou, Beijing, China, September 1995, *Beijing Declaration of Indigenous Women*, ¶ 5, available at <http://twinside.org.sg/title/dec-ch.htm> ("We have been and are continuing to suffer from multiple oppression; as indigenous peoples, as citizens of colonised and neo-colonial countries, as women, and as members of the poorer classes of society.").

22. See Sept. 16, 2005, Secretary-General Note, *supra* note 14.

23. See Aug. 12, 2004, Secretary-General Note, *supra* note 14; Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *Human Rights and Indigenous Issues: Rep. of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, ¶ 1, U.N. Doc. E/CN.4/2004/80 (Jan. 26, 2004) (by Rodolfo Stavenhagen).

24. See Permanent Forum on Indigenous Issues, *supra* note 12, ¶ 3 (manifesting its "concern about the multiple forms of discrimination experienced by indigenous women, based on gender and race/ethnicity, and the complex problems stemming from this discrimination").

25. See *Securing Indigenous Women's Rights and Participation*, UNIFEM (May 2004), http://www.unifem.org/attachments/stories/at_a_glance_indigenous_women.pdf (last visited May 1,

ommendation No. 25, the U.N. Committee for the Eradication of Racial Discrimination indicated that women may suffer different forms of racial discrimination due to their gender. It offered to assist State parties to develop “a more systematic and consistent approach to evaluating and monitoring racial discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their civil, political, economic, social and cultural rights on grounds of race, colour, descent, or national or ethnic origin.”²⁶ In the Americas, the Inter-American Commission²⁷ and Court²⁸ of Human Rights have similarly recognized the phenomenon, although in our view, neither has yet addressed its complexity in an extensive and appropriate manner.²⁹

III. WHY ADDRESS EQUALITY RIGHTS OF INDIGENOUS WOMEN FROM AN INTERSECTIONAL APPROACH?

Understanding the specific conditions experienced by indigenous women and trying to address them adequately is far from easy. Traditional legal approaches to discrimination are frequently maladapted for this exercise.³⁰ Legal perspectives often tend to take for granted that indigenous people’s experiences are the same for men and women and, a contrario, they forget to take into consideration the racial aspects of gender discrimination.³¹ “Often, however, there is little direct information about marginal women, a factor exacerbated by the fact that standard reporting and assessment tools cannot uncover experiences that are not already catalogued to reflect either the multiple identities of marginal-

2011) (“When combined with other forms of discrimination, such as those based on race or ethnicity, the effects of gender discrimination can multiply, posing serious challenges to women’s enjoyment of their basic human rights.”).

26. Rep. of the Comm. on the Elimination of Racial Discrimination, 56–57th Sess., Mar. 6–24, July 31–Aug. 25, 2000, at 152 annex V ¶ 2, U.N. Doc. A/55/18; GAOR, 55th Sess., Supp. No. 18 (2000).

27. See Ana, Beatriz and Celia Gonzalez Perez v. Mexico, Case 11.565, Inter-Am. Comm’n H.R., Report No. 53/01, ¶ 2 (2001); Press Release, Inter-Am. Comm’n H.R., No. 45/06, IACHR Voices Its Concerns at the Persistence of Serious and Systematic Violations of Women’s Rights (Nov. 15, 2006), available at <http://www.cidh.oas.org/Comunicados/English/2006/45.06eng.htm>.

28. See, e.g., Fernández-Ortega et al. v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (Ser. C) No. 215 (Aug. 30, 2010).

29. In the cases cited *supra* notes 27–28, which deal with sexual abuses against indigenous women, both the Commission and the Court addressed the gender-related aspects of the violations, but neither discussed the impact that such violations have had on the indigenous identity of the victims or on their respective communities or peoples.

30. See, e.g., Elena Marchetti, *Intersectional Race and Gender Analyses: Why Legal Processes Just Don’t Get It*, 17 SOC. & LEGAL STUD. 155 (2008).

31. See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989).

ized women or the range of unique burdens they often experience.”³² These limitations and omissions have of course contributed to the further silencing and marginalization of indigenous women’s experiences, exacerbating their vulnerability.

