



**flew** Family Law  
Education for Women  
Women's Right to Know

**fodf** Femmes ontariennes et  
droit de la famille  
Le droit de la femme à savoir

## Considering Young Aboriginal Women, Family and Legal Issues

November 4, 2013

**Tamar Witelson**, Legal Director, METRAC  
**Emily Hill**, Senior Staff Lawyer, Aboriginal Legal Services Toronto

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# METRAC

## METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

[www.metrac.org](http://www.metrac.org)

## METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

## FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

[www.onefamilylaw.ca](http://www.onefamilylaw.ca)

[www.undroitdefamille.ca](http://www.undroitdefamille.ca)

# Presenters

## **Tamar Witelson**

Legal Director, METRAC



## **Emily Hill**

Senior Staff Lawyer, Aboriginal Legal Services Toronto



# Family Law Issues for Young Aboriginal Women

## Topics to Be Covered

1. Young Aboriginal Women in the Family Law System
2. Context: Colonial History and Aboriginal Families
3. “Indian Status” and its Implications
4. Laws affecting Aboriginal Families and Family Property
5. Young Aboriginal Women and Child Custody and Access
6. Violence Against Aboriginal Women: Looking Forward
7. Additional Resources

*Information is accurate as of November 4, 2013*



# Young Aboriginal Women in the Family Law System

# Young Aboriginal Women in the Family Law System

## Aboriginal Peoples

- First Nations
- Inuit
- Metis

## Aboriginal Women in Partnerships

- In 2006, 48% of Aboriginal women reported being legally married
- In 2006, 17% of Aboriginal women were living in common-law relationships
- Divorce rates:
  - 7% among Métis women
  - 5% among “Registered Indian” women on reserve
  - 3% among “Registered Indian” women off reserve
  - 2% Inuit women
  - 6% among non-Aboriginal women

## Aboriginal Women and Family Violence

- Aboriginal women were found to be 3 times more likely than non-Aboriginal women to be a victim of violence (including family violence)
- 63% of female Aboriginal victims were between the ages of 15 and 34 years

# Young Aboriginal Women in the Family Law System

## **Young Aboriginal Mothers**

- in 2006, 8% of Aboriginal teenage girls (15 to 19 years) were parents
- compared to 1.3% of non-Aboriginal teenage girls
- 28% of Aboriginal children live in single parent families headed by a mother
- 58% of Aboriginal children live in poverty

## **Aboriginal Women, Children, and Child Protection Services**

- in 2011 almost half of the 30,000 children under 14-years-old in foster care were Aboriginal children
- in 2011 there were 14,225 Aboriginal children who were wards of the state



## Context: Colonial History and Aboriginal Families

# Context: Colonial History and Aboriginal Families

## Clash of Culture and Tradition

- **Aboriginal Cultural Norms**

- Women are respected as those who bring children into the world and who care for them
- Children are respected as a gift to society
- Women and children viewed as wise and powerful community members
- Women's role to keep and pass on tradition, culture and beliefs

- **Colonial European Cultural Norms**

- Women viewed as subordinate to men
- Children viewed as parental property/possessions and objects of parental authority

# Context: Colonial History and Aboriginal Families

## Impact of Colonialism on Aboriginal Women and Children

- Discrimination and human rights violations against Aboriginal peoples
- Poverty
- Sexist attitudes and practices towards Aboriginal women
- Aboriginal women displaced from social position of power and influence in community
- High levels of violence and sexual violence against Aboriginal women especially young women
- Breakdown of Aboriginal families and communities

# Context: Colonial History and Aboriginal Families

## Residential School System

- Started by churches, continued by Canadian government
- From 1880s to mid-1990s
- Objective was to end Aboriginal culture
  - separated children from family and community
  - forbade Aboriginal language, clothing, food, customs

# Context: Colonial History and Aboriginal Families

## Residential Schools' Effects on Family

- Aboriginal children
  - suffered physical, sexual, psychological abuse
  - lost traditional parenting role models for parenting skills
  - low education
  - high unemployment
  - substance abuse and self-harm
  - violence
  - high involvement in criminal justice system
  - high rate of child protection intervention
- Parents suffered loss of children
- Communities lost vitality of youth under 16 years
- Some children never returned to Aboriginal community

# Context: Colonial History and Aboriginal Families

## “The Sixties’ Scoop”

- Refers to high incidence of child protection apprehension from Aboriginal families
- Aboriginal children were fostered or adopted by white families
- Began in 1960s continued until 1980s
- Result of dismantling of Residential Schools
- Aboriginal parenting viewed as inadequate
- Extended family and communal values misunderstood as neglect
- Trauma and related poverty, unemployment, substance abuse, despair regarded as abuse or neglect
- Perpetuated family, community and cultural disruption of Residential Schools