It is submitted that, rather than analyzing each form of discrimination independently, it is preferable to analyze where and how these forms of discriminations are intersecting, in part because “[i]ndividuals do not experience neatly compartmentalized types of discrimination based on mutually exclusive forms of, for example, racism and sexism. Rather, individuals experience the complex interplay of multiple systems of oppression operating simultaneously in the world.”³³

In our project, we have thus favored an intersectional approach; that is, one that seeks to analyze the “intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone”³⁴ As put by the Human Rights Commission of the Province of Ontario, “[a]n intersectional approach takes into account the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all relevant grounds. This approach allows the particular experience of discrimination, based on the confluence of grounds involved, to be acknowledged and remedied.”³⁵ As former Canadian Supreme Court Judge Claire L’Heureux-Dubé explained,

[C]ategories of discrimination may overlap, and . . . individuals may suffer historical exclusion on the basis of both race and gender, age and physical handicap, or some other combination. The situation of individuals who confront multiple grounds of disadvantage is particularly complex. Categorizing such discrimination as primarily racially oriented, or primarily gender-oriented, misconceives the reality of discrimination as it is experienced by individuals.³⁶

32. Expert Group Meeting on Gender and Racial Discrimination, Zagreb, Croatia, Nov. 21–24, 2000, *Gender-Related Aspects of Race Discrimination*, at 14, U.N. Doc. EGM/GRD/2000/WP.1.

33. Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women’s International Human Rights Violations*, 52 EMORY L. J. 71, 76 (2003).

34. Mary Eaton, *Patently Confused: Complex Inequality and Canada v. Mossop*, 1 REV. CONST. STUD. 203, 229 (1994).

35. ONT. HUMAN RIGHTS COMM’N, AN INTERSECTIONAL APPROACH TO DISCRIMINATION: ADDRESSING MULTIPLE GROUNDS IN HUMAN RIGHTS CLAIMS 3 (2001), available at http://www.ohrc.on.ca/en/resources/discussion_consultation/DissIntersectionalityFtns/pdf (citing C.A. Aylward, *Intersectionality: Crossing the Theoretical and Praxis Divide* (Nov. 4, 1999) (unpublished paper distributed at Transforming Women’s Future: Equality Rights in the New Century: A National Forum on Equality Rights presented by West Coast Leaf)).

36. *Canada (A.G.) v. Mossop*, [1993] S.C.R. 554 at 645–46 (Can.) (citations omitted).

This approach has been favored by specific schools of thought within the feminist movement, more particularly by those of Critical Race Feminism and of Black Feminist Thought,³⁷ as well as by that of the Third World Feminism.³⁸ For example, Kimberlé Crenshaw considers that “[b]ecause the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.”³⁹ This approach is obviously particularly useful in analyzing the effects of the multiple discrimination experienced by indigenous women,⁴⁰ considering the fact that “[t]o understand the ideology of sexism and its effects on women’s lives, . . . we also have to understand how it interacts with and sustains other forms of domination, such as racism, classism, colonialism, and imperialism.”⁴¹

One could illustrate the relevance of this approach regarding Canadian indigenous women by recalling the massive pattern of disappearances of such women in the past forty years.⁴² Since the 1970s, there have been more than 580 reported cases of indigenous women gone

37. See generally BELL HOOKS, *AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM* (1999); PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (2d ed. 2000); CRITICAL RACE FEMINISM: A READER (Adrienne Katherine Wing ed., 2d ed. 2003); Patricia Hill Collins, *Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought*, 33 SOC. PROBS. S14 (1986); Crenshaw, *supra* note 31; Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House*, 10 BERKELEY WOMEN’S L.J. 16 (1995); Paula C. Johnson, *At the Intersection of Injustice: Experiences of African American Women in Crime and Sentencing*, 4 AM. U. J. GENDER & L 1 (1995); Hope Lewis, *Global Intersections: Critical Race Feminist Human Rights and Inter/National Black Women*, 50 ME. L. REV. 309 (1998).

38. See, e.g., CHANDRA TALPADE MOHANTY, *FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY* 37 (2003); see also Chandra Talpade Mohanty, *Introduction: Cartographies of Struggle: Third World Women and Politics of Feminism*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* 1 (Chandra Talpade Mohanty et al. eds., 1991).

39. Crenshaw, *supra* note 31, at 140. Crenshaw considers that feminists have ignored “how their own race functions to mitigate some aspects of sexism and, moreover, how it often privileges them over and contributes to the domination of other women.” *Id.* at 154.

40. See generally Josée-Anne Riverin, *Gender Concerns, Indigenous Claims and Human Rights: Indigenous Women at the Core of an Identity Crisis: Case Study of Indigenous Women in Asia* (Dec. 2010) (unpublished LL.M. thesis, University of Quebec at Montreal) (on file with authors).

41. Patricia Richards, *The Politics of Gender, Human Rights, and Being Indigenous in Chile*, 19 GENDER & SOC. 199, 205 (2005) (citations omitted).

42. See, e.g., *Stolen Sisters: Profiles of Violence and Discrimination Against Indigenous Women in Canada*, AMNESTY INT’L, http://www.amnesty.ca/campaigns/sisters_gallery_intro.php (last updated Oct. 4, 2007) [hereinafter *Stolen Sisters*] (indicating that indigenous women between the ages of 25 and 44 with status under the Federal Indian Act are five times more likely than other women of the same age to die as the result of violence).

missing or murdered.⁴³ Many cases have not been solved.⁴⁴ The disappearance of indigenous women in Canada can be explained by several factors, practices, and assumptions which, when combined, are instrumental in putting indigenous women in situations of greater vulnerability to sexual violence.⁴⁵ These can be, for example, poverty, overcrowded and precarious housing conditions, and lack of access to government services on reserves, which all may encourage indigenous women to leave their communities. Similarly, the existence of prejudices against indigenous women—for example, assumptions that they are promiscuous and open to enticement through alcohol or violence, or views that they are simple sex objects—increases their chances of being exposed to sexual violence.⁴⁶ Another contributing factor is also the lack of investigation by the police authorities, who may assume that indigenous women who have gone missing are drug addicts or prostitutes, and therefore pay less attention to them and consequently encourage impunity and future repetition of such crimes.⁴⁷ The intersectional discrimination here is obvious, and one cannot address the sexual violence issue among indigenous women by focusing solely on their gender because indigenous identity plays a role that is just as significant.

IV. OVERVIEW OF THREE SITUATIONS OF DOUBLE DISCRIMINATION FACED BY INDIGENOUS WOMEN IN QUEBEC

When we started to work in collaboration with Quebec Native Women, we decided to focus on three specific situations of double discrimination, which indirectly flow from public policies put forward by both federal and provincial governments. These are the problems indigenous women face when trying to transmit their Indian Status under the Federal Indian Act⁴⁸: the impact of the Quebec provincial youth protection regime on women facing family violence and the inapplicability on

43. Amnesty Int'l, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada*, AI Index AMR 20/012/2009 (Sept. 2009); see also Amnesty Int'l., *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada*, AI Index AMR 20/001/2004 (Oct. 2004); Amnesty Int'l, *Unequal Rights: Ongoing Concerns About Discrimination Against Women in Canada*, AI Index AMR 20/008/2008 (Sept. 2008).

44. See, e.g., *Maisy et Shannon Disparues Depuis un an*, RADIO-CAN. (Sept. 3, 2009), http://www.radio-canada.ca/regions/ottawa/2009/09/03/001-Maisy_Shannon_Un-an.shtml (reporting on the case of Maisy Odjick and Shannon Alexander from the Algonquin community of Kitigan Zibi in Quebec).

45. See generally DUHAIME & RIVERIN, *supra* note 6.

46. See, e.g., *Stolen Sisters*, *supra* note 42.

47. See sources cited *supra* note 44.

48. Indian Act, S.C. 1985, c. I-5 (1985) (Can.).

reserves of Quebec legislation protecting indigenous women's rights to matrimonial real property.⁴⁹

A. *The Transmission of Indigenous Women's Indian Status Under the Federal Indian Act*⁵⁰

In Canada, the Indian Act regulates almost all the relevant aspects of the lives of indigenous people.⁵¹ The Act provides certain benefits and services to individuals who qualify for Indian Status as defined under section 6. More importantly, qualified Indians may live on a reserve. Until 1985, indigenous women who married non-indigenous men lost their Indian Status and were considered non-indigenous, while indigenous men who married non-indigenous women automatically transmitted Indian Status to their wives. Children born to couples composed of indigenous women and white men could not obtain Status, while children of the latter couple could gain Status. This situation was, of course, patently discriminatory and denounced successfully by the U.N. Human Rights Committee.⁵²

With the adoption of Bill C-31 in 1985,⁵³ women who had lost their Status through marriage regained full Indian Status under the new section 6(1) of the Indian Act. Their children, however, regained a new *semi-Status* under the new section 6(2) of the Act, meaning that they were granted Status but could not transmit it to the next generation unless they married an Indian with Status.⁵⁴ On the other hand, non-indigenous women who married indigenous men prior to 1985 kept their full Status, as did their children. This situation continued to be discriminatory, considering, *inter alia*, that each scenario resulted in children and grandchildren with different statuses. The issue was taken to the Canadian courts, which ruled, in *McIvor v. Canada*, that this regime was

49. See generally DUHAIME & RIVERIN, *supra* note 6.

50. See generally ABORIGINAL WOMEN AND THE IMPLEMENTATION OF BILL C-31, *supra* note 18; BILL C-31 AMENDMENT, *supra* note 18; EQUALITY FOR ALL IN THE 21ST CENTURY, *supra* note 18; GUIDE TO BILL C-31, *supra* note 18; THE IMPLEMENTATION OF BILL C-31, *supra* note 18; IMPLEMENTING BILL C-31, *supra* note 18; PRELIMINARY IMPACTS AND CONCERNS, *supra* note 18. See also AMENDMENTS TO THE REGISTRATION PROVISIONS OF THE INDIAN ACT, *supra* note 17; BILL C-3: AN ACT TO PROMOTE GENDER EQUITY, *supra* note 17.