# Context: Colonial History and Aboriginal Families

## Considerations for Service Providers

- When working with young Aboriginal Women:
  - Be aware of Colonial history and context
  - Understand the importance of extended family and the place of children in Aboriginal cultures
  - Understand children's participation in family decision-making as part of Aboriginal culture
  - Respect mother's choice to involve children
  - Ask about cultural preferences when referring to specific services



## “Indian Status” and Its Implications

# “Indian Status” and Its Implications

- “Indian”
  - A term used in the *Indian Act R.S.C., 1985, c. I-5*
  - First Nations peoples may be, or are able to become, a “Registered Indian” under the *Indian Act*
- Who is a “Status Indian”?
  - A First Nations person recognized by the federal government as registered under the *Indian Act* (also called a “Registered Indian”)
- More than 1 million Aboriginal people in Canada (4% of population)
  - 53% “Status Indians”
  - 11% non-“Status Indians”
  - 30% Metis
  - 4% Inuit

# “Indian Status” and Its Implications

## What does “Status” or “Registered” mean?

- Identifies individuals governed by the *Indian Act*
- federal and provincial governments provide some benefits to “Status Indians” for:
  - housing
  - child care
  - post-secondary education
  - extended health care
  - certain tax exemptions
- “Indian Status” gives eligibility to:
  - live on reserve
  - own or inherit property on reserve
  - participate in political and community life of reserve
  - membership in Indian Bands

## “Indian Status” and Its Implications

### For child to be registered as a “Status Indian”

- depends on whether parents or grandparents are entitled to status
- possible concerns for mother:
  - whether to list father on birth certificate
  - if child entitled to register with more than one First Nation, child can only register with one

## “Indian Status” and Its Implications

### Discrimination against women and children under the *Indian Act*

- Until 1985, “Status Indian” included only:
  - an eligible First Nations male
  - wife of an eligible First Nations male
  - child of an eligible First Nations male

## “Indian Status” and Its Implications

### Discrimination against women and children under the *Indian Act*

- Until 1985:
  - A First Nations woman who married a non-“Status Indian” would lose her status
  - Her children would be ineligible for “Indian Status”

#### **Note:**

- ❖ A First Nations man who married a non-“Status Indian” would keep his status
- ❖ His wife and children would be eligible for “Indian Status”

## “Indian Status” and Its Implications

### Discrimination against women and children under the *Indian Act*

- Amendments to *the Indian Act* in 1985 and 2011
  - women who lost status through marriage may obtain “Indian Status”
  - children who lost status through mother’s marriage may obtain “Indian Status”
  - some grandchildren of parents who re-gained or are eligible for status may obtain “Indian Status”
- young Aboriginal women may not have or be aware of their entitlement to “Indian Status”
- young Aboriginal women may not have or be aware of their children’s entitlement to “Indian Status”

# “Indian Status” and Its Implications

## Considerations for Service Providers working with young Aboriginal women

- discuss a woman’s connection to her Aboriginal heritage and whether she/children have “Indian Status”
- explain your question is related to possible benefits associated with “Indian Status”
- ask if she would like more information about registering and possible benefits
- direct her to Aboriginal Legal Services Toronto or another lawyer to help determine if she or her child is entitled to “Indian Status”
- to prepare for legal advice about “Indian Status” rights, she should find out:
  - Did her grandmother lose her “Indian Status” as a result of marrying a non-“Status Indian”?
  - Is one of her parents registered, or entitled to be registered, under the *Indian Act* (section 6(2))?
  - Was she, or one of her siblings, born on or after September 4, 1951?