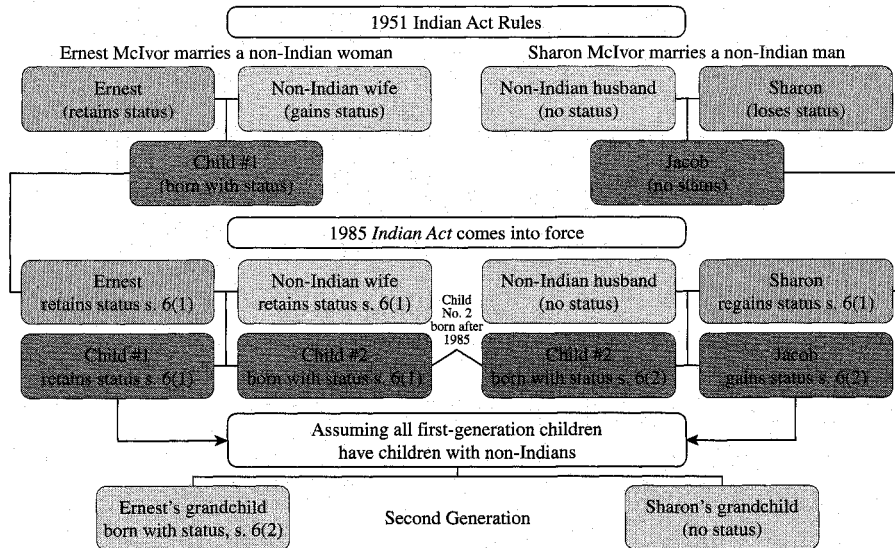
51. See generally SÉBASTIEN GRAMMOND, AMÉNAGER LA COEXISTENCE: LES PEUPLES AUTOCHTONES ET LE DROIT CANADIEN 439 (Emile Bruylant ed., 2003). See also PETER W. HOGG, CONSTITUTIONAL LAW OF CANADA 631 (2003).

52. See generally Rep. of the Human Rights Comm., 11-13th Sess., Oct. 20-31, 1980, Mar. 23-Apr. 10, 1981, July 13-31, 1981, ¶¶ 17-19, U.N. Doc. A/36/40; GAOR, 36TH SESS., SUPP. No. 40 (1981).

53. An Act to Amend the Indian Act, R.S.C. 1985, c. 27 (Can.).

54. The 6(2) Indian Status does not alter the capacity of the individual to obtain benefits and services under the Indian Act; it only limits his or her capacity to transmit the Status to the next generation.

discriminatory and obligated the federal government to change the law.⁵⁵ This situation can be illustrated as follows:



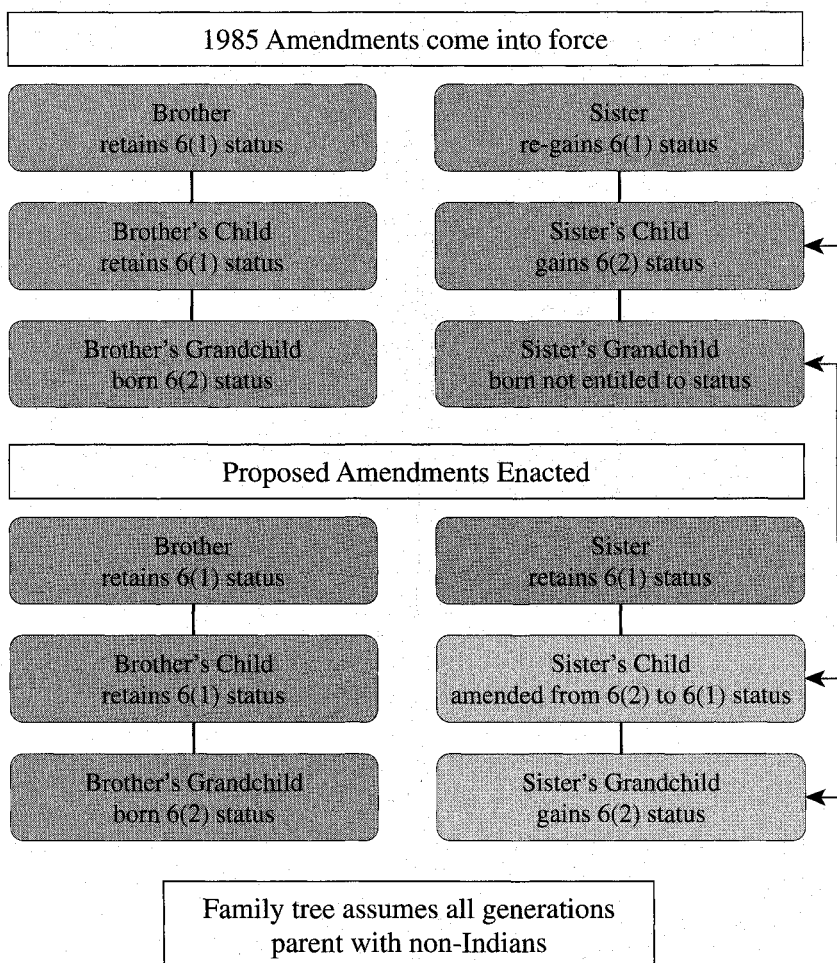
Source: DUHAIME & RIVERIN, *supra* note 6, at 37 (translated from French).