# Presenters

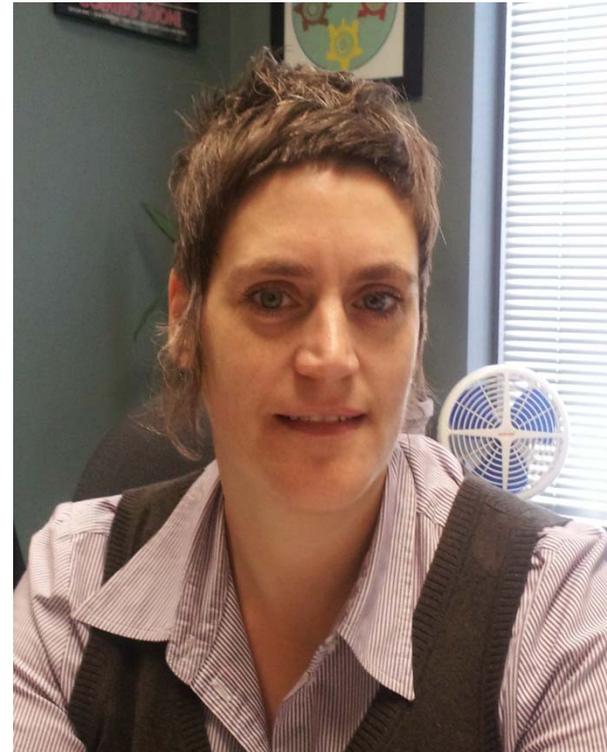
## **Tamar Witelson**

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Senior Staff Lawyer, Aboriginal Legal Services Toronto





## Laws Affecting Aboriginal Families and Family Property

# Laws Affecting Aboriginal Families and Family Property

## Ontario *Family Law Act*

- applies to Aboriginal women
  - both Status and non-Status
  - married and living common law
  - for all partners
  - on reserve and off reserve
    - includes custody/access; child support; spousal support; division of property off reserve
    - excludes family property rights on reserve

# Laws Affecting Aboriginal Families and Family Property

## Family Property Rights on Reserve

- matters dealing with land on reserve fall under federal government powers
- provincial laws for possession and division of family property to not apply
- new law passed and coming into force
  - *Family Homes on Reserves and Matrimonial Interests or Rights Act*

# Laws Affecting Aboriginal Families and Family Property

## *Family Homes on Reserves and Matrimonial Interests or Rights Act*

- applies to married spouses and common law partners (in a relationship for 1 year or more)
- affects women living on reserve
  - Aboriginal women
  - non-Aboriginal women with an Aboriginal spouse or partner
- Deals with:
  - emergency protection orders
  - right to stay in matrimonial home until property rights resolved
  - right to division of family property

# Laws Affecting Aboriginal Families and Family Property

## Concerns for women living on reserve before the new law:

- At the end of a relationship, the woman could be forced to leave her home
- A woman's matrimonial home could be sold without her consent
- A woman did not have a right to get a share of the value of the matrimonial home
- A woman, even with children, could not get a court order to stay in the matrimonial home
- In domestic violence cases, a woman could not get a court order to keep her abuser out of the home

# Laws Affecting Aboriginal Families and Family Property

## Changes under the new law

- New law applies unless Indian Band enacts its own rules for family property
- 1. Emergency Protection Orders available from court
  - for domestic violence when protection of person or property is needed
  - abusive partner may be removed from family home
  - up to 90 days

# Laws Affecting Aboriginal Families and Family Property

## Changes under the new law

### 2. Occupation Rights

- both spouses/partners have right to occupy family home during relationship
- either spouse/partner may apply for exclusive occupation court order after separation
- after death of spouse/partner, survivor may occupy family home for 180 days
- applies whether or not spouse/partner is First Nations member or “Status Indian”

# Laws Affecting Aboriginal Families and Family Property

## Changes under the new law

### 3. Possession Rights

- each spouse/partner entitled to half value of matrimonial home
- both spouses/partners must consent in writing to sale of matrimonial home
- after death of spouse/partner, survivor may apply for court order to get half value of matrimonial home
- applies whether or not spouse/partner is First Nations member or “Status Indian”

# Laws Affecting Aboriginal Families and Family Property

## Ontario *Child and Family Services Act (CFSA)*

- applies to Aboriginal mothers and children
  - both Status and non-Status
  - on reserve and off reserve
- Sections of the *CFSA* recognize that:
  - Services should recognize Aboriginal culture, heritage, tradition, and concept of extended family
  - “Indian and native people” entitled whenever possible to provide their own child and family services

# Laws Affecting Aboriginal Families and Family Property

## Ontario *Child and Family Services Act (CFSA)*

- Every CAS in Ontario may investigate and intervene when concerned an Aboriginal child is in need of protection
- Aboriginal women may not trust or may fear CAS because of negative history of government actions that broke apart Aboriginal families
- Aboriginal women may be reluctant to work with CAS or referred services

# Laws Affecting Aboriginal Families and Family Property

## Five First Nations societies in Ontario that enforce the *CFSA*

1. Anishinaabe Abinoojii Family Services
2. Dilico Ojibway Child and Family Services
3. Payukotayno James & Hudson Bay Family Services
4. Tikinagan Child and Family Services
5. Weechi-it-te-win Family Services

# Laws Affecting Aboriginal Families and Family Property

## Six First Nations Child and Family Services in Ontario with own standards of practice

- do not apprehend or enforce the *CFSA*
1. Akwesasne Child and Family Services
  2. Kina Gbezhgomi Child and Family Services
  3. Kunuwanimano Child and Family Services
  4. Mnaasged Child & Family Services
  5. Nog-da-win-da-min Family and Community Services
  6. Six Nations of the Grand River



## Aboriginal Women and Issues of Custody and Access

# Young Aboriginal Women and Issues of Custody and Access

## Common Problems for Young Aboriginal Women and Custody of Children

- Racism
- Domestic violence
- Stereotypes and negative assumptions about parenting abilities
- Challenges related to poverty
- Further challenges may arise from low education; drug use; violence
- Possible choices between living on or off reserve (case by case)
  - On reserve – community support; limited housing/resources; may be regarded as poor choice; may conflict with access by other parent
  - Off reserve – less community support for mother and children; more social services; children may have greater access to other parent
  - May have to flee violence

## Young Aboriginal Women and Issues of Custody and Access

### If a woman is fleeing violence on reserve

- a woman fleeing family violence on reserve
  - may be forced out of her family home
  - may be forced to live in extreme poverty
  - may be at high risk of losing custody of her children, since “best interests of child” is often determined by who has access to the family home, extended family and other resources

# Young Aboriginal Women and Issues of Custody and Access

## Some considerations for Service Providers

- ask about a woman's choice for herself and her children
- review the benefits and challenges from living on or off reserve
- help educate others working with an Aboriginal woman
  - social services
  - mediator
  - lawyer
  - judge
  - CAS
- Possible referrals for information:
  - Aboriginal child and family services
  - Aboriginal Family Court worker
    - 311 Jarvis Street Toronto 416-929-4223
  - Aboriginal Legal Services Toronto



## Violence Against Aboriginal Women: Looking Forward

# Violence Against Aboriginal Women: Looking Forward

## Violence Against Aboriginal Women

- 520 missing or murdered Aboriginal women in Canada in the past 30 years
- Aboriginal women are victims of violence 3.5 times more than non-Aboriginal women
- Among Aboriginal women sexual assault victims:
  - 75% are younger than 18 years
  - 50% are younger than 14 years
  - 25% are younger than 7 years
- 1 in 3 women in federal prison is Aboriginal
- average age of Aboriginal woman inmate is 34 years – five years younger than the average age of non-Aboriginal women inmates

# Violence Against Aboriginal Women: Looking Forward

## Encouraging Change

- growing awareness of Aboriginal history and culture
- Aboriginal women are finishing high school and university degrees at a higher rate than Aboriginal men
- wage gap between Aboriginal women and men is closing
- more Aboriginal women political and social leaders
- 17.5% of Indian Band Chiefs are women
- continuing activism by Aboriginal women's groups and allies

# Presenters

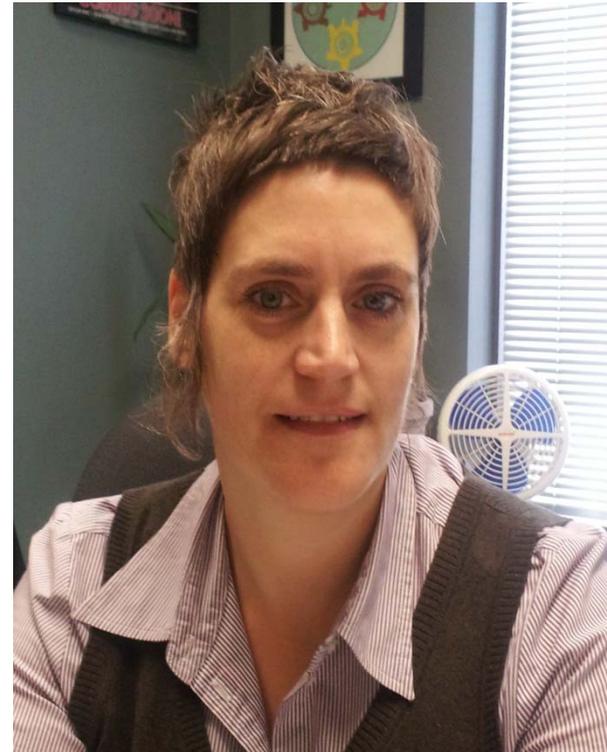
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Services Toronto