Very recently, on January 31, 2011, Bill C-3⁵⁶ entered into force. This legislative amendment to the Indian Act and to former Bill C-31 tried to redress the discrimination illustrated above. While Bill C-3 is certainly a step in the right direction, it is far from solving all the discriminatory aspects of the dynamic. Essentially, this amendment to the Indian Act re-establishes, as full 6(1) Status Indians, first-generation children of indigenous women who lost their status as result of a pre-1985 marriage. In the previous illustration, Jacob would thus regain a full 6(1) Status. The legislative amendment also grants a semi-Status (as described in section 6(2) of the Act) to some grandchildren of women who lost their status prior to 1985 (Sharon's grandchild, in the previous illustration).⁵⁷ This situation can be illustrated as follows:

55. *McIvor v. Canada* (Registrar of Indian & N. Affairs), 2009 BCCA 153, para. 161 (2009). Leave of Appeal was rejected by the Supreme Court of Canada on November 5, 2009. See Docket Information for *McIvor v. Canada*, SUP. CT. OF CAN., <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/dock-regi-eng.aspx?cas=33201> (last modified May 5, 2009).

56. *Gender Equity in Indian Registration Act*, R.S. 2010, c. 32, s. 4 (Can.).

57. See MARY C. HURLEY & TONINA SIMEONE, PARLIAMENTARY INFO. & RESEARCH SERV., PUB. NO. 40-3-C3-E, BILL C-3: GENDER EQUITY IN INDIAN REGISTRATION ACT (2010), available at <http://www.parl.gc.ca/Content/LOP/LegislativeSummaries/40/3/c3-e>.



Source: *Gender Equity in Indian Registration Act—How Do the New Legislative Changes to the Indian Act Affect Me?*, INDIAN & N. AFF. CAN., <http://www.ainc-inac.gc.ca/br/is/bl/geira/nlch-eng.asp> (last visited May 2, 2011).

The new legislative amendments do not address other problematic situations,⁵⁸ mainly because they have been tailored exclusively to address problems raised by the *McIvor v. Canada* case. As a result of this approach, the new Act reinstates as full-Status Indians first-generation children of indigenous women who lost their Status as a result of a marriage to a non-indigenous man, but *only* if such first-generation children themselves had children (as Jacob in the previous case).⁵⁹ Such reattribution of the full 6(1) Status does not apply to similar first-generation children who did not themselves have children. Similarly, as a result of the C-3 amendments, children of indigenous mothers married to non-

58. See BILL C-3: AN ACT TO PROMOTE GENDER EQUITY, *supra* note 17.

59. See Indian Act, S.C. 1985, c. I-5, s. 1(c.1)(iv) (1985) (Can.).

indigenous fathers prior to 1985 now benefit from a 6(1) Indian Status, while similar children born of a mixed couple married *after* 1985 are not covered by the C-3 amendments and benefit from a 6(2) Indian Status rather than a full one. In addition, the amendments do not address the situation regarding children of indigenous mothers and non-indigenous fathers (common-law unions, for example) who retain a 6(2) Indian Status.⁶⁰ Further, these amendments do not address the differentiated Status of male and female children born prior to 1985 of common-law unions between indigenous fathers and non-indigenous mothers.⁶¹ The law can thus still be considered discriminatory in many respects, and a case has been brought to the United Nations Human Rights Committee.⁶²

Another discriminatory aspect of this system resides in the registration process of the Status because, according to the information received from our indigenous women partners, federal civil servants presume that a child's father is non-indigenous if its birth certificate does not identify the father as Status Indian. In such situations, the child will be granted a semi-Status under section 6(2) of the Indian Act and will not be able to transmit his or her Status to the next generation unless he or she marries a Status Indian. Of course, if the mother was already a semi-Status Indian under section 6(2), the white-father presumption will make her child non-indigenous for the purposes of the Indian Act, excluding him or her from future benefits and services under this legislation and, most likely, excluding him or her from his or her reserve when reaching age eighteen.

B. *The Quebec Youth Protection Regime*

The other situation addressed in our project is the Quebec youth protection regime. The government of the Province of Quebec established this program under the Youth Protection Act,⁶³ which provides for the removal of children facing situations endangering their development, including family violence and negligence or similar treatment.⁶⁴

60. HURLEY & SIMEONE, *supra* note 57, at 8 ("Persons born after 17 April 1985 of common-law unions between a First Nations woman and a non-First Nations man who might satisfy all other conditions are not covered by new paragraph 6(1)(c.1), but remain entitled to registration under subsection 6(2).").

61. According to section 11(1)(c) of the 1951 version of the Indian Act, indigenous men having children of common-law unions with non-indigenous women would transmit the Indian Status to their male children but not to their female children. By application of the current version of section 6(1)(a) of the Indian Act, such Status acquired by male children prior to 1985 is maintained as an acquired right.

62. See Sharon McIvor *Takes Her Fight to the United Nations*, CNW (Nov. 12, 2010), <http://www.newswire.ca/fr/releases/archive/November2010/12/c3673.html>.

63. Youth Protection Act, R.S.Q., c. P-34.1 (Can. Que.).

64. See *id.* ss. 38–38.2.

Such children can be placed temporarily in foster families while biological families resolve the problematic situation.

This regime is often maladapted to the reality of indigenous families for many reasons. First, the notion of the “best interest of the child” corresponds to non-indigenous concepts, which can sometimes clash with the indigenous reality (regarding strict attendance to school during hunting season, for example).

Second, public servants implementing the Youth Protection Act are not always familiar with the day-to-day reality of indigenous families living in remote reserves and apply criteria that are, again, culturally maladapted. For example, in a context where Indian reserves drastically lack public funding and where there are severe housing shortages, many families will often share housing and place many children in the same room, both of which are factors taken into account negatively by public servants implementing the Youth Protection Act and assessing the best interest of a child.

Third, indigenous families are often the object of prejudices, perceived by the authorities as incapable of taking care of their children, often because of alcohol or drug abuse. Fourth, since very few indigenous families can qualify as foster families under the Act, for all sorts of reasons (including, for example, the lack of housing on reserves), many if not most children are placed in non-indigenous foster families outside of indigenous communities.

Finally, recent amendments to the Youth Protection Act shorten the time period during which children are placed in foster families.⁶⁵ Biological families thus have less time to resolve their problems, including those related to family violence. After a now-reduced period of time, children can be placed in adoption, most often with non-indigenous families outside of the community. It is needless to say that in remote reserves where public authorities provide little social and psychological support, indigenous parents who lost their children because of family violence stand almost no chance to resolve their problems in the time period provided by the law. It is not unlikely that such children will end up adopted by non-indigenous foster families outside of the community.⁶⁶

65. *See id.* s. 91.1. Section 91.1 was amended by An Act to Amend the Youth Protection Act and Other Legislative Provisions, S.Q. 2006, c. P-34.1, s. 63 (Can. Que.).

66. *See* Brian Myles, *Les autochtones craignent l'assimilation par l'adoption*, LE DEVOIR, July 8, 2008, at A4; *see also* TRADITIONAL AND CUSTOM ADOPTION IN THE FIRST NATIONS, *supra* note 17; REVISION OF THE YOUTH PROTECTION ACT, *supra* note 17.

C. Matrimonial Real Property Rights

The last situation addressed in our project deals with the protection of matrimonial real property rights of indigenous women living on reserves. In the Province of Quebec, there is a *de facto* regime protecting the real property rights of each person in a married couple: the matrimonial patrimony. Article 415 of the Quebec Civil Code⁶⁷ provides that, upon separation, divorce, or annulment of a marriage, the family real property and the movable property used by the family (car, appliances, etc.) are divided equally between both members of a couple, irrespective of written deeds.

The situation is a bit more complicated on Indian reserves as, in accordance with the 1867 Canadian Constitution⁶⁸ and section 88 of the Indian Act, provincial laws are not applicable to Indians and to Indian reserves. In fact, technically, Indian reserve lands are the property of the Federal Crown, which holds such lands in trust for the Indian bands and therefore cannot be seized by application of provincial laws.⁶⁹ Indians living on reserves are generally not owners of their private lands and houses but are granted permission to use these properties by band councils, in accordance with possession certificates.⁷⁰ Consequently, the Canadian Supreme Court ruled that provincial laws regulating real matrimonial property could not be applied to Indian reserve lands and the houses built on them.⁷¹

In these circumstances, there is a legislative vacuum regarding the protection of real matrimonial property rights on reserves.⁷² What usually happens is that upon separation or divorce, the judicial authorities will grant the use of the house to the person whose name appears on the possession certificate, which—in most cases—is the husband's. In the context of housing shortages on reserves, most indigenous women are either forced to go back to their parents' house—if there is room with them, that is—or leave the reserve and seek housing outside of the community.