# Additional Resources

Aboriginal Legal Services of Toronto

[www.web.net/alst/index.htm](http://www.web.net/alst/index.htm)

Toronto: 416-408-3967 or 416-408-4041

Find a community legal clinic near you

[www.legalaid.on.ca/en/contact/contact.asp?type=cl](http://www.legalaid.on.ca/en/contact/contact.asp?type=cl)

# Additional Resources

## **Some Aboriginal Community Resources**

### Ontario

**Chiefs of Ontario**

[chiefs-of-ontario.org/](http://chiefs-of-ontario.org/)

**Association of Iroquios and Allied Indians**

[www.aiai.on.ca/](http://www.aiai.on.ca/)

**Anishinabek Nation Union of Ontario Indians**

[www.anishinabek.ca/](http://www.anishinabek.ca/)

**The Grand Council of Treaty #3 Anishinaabe Nation**

[www.gct3.net/](http://www.gct3.net/)

**Nishnawbe Aski Nation**

[www.nan.on.ca/](http://www.nan.on.ca/)

**Native Women's Resource Centre of Toronto**

[www.nwrct.ca](http://www.nwrct.ca)

# Additional Resources

## **Aboriginal Community Resources**

### Ontario

**Ontario Native Women's Association**

[www.onwa-tbay.ca/](http://www.onwa-tbay.ca/)

**Andunyaun Women's Shelter**

[www.andunyaun.org](http://www.andunyaun.org)

### National Organizations

**Assembly of First Nations**

[www.afn.ca/](http://www.afn.ca/)

**Native Women's Association of Canada**

<http://www.nwac.ca/>

**Canadian Council for Aboriginal Business**

[www.ccab.com/](http://www.ccab.com/)

# Additional Resources

Family Law Education for Women (FLEW)

[www.onefamilylaw.ca](http://www.onefamilylaw.ca)

FODF (Femmes Ontariennes et Droit de la Famille)

[www.undroitdefamille.ca](http://www.undroitdefamille.ca)

Booklets for Aboriginal Women

[www.onefamilylaw.ca/en/aboriginalwomen](http://www.onefamilylaw.ca/en/aboriginalwomen)

Ontario Women's Justice Network

[www.owjn.org](http://www.owjn.org)

Ministry of Children and Youth Services

Child Protection Standards in Ontario

[children.gov.on.ca/htdocs/English/topics/childremsaid/childprotectionstandards.aspx](http://children.gov.on.ca/htdocs/English/topics/childremsaid/childprotectionstandards.aspx)

# Additional Resources

Native Child and Family Services of Toronto

[www.nativechild.org](http://www.nativechild.org)

Article on Aboriginal Women and Custody issues,  
Springtide Resources

[springtideresources.org/resource/aboriginal-women-no-rights-land-or-children](http://springtideresources.org/resource/aboriginal-women-no-rights-land-or-children)

What You Should Know About Child Protection  
Court

Cases, Ministry of the Attorney General Website

[attorneygeneral.jus.gov.on.ca/english/about/pubs/child\\_protection.asp](http://attorneygeneral.jus.gov.on.ca/english/about/pubs/child_protection.asp)

# Additional Resources (Family)

## **Assaulted Women's Helpline**

[www.awhl.org](http://www.awhl.org)

- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
- Toronto: 416-863-0511

## **Legal Aid Ontario**

[www.legalaid.on.ca/en/getting/default.asp](http://www.legalaid.on.ca/en/getting/default.asp)

- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- Toronto: 416-979-1446 (accepts collect calls)

## **Family Law Information Program (FLIP)**

[www.legalaid.on.ca/en/getting/flip.asp](http://www.legalaid.on.ca/en/getting/flip.asp)

## **Family Law Information Centres (FLICs)**

[www.legalaid.on.ca/en/getting/type\\_family.asp](http://www.legalaid.on.ca/en/getting/type_family.asp)

## **Family Law Services Centres (FLSCs)**

[www.legalaid.on.ca/en/contact/contact.asp?type=flsc](http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc)

# Additional Resources (General)

## **Victim Crisis Assistance and Referral Services (VICARS)**

- Immediate, on-site service to victims of crime 24 hours a day, 7 days a week
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

## **Victim Support Line (VSL)**

- province-wide, multilingual, toll-free information line providing a range of services to victims of crime
- Services available from 8 a.m. to 10 p.m., 7 days a week in 13 languages
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

## **Court Prep**

[www.courtprep.ca](http://www.courtprep.ca)

- provides information on the Canadian legal system and prepares victims and witnesses to give evidence