The Canadian Parliament is currently considering adopting legislation to fill the legislative vacuum. Bill S-4 will enable band councils to

67. Civil Code of Québec, S.Q. 1991, c. 64, art. 415 (Can.).

68. CONSTITUTION ACT, 1867, 30 & 31 VICT., c. 3 (U.K.), reprinted in R.S.C. 1985, app. II, no. 5, s. 91(24) (Can.).

69. On the status of Indian land, see generally *St. Catharine's Milling & Lumber Co. v. The Queen*, [1888] 14 App. Cas. 46 (P.C.) (appeal taken from Can.). See also *Delgamuukw v. B.C.*, [1997] 3 S.C.R. 1010 (Can.); *Guerin v. R.*, [1984] 2 S.C.R. 335 (Can.).

70. Indian Act, R.S.C. 1985, c. I-5, s. 20 (Can.).

71. *Derrickson v. Derrickson*, [1986] 1 S.C.R. 28 (Can.).

72. See ON-RESERVE MATRIMONIAL REAL PROPERTY, *supra* note 17; see also RECLAIMING OUR WAY OF BEING, *supra* note 18.

adopt their own regimes of protection and will also provide for an interim regime, which will allow judicial authorities to take into consideration factors equivalent to those provided under the provincial matrimonial patrimony regime when dividing the assets of a separating or divorcing couple.⁷³

* * *

The three situations described above illustrate well the different ways in which public legislation or actions of public officials may have discriminatory effects on indigenous women. Most of these contexts involve very private aspects of the lives of indigenous women. They relate to the women's capacity to enjoy and fully exercise their human rights, such as the right to culture and language, including the right to transmit one's culture and language to children, the right to housing, to family life, to property, and so forth. The maladapted laws and regulations—or the absence thereof—and the culturally inadequate actions of civil servants implementing public policies limit the capacity of indigenous women to exercise these rights. In each scenario, the end result is unique to the reality of indigenous women, contrary to that of indigenous men or of non-indigenous women.

V. FORCING A CHOICE OF IDENTITY

The three situations reveal, to differentiated degrees, how multiple forms of discrimination coexist and interact, having adverse effects on women. The first scenario deals with legislation applicable only to indigenous peoples (providing Indian Status), which regulate men and women differently because of historical discriminatory provisions. The second deals with a public policy regarding the protection of children, a subject matter central to the private lives of women (i.e., their role as mothers), which, while intended for all Quebecers, is maladapted to the indigenous reality (culturally inadequate responses, absence of adapted resources, etc). The last scenario deals with the lack of legislation applicable to real matrimonial property rights on Indian reserves regarding indigenous persons. Experience has shown that, in this context, women remain unprotected in the case of separation or divorce, losing their rights to the place they used to live in, and often must leave the reserve to find housing elsewhere.

In each scenario, the end result is caused by a racial and a gender component, the first triggering or aggravating the second, or vice versa.

73. Family Homes on Reserves and Matrimonial Interests or Rights Act, S-4, 40th Parl. (Can.), available at http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=3&Mode=1&Pub=Bill&Doc=S-4_3&File=32.

The intersectional discrimination—the uniqueness of the combined effect of both types of discriminations—is patent.

This being said, the double-discrimination effect is multiplied in contexts of family violence, which mainly adversely affects indigenous women. The Indian Status scenario illustrates quite bluntly this tendency. Let us recall that there is a *de facto* presumption of non-indigenous paternity in cases where birth certificates do not indicate the name of the father. Such children of full-Status mothers are automatically registered as semi-Status Indians under section 6(2) of the Indian Act. If the mother is already a semi-Status Indian, the child will not be registered as Indian under the Act. Consequently, an indigenous women who has a child as a result of domestic violence and who has preferred not to inform the father, in order to protect herself or to cut ties with the violent man, will be faced with an impossible dilemma when filing the child's birth certificate and registering it to Indian Affairs. She either reveals the father's identity, exposing herself to future contact with the violent father and perhaps to further violence, or she indicates that the child has an unknown father and consequently limits its right to Indian Status. In other words, the adverse effect of the Status policy forces women in contexts of family violence to choose between their personal security, physical, sexual, and moral integrity, or their cultural and national identity. Indigenous men do not face such decisions. Similarly, non-indigenous women do not have to sacrifice their personal security to transmit their Canadian citizenship to their children.

The same can be said of the second scenario, regarding the provincial youth protection regime. Considering the fact that family violence is an important factor taken into consideration by youth protection officers in determining whether to place a child in a foster family, considering the short time the legislation gives to parents to redress family violence before an eventual adoption of their child, and considering the lack of resources available in indigenous communities to address this type of problem, indigenous women also face a similar dilemma. Either they denounce family violence in order to protect their personal security and face the possibility of seeing their child being taken from them, and placed in and later adopted by a non-indigenous foster family outside of the community, or they continue to endure the violence to avoid losing their child to a new non-indigenous environment and culture.

Finally, with respect to the last scenario dealing with the lack of adequate applicable legislation protecting women's matrimonial real property rights on Indian reserves, indigenous women must either denounce the family violence and run the risk of being expelled of their house (and because of lack of housing on reserves, run the risk of being

forced out of the community as well), or they must endure the violence to stay in their community and raise their children in their native language and culture.

All three scenarios deal with the private lives of indigenous women. But all three also illustrate how, in contexts of family violence, inadequate public policies force these women to choose between their identity as women and as indigenous persons, between the right to preserve one's personal, sexual, and moral integrity; or the right to live in one's culture and language, and to transmit these to the next generation. This impossible choice—this identity dilemma—is specific to the condition of indigenous women. It is not faced in similar ways by indigenous men or by non-indigenous women in Quebec.

Is this not precisely the type of intersectional discrimination we referred to in the beginning? Trying to redress such a situation commands an intersectional approach, which seeks to avoid the sub-classification of discrimination in specific categories of gender and racial discrimination. This is precisely the type of identity dilemma that the Critical Race Feminists have tried to put to light and have condemned.⁷⁴ As put by Patricia Hill Collins, the “[e]ither/or dualistic thinking, or what I . . . refer to as the construct[ion] of dichotomous oppositional difference, may be a philosophical lynchpin in systems of race, class, and gender oppression.”⁷⁵

VI. CONCLUSION

Understanding the phenomenon is, of course, a step in the right direction, but too small of a step. Working in collaboration with Quebec Native Women, we have decided to take these issues to the women of Quebec's indigenous communities. One of our initial conclusions was that, apart from the very publicized debate regarding the transmission of the Indian Status, very few women were aware of the issues described above. In fact, very few were aware of their equality rights in general. The project was thus adapted to raise awareness in indigenous communities about women's rights, in particular about equality and about the obligation of the State to prevent discrimination, including discriminatory effects of its law, policies, and actions in the women's private lives.

With the financial support of the Quebec Ministry of Education, a training guide was prepared in collaboration with Quebec Native Women and the University of Quebec at Montreal, which was designed to equip indigenous women leaders with the legal tools to publicize

74. See Bond, *supra* note 33; see also Crenshaw, *supra* note 31; Crenshaw, *supra* note 37.

75. Collins, *supra* note 37, at S20.

these issues in their respective nations.⁷⁶ In 2010, French-speaking leaders representing the Innu Nation, the Atikamekw Nation, the Huron Wendat Nation, and the Abenakis Nation were trained in the Mohawk community of Kahnawake. We later accompanied them back to their communities to support their presentation to groups of indigenous women there. The results were very encouraging. In addition to considerable positive feedback from the participants, many indigenous women later contacted Quebec Native Women to know more about their right to equality. In 2011, the same is being done with English-speaking indigenous leaders from the Mohawk (or Kanien'kehá:ka) Nation, the Algonquin Nation, the Cree (or Eeyou) Nation, the Micmac (or Mi'gmaq) Nation, and the Naskapi (or Mushuau Innuts) Nation.

Aside from capacity-building of leaders, the next challenge remains, of course, documenting particular cases and addressing the issue in political and judicial fora. This is part of a broader continental endeavour undertaken with the Continental Network of Indigenous Women of the Americas, with which we are trying to do the same (analyzing, strengthening capacities, documenting) in other regions and on other themes. These efforts include addressing access to education of indigenous girls in Argentina, access to health of Mexican indigenous women, and the impact of sexual violence on indigenous women in the Colombian conflict.

While the prospects of documenting interesting results of intersectional discrimination seem—unfortunately—promising, other important challenges lie ahead. For example, this process will require establishing adequate methodological tools to fully assess the collective-impact violations of indigenous women's human rights can have on their respective communities. Indeed, as the research progresses in each project of the Continental Network, our indigenous partners all agree on one thing: Indigenous women experience human rights violations in both an individual and a collective—indigenous people—manner. This begs the question: Is the intersectional approach suggested by schools of thought such as the Critical Race Feminism well-adapted to address collective concerns of indigenous women and their peoples? Do indigenous women experience racial discrimination in a classic racial or cultural perspective, or do issues specific to indigenous peoples, such as self-determination and cultural sovereignty, come into play? Obviously, the debate is far from over.

76. See DUHAIME & RIVERIN, *supra* note 6.